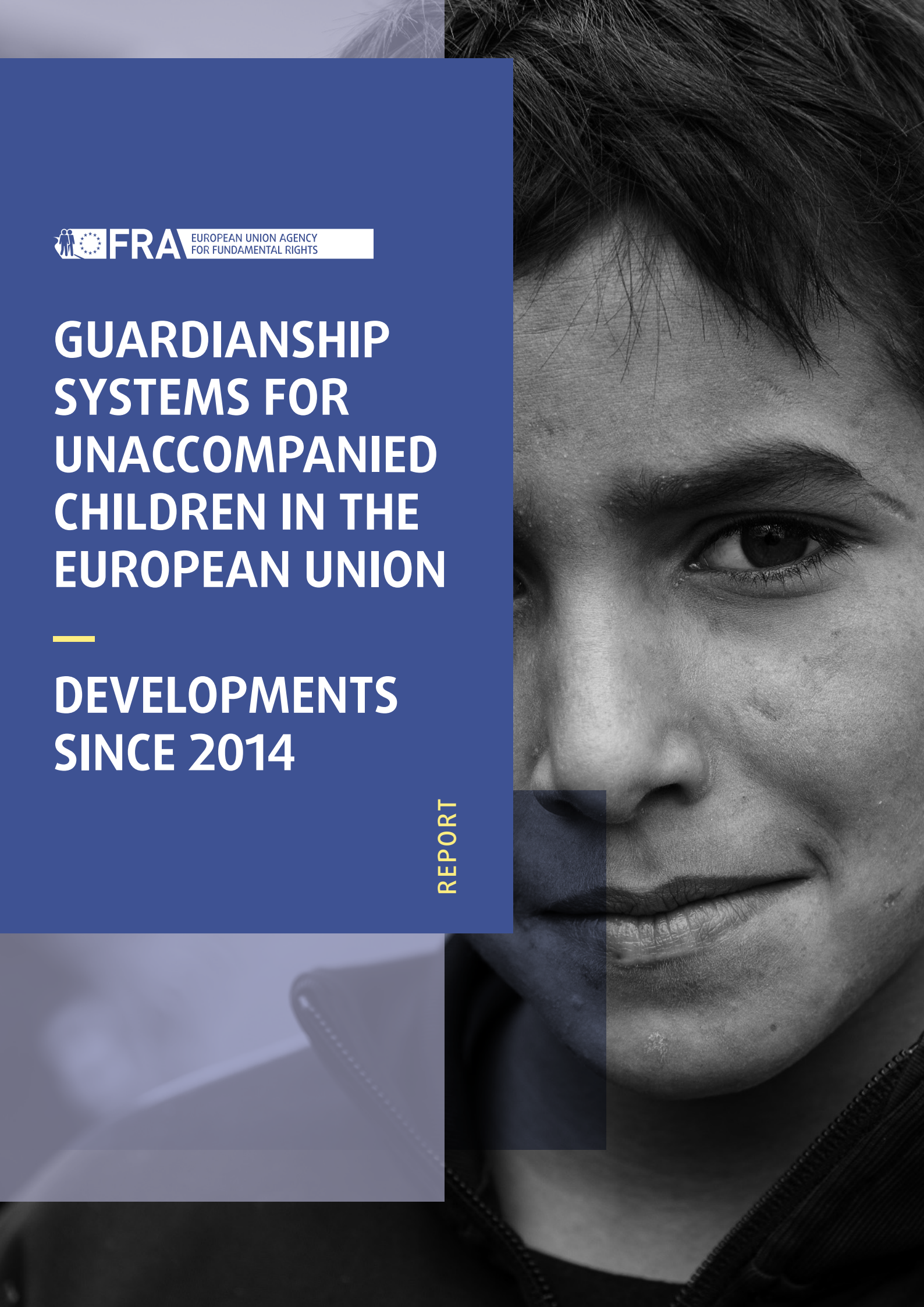


# GUARDIANSHIP SYSTEMS FOR UNACCOMPANIED CHILDREN IN THE EUROPEAN UNION

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## DEVELOPMENTS SINCE 2014

REPORT



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# Foreword

Every year, children undertake dangerous journeys to Europe – many without their parents or other adult caregivers. The journey itself is full of peril, but arriving in the European Union also brings daunting challenges. This is why providing guardians to unaccompanied children is so vital.

Guardians aim to ensure children's well-being and that their best interests are taken into account. They help children find a place to stay, go to school, get healthcare, and exercise their legal rights. For unaccompanied children who find themselves in unfamiliar surroundings, often unable to understand the language, they are their only adult reference point – a tremendous responsibility.

In 2015 and 2016, the numbers of unaccompanied children arriving in Europe increased dramatically, straining national guardianship systems. This report looks at how EU Member States, as well as North Macedonia and Serbia, have since adapted these systems for such children.

It shows that overall, although legislative changes have taken place in many Member States, national guardianship systems continue to face many challenges. The guardianship systems also still vary greatly across the EU.

All children deprived of parental care should be entitled to proper protection, but guardians are not appointed in certain contexts. Even when children are assigned guardians, the process can take too long, exposing them to various risks. Guardians remain stretched thin in various locations. Sometimes, conflicts of interest emerge. With local authorities playing large roles, consistency can be elusive.

Monitoring helps, but it needs accessible complaint mechanisms to be effective. Proper training is also key; too few countries provide it. Structured networks that exchange experiences and tools can also be an invaluable resource. So can the children themselves – whether to provide insights on their own care plans or on broader improvements. Encouragingly, more initiatives recognise this reality.

Recent EU-level policy efforts emphasise the need to both standardise the protection of unaccompanied children across the EU and to strengthen guardianship systems for them. We hope the findings outlined in this report help policymakers implement practical changes to further these important goals.

**Michael O'Flaherty**  
*Director*



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# Main findings and guidance

The United Nations Convention on the Rights of the Child (CRC), ratified by all EU Member States, obliges states to ensure the protection of children who are without parental care. This right to protection expands to any child, no matter the nationality or residence status, if found in the territory of a state that is party to the convention.

Assigning a guardian to support the child is a key element of that protection. The guardian should ensure that the child receives appropriate accommodation, goes to school and has access to a doctor. The guardian should also ensure that the best interests of the child are considered at all moments, including when making decisions about the future of the child, and should represent the child in any administrative or judicial proceeding.

This report focuses on key developments since 2014 as regards guardianship provisions for unaccompanied children from non-EU countries. It supplements and updates information on guardianship provided by earlier FRA publications issued in 2014 and 2015.

FRA and the European Commission published **Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking** in 2014. It provides guidance on the management and actions of guardians. In 2015, FRA published **Guardianship systems for children deprived of parental care in the European Union**. The report provides an overview of guardianship systems in the EU Member States, with a specific focus on their role in responding to child trafficking.

The continuing challenges faced, and the legal and policy initiatives taken by Member States to address them, as well as their outcomes, have called for an update of this initial 2015 guardianship report. The report preceded the increase in the numbers of migrants and asylum seekers, including unaccompanied children, arriving in the EU in 2015 and 2016. The sudden increase in arrivals of unaccompanied children – from 21,000 in 2014 to 91,000 in 2015 – inevitably put under strain guardianship systems in many EU Member States.

This report focuses on unaccompanied children from non-EU countries, independently of their status. This includes child victims of trafficking, children seeking asylum, and children with international protection status, as well as children who do not apply for asylum but who need protection. It covers several new areas in which there have been developments in the past few years, such as child participation, reporting obligations of guardians, and the role of guardians in age assessment procedures.

The report covers the 27 Member States, North Macedonia and Serbia. It is based on desk research carried out by FRA's research network, Franet. It covers the state of play and any developments since the last report in the following areas:

- main elements of guardianship systems
- appointment procedures
- knowledge and skills of guardians

- tasks of guardians (ensuring the well-being of the child; safeguarding the child's best interests; and legal representation).

## LEGAL AND POLICY DEVELOPMENTS

International and European institutions have developed a range of guidelines, standards and proposals since 2014. These acknowledge the importance of guardianship for unaccompanied children and suggest ways to strengthen it. The European Commission's proposals on migration and asylum of 2016 and the Pact on Migration and Asylum of 2020, once adopted, will provide opportunities to strengthen certain aspects of guardianship in EU law. This includes that Member States should appoint a guardian as soon as possible, and within five working days; that guardians should not be assigned a disproportionate number of children; and that there should be a system for supervising and monitoring of guardians.

The 2017 communication from the European Commission on the protection of children in migration acknowledged the challenges that Member States face as regards guardianship and set up a **European Guardianship Network**.

Initiatives at UN and Council of Europe level have recently strengthened standards concerning the protection of unaccompanied children through guardianship. For example, in 2019, the Council of Europe's Committee of Ministers adopted recommendations on guardianship for unaccompanied children.

At national level, a range of legal, policy and procedural developments since 2014 have tried to address the various challenges involved in guardianship. There are still many differences across Member States as regards terminology, appointment, tasks allocated, and training and monitoring of guardians. Since 2014, 17 Member States have introduced legislative changes related to guardianship or the legal representation of unaccompanied children. However, these changes were substantive in less than half of them. Nevertheless, legal changes led to several positive developments that can strengthen the protection of unaccompanied children. These include:

- clearer procedures for sharing responsibilities for the protection of unaccompanied children among regional authorities (Germany, Sweden);
- increasing the independence of guardians (Bulgaria, Hungary, Italy);
- improving procedural safeguards, with courts playing a stronger role (Bulgaria, Denmark, Malta, Slovenia);
- placing stronger emphasis on the need for training of guardians (Greece, Italy, Malta, Poland, Slovenia).

## IMPROVING THE ORGANISATION OF GUARDIANSHIP SERVICES

There is no uniform approach to organising guardianship systems in Member States. The terms 'guardian' and 'legal representative' are used differently across Member States. Moreover, the roles and tasks assigned can change depending on the residence status of the child, the type of procedure, the location of the child and personal circumstances.

When the appointment of a natural person as guardian is not possible, an institution is assigned the guardianship role. This most often occurs for children from non-EU countries and has not changed significantly since 2014. These institutions are usually social work centres, reception centres or other



guardianship authorities. In practice, staff or other persons affiliated to such institutions exercise guardianship duties.

More than half of the Member States assign guardianship responsibilities to local authorities. This can create disparities in the way guardianship services are implemented across different localities. Since 2014, three Member States have centralised the appointment of guardians and other Member States have kept responsibility with local authorities but centralised the provision of guidance and protocols.

The employment status of guardians has been further professionalised in the past few years. In eighteen Member States, North Macedonia and Serbia, guardians are professionals employed by guardianship institutions or other responsible authorities. Only two Member States rely mainly on volunteer guardians, and six Member States have both professional and volunteer guardians.

## Guidance

“The principle of non-discrimination also requires equal protection for all children within the state’s territory, irrespective of the place of residence. EU Member States should harmonise guardianship provisions and services. Where protection systems are the responsibility of regional or local government, national governments should ensure consistency of standards and practices among different regions and localities within their territory.” (p. 27)

“If guardians are assigned at a regional or local level, the same safeguards should apply regardless of the location.” (p. 56)

*FRA and European Commission (2014), **Guardianship for children deprived of parental care**, Luxembourg, Publications Office of the European Union (Publications Office).*

## Guidance

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

and supervision developed for professional guardians should also be used for volunteer guardians.” (p. 32)

*FRA and European Commission (2014), **Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

## PROMOTING THE INDEPENDENCE OF GUARDIANSHIP

The independence of the guardian is a fundamental principle of guardianship. Appointed guardians and legal representatives must be able to make independent and impartial decisions. Organisations, institutions and/or individuals should be precluded from guardianship if their interests conflict, or could potentially conflict, with those of the child. This may occur, for example, when guardians work at social work centres or accommodation centres.

Four Member States that systematically appointed staff in reception facilities as guardians in 2014 no longer do so. However, five Member States and Serbia systematically assign the role of guardian to staff at reception centres where children are accommodated. This means that their independence is not ensured.

## Guidance

“Appointed guardians and legal representatives must be in a position to make independent and impartial decisions, assessment, actions and representations guided by the best interests of the child. Organisations, institutions and/or individuals should be precluded from guardianship and/or legal representation duties if their interests conflict, or could potentially conflict, with those of the child.” (p. 27)

“Guardianship services and appointed guardians should be independent and not have financial or institutional connections with institutions, services or public authorities responsible for providing the child with accommodation or day-to-day care.” (p. 36)

*FRA and European Commission (2014), Guardianship for children deprived of parental care, Luxembourg, Publications Office.*

## APPOINTING GUARDIANS IN A TIMELY AND EFFICIENT MANNER

The prompt appointment of a guardian is an important safeguard to ensure children’s well-being and prevent them from absconding. Member States’ legislation and procedures indicate that a guardian should be appointed as soon as possible or without undue delay, but there are generally no set deadlines. The increase in arrivals in 2015 and 2016 resulted in delays in the appointment of guardians. A large number of children were assigned to one guardian.

In response, the European Commission proposed in 2016 that a person or an organisation should be appointed as guardian as soon as possible and no later than five working days after an unaccompanied child makes an application. In around 12 Member States the average time for the appointment of a guardian is currently less than a week after a request for guardianship is made. Another 12 Member States need between a week and one month to appoint a guardian. The remaining Member States need more than one month.

In addition, 11 Member States, North Macedonia and Serbia have set up mechanisms to provide a person of support to the child from the initial contact with or identification by the police, or at the border. This is not necessarily a guardian.

Some Member States, in responding to the increase in arrivals since 2015, have limited the number of children assigned to each guardian. This varies from three to 50.

## Guidance

“Prompt appointment of a guardian is a key safeguard for a child’s rights and overall well-being, protecting unaccompanied children and preventing child trafficking and other forms of child abuse and exploitation.” (p. 55)

“The competent authorities should set a time limit for appointing a guardian, starting from the moment an unaccompanied child is identified.” (p. 56)

“When the need to appoint a guardian has been established, a guardian should be assigned to the child as soon as possible, and within a maximum time limit, which should be set by law. The appointment decision should be subject to judicial review.” (p. 58)

“When making case assignment decisions, the guardianship authority must consider not only the number of cases but also the type of case and the level of support required. Establishing a defined maximum number of cases to be assigned to an individual guardian is one way to make sure that the caseload of guardians remains reasonable, allowing guardians to perform their duties efficiently without jeopardising the child’s rights.” (p. 44)

*FRA and European Commission (2014), Guardianship for children deprived of parental care, Luxembourg, Publications Office.*

## ENSURING ACCOUNTABILITY AND OVERSIGHT

Accountability is a fundamental principle of guardianship. Most Member States have set up internal and external systems to monitor the work of guardians. Most Member States assign internal monitoring to social welfare or child protection institutions. This includes supervision and training and the provision of guidance. External monitoring is mainly provided by courts on request in individual cases.

Monitoring is mainly carried out through the reporting obligations of guardians and through complaints procedures. In most Member States guardians must submit reports at the beginning of the guardianship and then once or twice a year, on guardianship termination and on request. Complaints against guardians are rarely made, which raises questions about the effectiveness of existing complaints mechanisms.

### Guidance

“National law should provide the legal basis of guardianship and define the authority responsible for it. This guardianship authority should be held responsible and accountable for the acts of the appointed guardian. The exercise of guardianship and other representation functions should be monitored regularly and independently. The legal basis

of guardianship in national law should include sufficiently precise legal provisions defining a guardian’s duties and functions.” (p. 27)

*FRA and European Commission (2014),  
**Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

## ENSURING EQUAL PROTECTION FOR ALL CHILDREN

The appointment of guardians is generally reserved for unaccompanied children who apply for asylum or those identified as victims of trafficking. However, the law in 22 Member States, North Macedonia and Serbia allows a guardian or legal representative or other support figure (e.g. ad hoc administrator) to be assigned if a child needs protection or is involved in other procedures, such as return. This takes place under different guardianship schemes that provide different forms of support depending on the status of the child. This can influence the type of protection provided to the child, affecting the obligation of states to protect all children without discrimination regardless of their residence status.

### Guidance

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

of Fundamental Rights. Particular attention should be given to the gender dimensions of violence against children.” (p. 26)

*FRA and European Commission (2014),  
**Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

## FACILITATING THE PARTICIPATION OF CHILDREN

Listening to and considering the views of children on any decision that affects them is a guiding principle of the CRC, the Charter of Fundamental Rights of the European Union, relevant EU directives and national legislation. Children can take part as individuals, for example when they are asked about their views on their own care plans. They can also take part collectively, for

example when they are asked to express their views during consultation on legislative, policy or practical issues.

This research identified several initiatives in Member States that promote the active collective participation of children who arrive unaccompanied and are assigned a guardian. The children act as advisors in the development or improvement of guardianship services. Moreover, mechanisms in several Member States allow children to express their opinions not only throughout the guardianship period, but also before the appointment of a guardian and at the end of the guardianship.

## Guidance

“Guardianship and legal representation arrangements and procedures should respect the child’s right to be heard, and they should give due weight to the child’s viewpoint. Children should receive, in a manner they understand, appropriate information regarding the scope of guardianship arrangements and about all available services that could provide assistance to them. Children should also

be adequately informed about their rights and the possibility of lodging complaints whenever they feel that their guardians are not respecting their rights.” (p. 28)

*FRA and European Commission (2014), **Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

## IMPROVING THE QUALIFICATIONS AND TRAINING OF GUARDIANS

Most Member States provide a general description of the qualifications required to become a guardian. In institutional guardianship, the guardian role is generally given to staff of the institution, usually social workers, legal professionals or psychologists. These staff have to comply with the general professional requirements of the employer.

Only seven Member States systematically provided induction training to new guardians in 2014. This research finds that 11 Member States now do this, although the European Guardianship Network notes that the lack of training for guardians is an ongoing challenge.

## Guidance

“Appointed guardians and legal representatives should have appropriate professional qualifications in the field of child welfare and/or child protection. In addition, they should receive appropriate initial and continuous training by the relevant authorities.” (p. 27)

“Guardians who deal with children with particular needs, such as child victims of

trafficking or unaccompanied children, must also have the necessary expertise to respond effectively to such needs, for instance knowledge and experience in working with traumatised children.” (p. 27)

*FRA and European Commission (2014), **Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

## ENSURING GUARDIANS’ PARTICIPATION IN KEY DECISION-MAKING PROCESSES

Guardians have a responsibility to safeguard the best interests of the child. They should ensure the child’s overall well-being and exercise legal representation for the child to complement his or her limited legal capacity. The way these tasks are distributed among different institutions or persons varies across the EU. The duties and tasks of guardians are often defined in law in a general

manner. However, several Member States have adopted laws containing detailed descriptions or have developed protocols and guidelines that detail these tasks. This facilitates clarity and transparency on the guardian's role.

Determining a durable solution for the child is an intrinsic part of safeguarding the best interests of the child. However, not all Member States give a prominent role to guardians when important decisions are taken for a child. This includes deciding whether the child should remain in the country and a residence permit be requested; whether to proceed with a child's relocation to another EU Member State or transfer to a non-EU country; or whether to return a child to the country of origin. Moreover, in several Member States, once a child receives a residence permit a different guardian is assigned to support the child during the integration phase.

Some Member States have established promising practices to ensure the coordination of guardians with other actors. This includes coordination with reception centres to ensure the well-being of the child, and coordination with the Dublin Unit in case of family reunion or relocation.

One of the main tasks of a guardian included in national legislation is the child's legal representation. This is generally clearly defined. In addition, depending on the procedure, the child will also be entitled to a lawyer, but the interaction between and roles of the guardian and the lawyer vary.

## Guidance

"The guardian shall hold public authorities accountable for any decisions affecting the child and ensure respect for the principle of the best interest as a primary consideration as required by Article 3 of the CRC throughout the decision-making processes. The guardian must hold public authorities accountable. He or she must intervene if the welfare of the child is in danger and challenge, within the limits of his or her authority, any decision that is deemed to be contrary to and/or does not promote the child's best interests." (p. 72)

"Promoting the child's well-being requires the guardian to ensure that the child's legal, social, health, psychological, material and educational needs are met." (p. 74)

"In addition to legal representation, in certain administrative, criminal or civil proceedings in which the child is involved, he or she is entitled to free legal aid. The right to legal aid is realised through the appointment of a lawyer or other qualified legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings as provided for in national law." (p. 38)

*FRA and European Commission (2014), **Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

## ENSURING CHILDREN ARE SUPPORTED DURING AGE ASSESSMENT PROCEDURES

When there is doubt about the age or the minority of a person, most Member States conduct an assessment to determine the person's age. Member States have very different practices around the role of guardians in relation to age assessment. In most cases a guardian will be appointed only once it is established that the person is a child. However, in most Member States legislation allows another independent person to provide support during the age assessment process.

EU law requires the consent of the child and/or the legal representative if the age assessment includes a medical examination. The consent of the guardian for a medical examination is not always necessary. Some Member States consider the consent of the individual undergoing age assessment as sufficient.

## Guidance

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

and support the child throughout the entire process.” (p. 101)

*FRA and European Commission (2014), **Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

## FACILITATING A SMOOTH TRANSITION TO ADULTHOOD

Guardianship generally ends when the child is reunited with his or her parents or family or when the child reaches majority. Guardians play an important role in preparing children through the transition period. They also ensure that there is a support network for the future young adult. Legal majority is reached in all EU Member States, North Macedonia and Serbia at 18 years, unless reached earlier through marriage. Some Member States provide for the possibility of extending certain social support measures to children once they have reached 18. This includes providing accommodation in specialised centres or providing foster care up to the age of 21 or more. These measures depend on the specific circumstances of the child and do not include legal guardianship; however, some Member States provide mentorship programmes.

## Guidance

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

Although guardianship might end when a child reaches the age of majority, EU Member

States should, given the vulnerability of these young people, consider making support and assistance available beyond the age of 18, to facilitate the child’s transition to adulthood.” (p. 63)

*FRA and European Commission (2014), **Guardianship for children deprived of parental care**, Luxembourg, Publications Office.*

# Introduction

Children are entitled to general and specific human rights enshrined in international and European legal instruments. Article 24 of the EU Charter of Fundamental Rights<sup>1</sup> entitles children to such protection and care as is necessary for their well-being.

Children deprived of parental care, independently of nationality or residence status, are entitled to special protection and assistance, as Article 20 of the Convention on the Rights of the Child<sup>2</sup> (CRC) sets out. Guardians and legal representatives often assume the crucial role of providing such protection to children until they are reunited with their parents or family or until they reach majority. The appointment of a guardian or legal representative is provided by EU law, mainly in the EU *acquis* on asylum and victims' rights. All Member States have developed their own national guardianship system.

## WHY IS THIS REPORT NEEDED?

The objective of this report is to support Member States in improving their guardianship systems. The research assesses the challenges faced during a period of increased arrivals, the responses of Member States and promising practices. This provides useful information for updating FRA's 2015 report on guardianship systems for children deprived of parental care in the EU.<sup>3</sup> That report provided an overview of guardianship systems in the (then) 28 Member States, with a specific focus on their role in responding to child trafficking. It was published before the increase in arrivals in the EU of migrants and asylum seekers, including unaccompanied children, in 2015 and 2016. The present report examines how Member States have since adapted their guardianship systems for unaccompanied children.

During the increase in arrivals of unaccompanied children in 2015 and 2016, guardianship systems in Member States faced several challenges. These were described in FRA's regular migration bulletins<sup>4</sup> and discussed at the 10th European Forum on the rights of the child.<sup>5</sup> The main challenges were as follows.

- There was an insufficient number of guardians compared with the number of unaccompanied children entitled to a guardian. This sometimes resulted in the appointment of guardians without the required skills or training, or in children reaching majority before being appointed a guardian or legal representative.
- A large number of children were appointed to each guardian. This prevented guardians from providing individualised support to each child.
- There were delays in appointing guardians. This may have contributed to children going missing and their whereabouts being unknown.

These challenges contributed to shaping several changes in national law, policy and practice. Since 2014, 17 Member States have amended their laws on guardianship, sometimes significantly.

Member States assign guardians very different roles and responsibilities. This research focuses on the three main functions of guardians: ensuring the well-being of the child, safeguarding their best interests, and providing legal representation. (For more on guardians' key functions, see [Chapter 2](#).)





This research covers the state of play and developments since 2014 in the following areas:

- main elements of guardianship systems
- appointment procedures
- knowledge and skills of guardians
- tasks of guardians.

Member States generally have more solid mechanisms for ensuring the protection of child victims of trafficking, once they are identified.<sup>6</sup> This may not always be the case for unaccompanied children who are not victims of trafficking but who are nevertheless in need of protection, whether they are asylum seekers or not. This research focuses on guardianship for unaccompanied children from non-EU countries independently of their status. This includes children who are victims of trafficking, who are seeking asylum or who have been granted international protection, and children who do not apply for asylum but who require assistance and support.

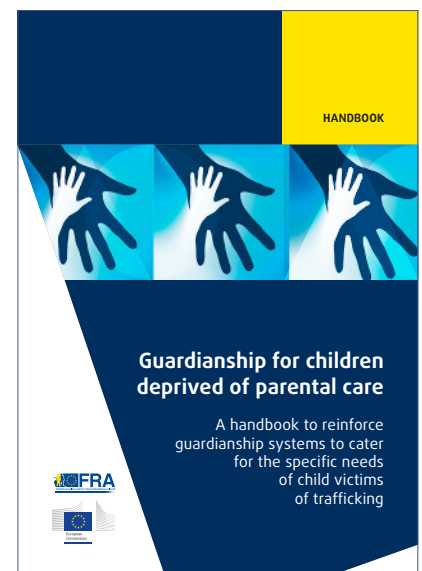
New legislation relating to guardianship of children has not yet been adopted at EU level, although several proposed changes are pending the revision of the EU asylum *acquis*. The guidance contained in FRA and the European Commission's 2014 handbook on guardianship for children deprived of parental care<sup>7</sup> remains valid. The handbook provides guidance to help standardise guardianship practice in EU Member States. It sets out the core principles, design and management of such systems. The handbook, available in 23 languages, is a useful and guiding document for guardians and guardianship authorities.

## RESEARCH METHODOLOGY

FRA's multidisciplinary research network Franet conducted the research between September 2020 and March 2021. Data were collected through desk research, and relevant authorities provided information. Some of the areas covered were also covered in FRA's 2015 report on guardianship systems, enabling a comparison between the reports. Several new areas were added to the data collection for this report and present the current state of affairs.

The research covers the 27 EU Member States and North Macedonia and Serbia; North Macedonia and Serbia hold observer status on FRA's management board. It was shared with FRA's national liaison officers and several other international, European and national stakeholders in July 2021. This included the **European Guardianship Network**. The report was shared to ensure factual accuracy.

The information presented in this report reflects the situation in March 2021. Changes that occurred thereafter have been considered only when they were specifically brought to the attention of FRA. Comparable data on the EU Member States, North Macedonia and Serbia are included in the tables and figures. Country-specific information included in the report was selected to provide illustrative examples. The report also includes selected promising practices considered particularly relevant to all interested stakeholders. Annex 1 includes an updated list of national legislation covering guardianship.





## Key terminology

**Child:** “‘minor’ means a third-country national or a stateless person below the age of 18 years”.

*Qualification Directive (2011/95/EU)*,<sup>8</sup> Article 2 (1); see also *CRC*,<sup>9</sup> Article 1.

“Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant’s age. If, thereafter, Member States are still in doubt concerning the applicant’s age, they shall assume that the applicant is a minor.”

*Asylum Procedures Directive (2013/32/EU)*,<sup>10</sup> Article 25 (5).

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

*Anti-Trafficking Directive (2011/36/EU)*,<sup>11</sup> Article 13 (2).

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

*Qualification Directive (2011/95/EU)*,<sup>12</sup> Article 2 (1).

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

*UN Committee on the Rights of the Child, General Comment No. 6, CRC/GC/2005/6*,<sup>13</sup> and *UN guidelines for the alternative care of children (UN alternative care guidelines), A/HRC/11/L.13*,<sup>14</sup> paragraph 8.

The Separated Children in Europe Programme uses the word ‘separated’ rather than ‘unaccompanied’. This more accurately defines the essential problem that such children face, namely the lack of care and protection of their parents or primary caregiver and the social and psychological consequences of this separation. In this report, the term ‘unaccompanied’ is used to refer to both unaccompanied and/or separated children. This is to ensure consistency with the terminology used in EU law and to avoid confusion.

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

*UN Committee on the Rights of the Child, General Comment No. 6, CRC/GC/2005/6*,<sup>15</sup> and *UN alternative care guidelines, A/HRC/11/L.13*.<sup>16</sup>

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

*Reception Conditions Directive (2013/33/EU)*,<sup>17</sup> Article 2 (j).

Representatives or legal representatives differ from qualified lawyers or other legal professionals who provide legal assistance, speak on behalf of the child and legally represent him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings, as provided in national law.

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

*UN Committee on the Rights of the Child, General Comment No. 6, CRC/GC/2005/6,<sup>18</sup> and UN alternative care guidelines, A/HRC/11/L.13.<sup>19</sup>*

## Endnotes

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# 1

## LEGAL AND POLICY DEVELOPMENTS CONCERNING GUARDIANSHIP

### MAIN FINDINGS

- EU law requires the appointment of a guardian or legal representative for children deprived of parental care under several EU directives. The European Commission proposals on migration and asylum of 2016 and the Pact on Migration and Asylum of 2020 provide a number of guarantees to strengthen guardianship for unaccompanied children. The 2017 Commission communication on the protection of children in migration acknowledged the challenges of guardianship in Member States and set up a European Guardianship Network.
- At international level, the UN Committee on the Rights of the Child and the CMW addressed unaccompanied children's entitlement to special protection and assistance and the need to strengthen guardianship in two of its Joint General Comments. Some Member States have been criticised by the UN Committee on the Rights of the Child for not providing guardians to support children during various procedures. The Committee of Ministers of the Council of Europe adopted recommendations on guardianship for unaccompanied children in the context of migration. These included nine guiding principles for effective guardianship.
- Seventeen Member States have introduced legislative changes related to guardianship or legal representation for unaccompanied children since 2014. In less than half of them, these changes were substantive. Other amendments included only small adjustments to existing regulations and did not change the modus operandi of guardianship systems. Member States have also developed new policies that impact on the protection of unaccompanied children, including on the appointment of guardians.
- National human rights institutions in Member States have regularly monitored and reported on the challenges of protecting unaccompanied children and the weaknesses in guardianship systems. In Italy, the Ombudsperson for Children has an even stronger role than monitoring, covering the provision of guidance and training for guardians.

The protection of children without parental care is an obligation of all EU Member States, North Macedonia and Serbia, all of whom are parties to the UN CRC. The appointment of a guardian and legal representative is an essential element to ensure that the best interests of the child remain a primary consideration. Different instruments at international and European levels have defined and developed the core principles of guardianship for children. National guardianship systems have also continued to adapt and evolve over the past few years at legislative, policy and practice levels.

This chapter outlines the main developments at international, European and national levels concerning guardianship of unaccompanied children. The focus is on policy and legislative developments since 2014.



## 1.1. DEVELOPMENTS AT INTERNATIONAL AND EUROPEAN LEVELS

### 1.1.1. Developments at EU level

The rights of the child are enshrined in Article 24 of the EU Charter of Fundamental Rights<sup>1</sup> and Article 3 of the Treaty on European Union<sup>2</sup> and in relevant secondary legislation. Since 2011, the protection of children, including the appointment of a guardian or a representative, has been a requirement of the EU Human Trafficking Directive<sup>3</sup> and the directive on combating the sexual abuse and sexual exploitation of children and child pornography.<sup>4</sup> Specifically as regards non-EU nationals, the Reception Conditions Directive<sup>5</sup> and the Qualification Directive<sup>6</sup> have remained unchanged since 2013.<sup>7</sup> These require the appointment of a ‘representative’ for unaccompanied children.

In July 2016, the European Commission presented several legislative proposals on migration and asylum. These also aimed to strengthen and standardise guardianship for unaccompanied children across EU Member States. The EU has not yet adopted the proposals. The European Commission has since supplemented them with other proposals through the Pact on Migration and Asylum, launched in 2020.<sup>8</sup> In relation to guardianship, the main points are as follows.

- A ‘guardian’ is defined as a person or an organisation appointed to assist and represent an unaccompanied child. This is with the view to safeguarding the best interests of the child and his or her general well-being in relevant procedures and exercising legal capacity for the child where necessary.<sup>9</sup>
- A person or an organisation should be appointed as guardian as soon as possible and no later than five working days after an unaccompanied child makes an application. When an organisation is appointed as representative, it must designate a person to carry out the duties of a guardian.<sup>10</sup>
- A guardian should not be made responsible for a disproportionate number of children.<sup>11</sup>
- Member States must appoint entities or persons to be responsible for the performance of guardians’ tasks, supervising and monitoring at regular intervals that they are performing their tasks in a satisfactory manner.
- Provisions should be made for reviewing complaints lodged by an unaccompanied child against his or her guardian.<sup>12</sup>

- A guardian must perform his or her duties in accordance with the principle of the best interests of the child. The guardian must have the necessary expertise and not have a verified record of child-related crimes or offences.<sup>13</sup>
- The asylum authority must inform the guardian of all relevant facts, procedural steps and time limits pertaining to the unaccompanied child.<sup>14</sup>
- EU Member States no longer have the option to refrain from appointing a representative when the unaccompanied child will likely reach the age of 18 before a first instance asylum decision is taken.<sup>15</sup>

At policy level, the European Commission adopted a communication on the protection of children in migration in 2017.<sup>16</sup> This also covers issues of guardianship for unaccompanied children. The communication identifies major shortcomings in the functioning of guardianship systems in some Member States. This particularly relates to the number of suitably qualified guardians available and the speed at which they are appointed. It suggests that guardianship institutions should be strengthened and guardians be recruited in sufficient numbers, be appointed faster and be better equipped to fulfil their tasks. The communication tasked the Commission with setting up the European Guardianship Network'. It has funded a project setting up the network since 2019.<sup>17</sup> The network aims to develop and exchange promising practices and guidance among guardians and guardianship authorities in the Member States. The implementation report of the 2017 communication covering the period 2019 points at challenges and gaps in relation to the implementation of legislation and policies in several areas, including guardianship.<sup>18</sup>

The EU Strategy on the Rights of the Child, adopted in 2021, is a major policy initiative put forward by the European Commission. Its aim is to better protect all children, help them fulfil their rights and place them right at the centre of EU policy making.<sup>19</sup> The strategy invites Member States to strengthen guardianship systems for unaccompanied children, including through participation in the activities of the European Guardianship Network. The strategy was adopted on the same day as the proposal for the European Child Guarantee. This aims to support Member States in their efforts to guarantee access to quality services for children in need, including children with a migrant background.<sup>20</sup>

### 1.1.2. Developments at the Council of Europe

The Council of Europe's Committee of Ministers issued a recommendation in 2019 with nine guiding principles for the guardianship of unaccompanied children:<sup>21</sup>

- Principle 1 – Protection of the rights of unaccompanied and separated children in migration through guardianship
- Principle 2 – Guardianship frameworks and measures
- Principle 3 – Appointment or designation of guardians without undue delay
- Principle 4 – Legal responsibilities and tasks of guardians
- Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms
- Principle 6 – Institutional measures
- Principle 7 – Resources, recruitment, qualifications and training
- Principle 8 – Co-operation and co-ordination at national level
- Principle 9 – International co-operation.

The recommendation acknowledges the key role that guardians play in the safeguarding of unaccompanied and separated children's best interests. It recommends that Member States assess legislation, policies and practice and, where appropriate, take measures and allocate resources to ensure the necessary reforms. While acknowledging that Council of Europe Member States may have different ways of organising guardianship, the adoption of this recommendation illustrates a strong common agreement that the specific needs of children in migration must be catered for at every level.

## PROMISING PRACTICE

### European Guardianship Network

The European Guardianship Network, set up by the 2017 communication on children in migration, is a network of guardianship authorities and agencies, (national and local) authorities and international and non-governmental organisations.

The network aims to promote guardianship and improve guardianship services for unaccompanied and separated children in the EU Member States. This is achieved by exchanging promising practices, expertise and other relevant information and sharing ideas and cooperation on common challenges and cross-border work.

The European Commission (Directorate-General for Justice and Consumers) funds the network and the guardianship authority in the Netherlands, Nidos, is the current coordinator. The network is constantly expanding its membership. In June 2021, it included 21 EU Member States, Switzerland and the United Kingdom.



*For more information, see the website of the European Guardianship Network.*

The recommendation was adopted in the wider context of a Council of Europe Action Plan focusing on the protection of vulnerable children (2017–2019).<sup>22</sup> A new, recently adopted Action Plan on protecting vulnerable persons in the context of asylum and migration in Europe (2021–2025)<sup>23</sup> envisages further Council of Europe activities in this field. These include the adoption of an explanatory memorandum<sup>24</sup> to the 2019 recommendation and its effective implementation.

In addition, a Council of Europe recommendation on human rights principles and guidelines on age assessment for children in the context of migration is also under preparation. The European Court of Human Rights<sup>25</sup> and the European Committee of Social Rights (ECSR)<sup>26</sup> have continued to emphasise the importance of appointing a legal representative. They also hold that, in cases concerning children, a child's situation of extreme vulnerability is the decisive factor and should take precedence over the status of irregular migrant.<sup>27</sup>

### **1.1.3. Developments at UN level**

The UN Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) adopted jointly in 2017 two Joint General Comments in the context of international migration. One includes general principles regarding the human rights of children in the context of international migration, and the second focuses on state obligations, in particular in countries of transit and destination.<sup>28</sup> These supplement and expand existing interpretative guidance on the treatment of unaccompanied and separated children outside their country of origin.<sup>29</sup>

The committees stress that States Parties should ensure that children are identified promptly in border control and other migration control procedures within a state's jurisdiction. Anyone claiming to be a child should be treated as such, promptly referred to a child protection authority and other relevant services, and appointed a guardian, if unaccompanied or separated.<sup>30</sup> In the context of best interests assessments, the committees require that unaccompanied children are guaranteed the right to:<sup>31</sup>

*“ . . . have appointed a competent guardian, as expeditiously as possible, who serves as a key procedural safeguard to ensure respect for their best interests; Be fully informed throughout the entire procedure, together with their guardian and legal adviser, including information on their rights and all relevant information that could affect them.”*

Since the entry into force in 2014 of the third Protocol to the CRC on a communications procedure<sup>32</sup> and its slow ratification by EU Member States, the CRC committee has examined numerous individual cases.<sup>33</sup> A majority of them relate to a violation of children's rights in the context of migration. In some cases, the committee has also criticised states for not appointing a legal representative to support the unaccompanied child during specific processes, such as age assessment.<sup>34</sup> More information is provided in Section 5.5.

## **1.2. DEVELOPMENTS AT NATIONAL LEVEL**

Since 2014, many Member States have adopted legislative changes that have affected asylum, integration, family reunion and other related areas.<sup>35</sup> Seventeen Member States implemented legislative changes that had an impact on the protection of unaccompanied children and their guardianship. Some of the legislative changes followed infringement procedures initiated by the European Commission.<sup>36</sup> Less than half of the 17 Member States that reformed the law introduced substantive changes; these changes related,



for example, to the independence of guardians or the role of courts. Other Member States made only small legal adjustments to existing regulations. Table 1 provides a summary of guardianship aspects that were amended; the relevant legal sources are in [Annex 1](#).

Overall, despite legislative changes, national guardianship systems in the EU are still diverse. However, it is possible to identify some common issues addressed through these changes:

- sharing of responsibility for the protection of unaccompanied children among regional authorities (Germany, Sweden);
- increasing the independence of the guardians (Bulgaria, Hungary, Italy);
- improving procedural safeguards, with courts playing a stronger role (Bulgaria, Denmark, Malta, Slovenia);
- a strong emphasis on the need for training (Greece, Italy, Malta, Poland, Slovenia).

**TABLE 1: MEMBER STATES WITH LEGISLATIVE CHANGES AFFECTING GUARDIANSHIP SINCE 2014**

State	Date	Subject matter (selected)
BG	2020	The amendments entrust procedural and practical representation in international protection proceedings of unaccompanied children seeking or having received international protection to lawyers from the legal aid register of the National Legal Aid Bureau. Previously, the mayor or a designated official or the head of the residential social service was generally appointed as guardian.
DE	2015	The law determines the local jurisdiction of the youth welfare office by including or excluding unaccompanied children in or from a newly established distribution mechanism among federal states, a screening procedure including age assessment, if necessary, and legal representation by the youth welfare office during the first weeks after arrival in Germany; this is also part of the reception procedure. The appointment of a guardian is the task of the family court; the guardian can be appointed immediately. However, because of the newly established distribution mechanism the guardianship proceedings at the family court regularly start after the determination of the local jurisdiction of the youth welfare office. Children were previously able to perform procedural acts from the age of 16; this is now possible only on reaching the age of majority, i.e. from the age of 18.
DK	2019	The law assigns the responsibility for appointing a guardian to the Agency of Family Law. It also creates a family court to hear appeals of the agency's decisions.
EL	2018, 2019	The law assigns the prosecutor with responsibility for appointing a natural person as a guardian as soon as possible, in accordance with the provisions of the Civil Code. If this is not possible, the prosecutor appoints a professional guardian from a registry established under the National Center for Social Solidarity (EKKA) in the Ministry of Labour and Social Affairs. The Child Protection Directorate of EKKA is responsible for guardians' supervision and monitoring. The Guardianship Supervisory Board is involved in crucial decisions affecting children. Guardians and the Guardianship Supervisory Board are responsible for best interests assessment and best interests determination procedures. The new scheme envisaged under the law was not yet in place in September 2021. The 2019 law on international protection allows EKKA to delegate the responsibilities and competences of representation to a legal entity. The legal entity is responsible for the care and well-being of unaccompanied or separated children. The legal entity must nominate a natural person to perform the duties of the representatives.
ES	2015, 2021	The law emphasises basic principles such as the best interests of the child and prioritises family foster care. Temporary guardianship ( <i>guarda</i> ) is immediately assigned to the reception centre where the child is accommodated. The law specifies the cases where legal representation ( <i>tutela</i> ) of the public authorities ceases to exist.  The legal representation ceases to exist 12 months, instead of 6 months, after the child has voluntarily left the reception centre.
HR	2019	The amendment introduces a change in the duty to attend the inventory of the assets of the child.
HU	2014	The amendment creates the position of child protection guardian to ensure the independent legal representation and protection of children. It also amends the organisational structure of the guardianship system. It establishes that a person may not be appointed as a child protection guardian if he or she is the head of the guardianship authority or its administrator; the head of the regional child protection service; the head of a children's home or employee thereof; or a foster parent of the child. It also requires the guardian to report about the child to the guardianship authority every year.  In principle, these changes extend to all unaccompanied children; however, during the state of crisis due to mass migration in 2016–2020, unaccompanied children between 14 and 18 in the transit zone were assigned an ad hoc guardian instead of a child protection guardian.



State	Date	Subject matter (selected)
IT	2017	The new law regulates the appointment of guardians by the juvenile court, including from a list of newly created 'volunteer guardians'. Candidate guardians are selected and trained by the regional branches of the National Authority for the Protection of Childhood and Adolescence. The new law provides that, until a guardian is appointed, the legal representative of the reception centre has the partial role of guardian. This includes supporting the child in applying for asylum.
LT	2014, 2015	An order introduced a new procedure regarding the appointment of guardians for non-asylum-seeking unaccompanied children. The law provides that the representative of the unaccompanied children can be a juridical person (legal entity).
LU	2015, 2019, 2020	Legal reforms established a consultative commission on the evaluation of the best interests of unaccompanied children in return decisions. Its focus is to carry out individual assessments regarding the best interests of the child. The ad hoc administrator can express his or her point of view to the consultative commission. According to new legislation, the unaccompanied child or his or her representative (ad hoc administrator) can file an application for international protection.
LV	2015	The amendment clarifies the range of persons who cannot be guardians.
MT	2020	The new act includes a referral procedure specific to unaccompanied children. In this procedure the juvenile court issues the protection order, including the appointment of a guardian. Children now take part in each stage of the process and their interests are represented by a child's advocate.
PL	2019	The guardian representing the child may be an appointed lawyer who shows knowledge of matters concerning the child, or who has completed training on the principles of representation of the child and the rights or needs of the child.
PT	2018	The amendment expands the groups at risk that can benefit from the protection that the 1999 child protection law sets out. Children of foreign nationality fostered in an institution are now included. Legal representation of unaccompanied children continues to be assigned to the director of the reception centre, as in the Civil Code.
RO	2014, 2016	Additional safeguards have been incorporated in the Asylum Act in relation to unaccompanied asylum-seeking children. There is an explicit obligation of the General Inspectorate for Immigration and the legal representative to inform the unaccompanied child about the significance and possible consequences of the personal interview, and about age assessment procedures.
SE	2017	The amendment stipulates the duty of the chief guardian ( <i>överförmyndaren</i> ) to inform the child and the child's accommodation and public counsel about the identity of the appointed guardian <i>ad litem</i> – the guardian appointed for a particular legal procedure. This should take place immediately after the appointment.
SI	2016, 2017	The decision on the appointment of a legal representative for asylum-seeking unaccompanied children is issued by the competent centre for social work. The centre chooses a legal representative from a list of private persons maintained by the ministry responsible for the family and social affairs. The decree reduces the number of children who a legal representative may represent to a maximum of three at a time. It requires legal representatives to undergo training, with theoretical and practical input, every three years.

Note: A complete overview of national legislation on guardianship and/or legal representation is provided in Annex 1.

Source: FRA, 2021

In most Member States that undertook legal reforms, the amendments clarified or detailed certain issues; they did not substantially change the core features of the existing national guardianship system. For example, in Portugal the amendment expands the groups at risk that can benefit from the protection that the 1999 child protection law sets out. Children of foreign nationality fostered in an institution are now included.<sup>37</sup> Legal representation of unaccompanied children continues to be assigned to the director of the reception centre, as in the Civil Code. In Latvia, legislative changes clarify who cannot be a guardian. This includes persons convicted of violent crimes and crimes against sexual integrity. The new legislation also allows a foreigner to be a guardian if he or she is a relative of the child or someone who lives in the same household as the child. The new legislation also strengthens the prevention of violence against children left without parental care.<sup>38</sup>

Other Member States, however, such as Bulgaria, Greece, Italy, Malta and Slovenia, implemented changes to core procedures related to the characteristics, appointment or role of guardians.

Member States have also developed new policies that impact on unaccompanied children and their guardians. For example, in Croatia, the Protocol on procedures for unaccompanied and separated children, adopted in 2018, sets out the tasks of guardians and the referral procedures.<sup>39</sup> According to the protocol, initial interviews with an unaccompanied child must be held in the presence of a social worker. At the same time, as soon as it is established that a child is unaccompanied or separated, a police officer must set up an identification. This includes an obligation to involve a social worker from the Centre for Social Welfare.

In Austria, the federal state and the nine Austrian provinces concluded an agreement to make child and youth aid more uniform and to guarantee existing standards.<sup>40</sup> This agreement entered into force on 1 January 2020. Since then the provinces have agreed how to implement the instruments, minimum standards and benefits of child and youth aid laid down in existing federal legislation<sup>41</sup> at provincial level. The nine provinces are thus primarily responsible for guardianship and all have separate laws on child and youth aid.

## PROMISING PRACTICE

### Coordinated initiative to address a legal gap

In **Romania**, civil society initiated a working group in response to a legislative gap on guardianship. The group brought together relevant stakeholders at a technical level to draft a proposal for a bill regulating the role of, characteristics of, and professional training required for, representatives. It also aims to map potential training needs of those appointed as representatives for unaccompanied children in Romania.

The working group was initiated by the Jesuit Refugee Service (JRS) Romania. It was attended by the National Authority for the Rights of Persons with Disabilities, Children and Adoption, the General Inspectorate for Immigration, the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund, Save the Children, the Romanian National Council for Refugees and the Romanian Ombudsperson.

*For more information, see JRS Romania (2019), Annual report 2019.*



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# 2

## MAIN ELEMENTS OF GUARDIANSHIP SYSTEMS IN EU MEMBER STATES

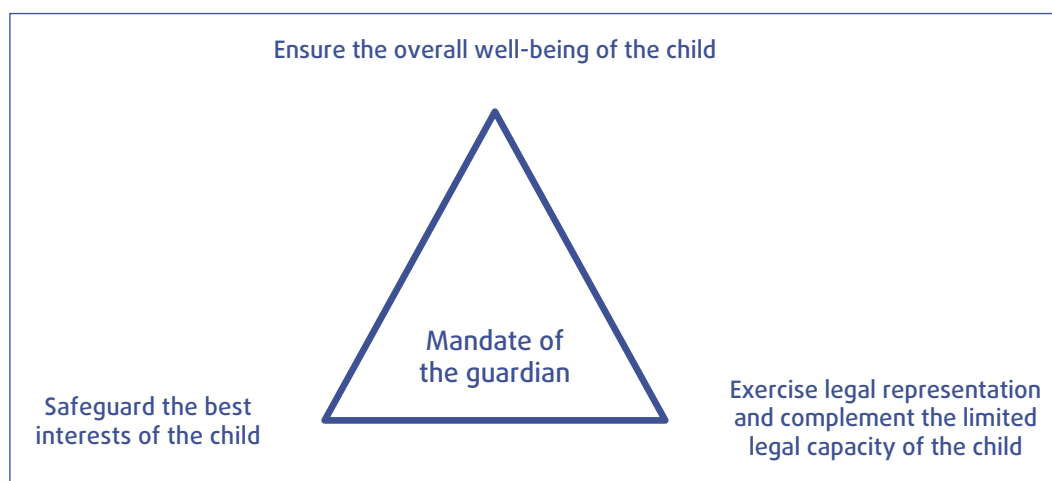
### MAIN FINDINGS

- Member States organise guardianship systems differently. As a result, the terminology used and aspects concerning the functions, tasks, appointment and employment status of guardians vary significantly across the EU.
- The appointment of institutions as guardians for unaccompanied children in migration remains the norm. In practice, staff or other persons affiliated to such institutions exercise guardianship duties.
- The number of children assigned to each guardian has increased since 2015 because of the increase in arrivals of unaccompanied children. This affects the quality of support that guardians can provide. Some Member States have addressed this challenge by limiting the number of children per guardian. These limits range from three to 50 children per guardian.
- In more than half of the Member States guardianship responsibilities are still entrusted to local authorities. However, recently, a few Member States have centralised the appointment of guardians or the provision of guidance and protocols. Having central guidance facilitates consistency in standards and practices among different regions and localities.
- Four member States no longer systematically appoint staff of reception facilities as guardians. However, five Member States and Serbia continue to assign as guardians staff of reception centres where children are accommodated. This is against the principle of guardian independence.
- In 19 Member States and Serbia and North Macedonia, guardians are professionals employed by guardianship institutions or other competent authorities. Six Member States have both professional and volunteer guardians, while only two Member States rely mainly on volunteer guardians. This represents a tendency towards the professionalisation of guardianship services, with fewer Member States relying on volunteer guardians.
- The appointment of guardians is generally linked to an asylum application. However, legal provisions in 22 Member States and Serbia and North Macedonia allow the assignment of a guardian, a legal representative or another support figure if the child is involved in other procedures such as return.
- Several initiatives in Member States promote the active participation of groups of children in the development or improvement of guardianship services.

The Member States, North Macedonia and Serbia have developed their own guardianship systems. Consequently, these systems differ significantly. This chapter examines the essential components of the guardianship system. These include the institutions or individuals acting as guardians; the organisational level of guardianship – central, regional or local level; independence; the employment status of guardians; and the different characteristics of guardianship systems depending on the residence status of the child. The chapter also looks at different forms of child participation in the development of guardianship policies that have been used more recently.



**FIGURE 1: GUARDIAN'S TASKS**



Source: FRA and European Commission (2014), **Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking**, Luxembourg, Publications Office, p. 15

Diversity in the organisation of guardianship at national level is the norm. There are many differences in how guardians are appointed, their functions and the terminology used. Guardians are often called 'representatives' or 'legal representatives'.<sup>1</sup>

Some Member States also use different terms, such as 'ad hoc administrator', 'guardian *ad litem*', 'special guardian' or 'tutor'. The system of guardianship for unaccompanied children often combines elements from the general legal provisions for child protection, the general guardianship system established in civil codes and the legal provisions for asylum and migration. In some cases, there are additional *lex specialis* provisions regarding the appointment procedure for guardians and their role during the asylum or return procedure.

EU directives generally define a 'representative' as the "person or organisation appointed by the competent bodies in order to assist and represent an unaccompanied child in procedures [ . . . ] with a view to ensuring the best interests of the child and exercising legal capacity for the child where necessary".<sup>2</sup>

In this report, as in previous FRA publications,<sup>3</sup> the term 'guardian' is used to describe the person responsible for safeguarding the well-being and the best interests of the child and representing him or her in judicial or administrative proceedings, thus complementing the child's limited legal capacity when required. Figure 1 illustrates the three main tasks of a guardian. Depending on the national system, one or more persons or institutions may exercise these three fundamental tasks.

## 2.1. INSTITUTIONS OR INDIVIDUAL PERSONS ACTING AS GUARDIANS AND MAXIMUM NUMBER OF CHILDREN ASSIGNED

When a natural person, such as a relative of an unaccompanied child, cannot be appointed as guardian, national law across the EU allows for the appointment of a legal person, such as a guardianship institution or another public entity.

The appointment of institutions as guardians for unaccompanied children from non-EU countries continues to be the norm, with no major developments since

### PROMISING PRACTICE

## A self-assessment tool for guardianship systems

The pilot assessment system (PAS) is a tool that guardianship authorities in the EU can use to assess themselves. The system examines what structural elements of the guardianship system are in place and measures the capacity of a system to meet the PAS standards.

The PAS includes standards based on FRA and the European Commission's handbook on guardianship relating to non-discrimination, responsibility and accountability, independence and impartiality, a child-centred approach, quality, child participation, and sustainability and collaboration with others. It was developed as part of the ProGuard project on the professionalisation of guardianship in Europe.

*For more information, see the web page on the ProGuard project.*

2014.<sup>4</sup> Guardianship duties are in practice exercised by staff or other persons affiliated to institutions. Sometimes the same staff member is assigned to a child for longer periods. Occasionally, the same staff member carries out a range of tasks, but often several persons support the child, depending on the task and/or staff availability. In a few Member States, as highlighted in Table 2, the institution responsible for guardianship has changed. For example, in Denmark, the guardianship responsibility has been assigned to the Agency of Family Law and the family court since 2019, in accordance with the new family law system.<sup>5</sup>

**TABLE 2: INSTITUTIONS TO WHICH GUARDIANSHIP IS ASSIGNED BY LAW, WHEN NO NATURAL PERSON IS APPOINTED, EU MEMBER STATES, NORTH MACEDONIA AND SERBIA**

Country	Name of institution	Country	Name of institution
AT	Child and Youth Welfare Office ( <i>Kinder- und Jugendwohlfahrtsträger</i> )	IT	Local social services through the mayor (and residential care facility as a temporary measure)
BE	Guardianship Service ( <i>Service des Tutelles</i> )	LT	Head of the childcare institution
BG	National Legal Aid Bureau	LU	Specialised care establishment where the child resides
CY	Social Welfare Services ( <i>Υπηρεσιών Κοινωνικής Ευημερίας</i> )	LV	Municipal Child Rights Protection Unit (orphan's court, <i>Bāriņtiesu</i> ) or the head of childcare institution
CZ	Authority for Social and Legal Protection of Children ( <i>Orgán sociálně-právní ochrany dětí</i> )	MK	Centres for social work
DE	Youth Welfare Office ( <i>Jugendamt</i> ); associations recognised by the Youth Welfare Office	MT	Agency for the Welfare of Asylum Seekers (AWAS)
DK	Agency of Family Law ( <i>Familieretshuset</i> ) and its Child Unit ( <i>Børneenheden</i> )	NL	Nidos
EE	Municipal child protection authority	PL	Local courts (including the option for the court to appoint a legal advisor or non-governmental organisation (NGO) representative)
EL	Public Prosecutor for Minors or, in its absence, the territorially competent First Instance Public Prosecutor	PT	Care agency; residential care facility where the child resides
ES	Youth welfare authority of the respective Autonomous Community	RO	Director of residential care institution facility; General Directorate of Social Assistance and Child Protection ( <i>Directia generala de asistenta sociala si protectia copilului</i> ) through its director
FI	Social welfare service of the municipal authority; director of the reception facility	RS	Centres for social work
FR	Child protection service ( <i>Aide sociale à l'enfance, conseil général</i> ) of the local authority ( <i>département</i> )	SE	Social welfare service at municipal level ( <i>Socialnämnden</i> )
HR	Centre for Social Welfare ( <i>Centar za socijalnu skrb</i> )	SI	Social work centres ( <i>Centri za socialno delo</i> )
HU	Regional Child Protection Service ( <i>Tegyesz</i> )	SK	Office of Labour, Social Affairs and Family ( <i>Úrad Práce, Sociálnych Vecí a Rodiny</i> )
IE	Child and Family Agency-TUSLA		

Notes: Cells highlighted in grey show changes since 2014.

Source: FRA, 2021

In 2015 and 2016, Member States with high numbers of arrivals and asylum applications had to assign many unaccompanied children to each available guardian. Consequently, it became very difficult to ensure comprehensive support for each child. Guardians were sometimes not able to meet a child; they exercised a minimal role of legal representation, signing the necessary administrative documents when required by judicial or administrative bodies.<sup>6</sup>

Some Member States had already implemented laws and policies limiting the number of children per guardian, but they were not able to comply during that period. Other Member States, such as Finland,<sup>7</sup> Germany, Greece,<sup>8</sup> Hungary,<sup>9</sup> Italy,<sup>10</sup> the Netherlands<sup>11</sup> and Slovenia (Table 3), have set such limits more recently. These range from 3 to 50 children per guardian. This difference in the number of children is partly due to the different employment statuses of guardians – professionals or volunteers – and the different tasks assigned to them across the EU.

For example, in Germany, where staff of youth welfare offices may exercise guardianship, the law allows for a full-time staff member to be responsible for a maximum of 50 children.<sup>12</sup> In Slovenia, for unaccompanied children applying for asylum, a limit of three children per guardian – called a statutory representative – was set in 2017. The legal representative may exceptionally represent a maximum of five children at a time when no other guardian is available.<sup>13</sup> In Italy, the law establishes a limit of three children for each volunteer guardian.<sup>14</sup>

**TABLE 3: EXAMPLES OF MEMBER STATES WITH LAWS OR POLICIES SETTING A MAXIMUM NUMBER OF CHILDREN PER GUARDIAN**

EU Member State	Maximum number of children per guardian
FI	Maximum of 10 children per guardian in the reception phase and 20 children per guardian in the integration phase.
DE	Maximum of 50 children per guardian for German and foreign unaccompanied children. This may be reduced if the guardian is entrusted with additional tasks.
EL	Maximum of 20 children per guardian. Exceptionally, during periods of increased arrivals, in airport or port transit zones or during stays at reception and identification Centres (RICS), the maximum number of children per guardian can exceed 20. However, this must not prevent the guardian from carrying out his or her duties.
HU	Maximum of 30 children per child protection guardian.
IT	Maximum of three children per voluntary guardian.
NL	In the delta method, the working method used in the Dutch child protection system, the maximum caseload is 15–17 children. The caseload for Nidos varies for unaccompanied children. It depends on their individual situation as regards the asylum procedure and the reception facility.
SI	Legal representatives of unaccompanied children applying for asylum can represent a maximum of three children at a time, and five in exceptional situations when no other legal representative is available.

*Note: Guardians in the Member States listed have different employment statuses (professionals or volunteers) and may exercise different tasks.*

*Source: FRA, 2021*

FRA’s research shows that in practice the number of children per individual guardian varies enormously between and within Member States. Data collected in September and December 2020 found that the average number of children per guardian or legal representative ranged from one or two in Stockholm<sup>15</sup> (Sweden) to 303 in the Serdika district<sup>16</sup> of Sofia (Bulgaria). At the same time, only 10 children were assigned to one legal representative in the Kremikovtsi district<sup>17</sup> of Sofia (Bulgaria). In Cyprus<sup>18</sup> each legal representative was assigned 58 children in September 2020 but 22 in December 2020. This was because more guardians were recruited.

The number of children per guardian can differ within a Member State depending on the guardians’ status. For example, in December 2020 each professional guardian in Belgium<sup>19</sup> was assigned an average of 18 children. In contrast, volunteer guardians had about two to three children each. In Denmark, of 12 guardians from the Red Cross, five volunteers had one child each and seven professionals had more than one child.<sup>20</sup>



## 2.2. CENTRALISED OR LOCAL GUARDIANSHIP SYSTEMS

Guardianship systems for children from non-EU countries continue to be organised at local level in most Member States, North Macedonia and Serbia. Thirteen Member States centralise decisions related to guardianship at the national or regional level (Table 4).

**TABLE 4: INSTITUTION IN CHARGE OF GUARDIANSHIP FOR UNACCOMPANIED CHILDREN FROM NON-EU COUNTRIES, LEVEL OF GOVERNMENT, EU MEMBER STATES, NORTH MACEDONIA AND SERBIA**

Country	National	Regional	Local	Country	National	Regional	Local
AT			$\alpha$	IT			$\alpha$
BE	$\alpha$		$\alpha$	LT			$\alpha$
BG	$\alpha$			LU	$\alpha$		
CY	$\alpha$			LV			$\alpha$
CZ			$\alpha$	MK			$\alpha$
DE			$\alpha$	MT	$\alpha$		
DK	$\alpha$			NL	$\alpha$		
EE			$\alpha$	PL			$\alpha$
EL		$\alpha$		PT	$\alpha$		
ES		$\alpha$	$\alpha$	RO			$\alpha$
FI	$\alpha$		$\alpha$	RS			$\alpha$
FR			$\alpha$	SE			$\alpha$
HR			$\alpha$	SI			$\alpha$
HU		$\alpha$		SK			$\alpha$
IE	$\alpha$						

Notes: In some Member States several levels are competent; this depends on the residence status of the child. Cells highlighted in grey show changes since 2014.

Source: FRA, 2021

Only a few Member States have changed their approach to administrative organisation since 2014. For example, in Bulgaria, amendments to the Asylum and Refugees Act<sup>21</sup> now entrust procedural and practical representation in international protection proceedings of unaccompanied children seeking or having received international protection to lawyers from the legal aid register of the National Legal Aid Bureau. This means that guardianship responsibilities have moved from local (centres for social work or directors of residential care facilities) to national level.





Other Member States that have recently reformed their guardianship system have retained responsibility for the appointment of guardians at local level. However, they have set up systems where coordination and standardisation are carried out at national or regional level. This is the case, for example, in Greece. Here, under the new legal framework, local prosecutors will be able to appoint guardians identified by EKKA, a national organisation under the Ministry of Labour and Social Affairs. In addition, EKKA assumes a coordinating role for the recruitment and training of professional guardians.<sup>22</sup> In Italy, local juvenile courts appoint guardians. Here, Law No. 47/2017<sup>23</sup> assigns the National Authority for the Protection of Childhood and Adolescence and its regional branches as having responsibility for selecting, training and providing guidance to volunteer guardians.<sup>24</sup>

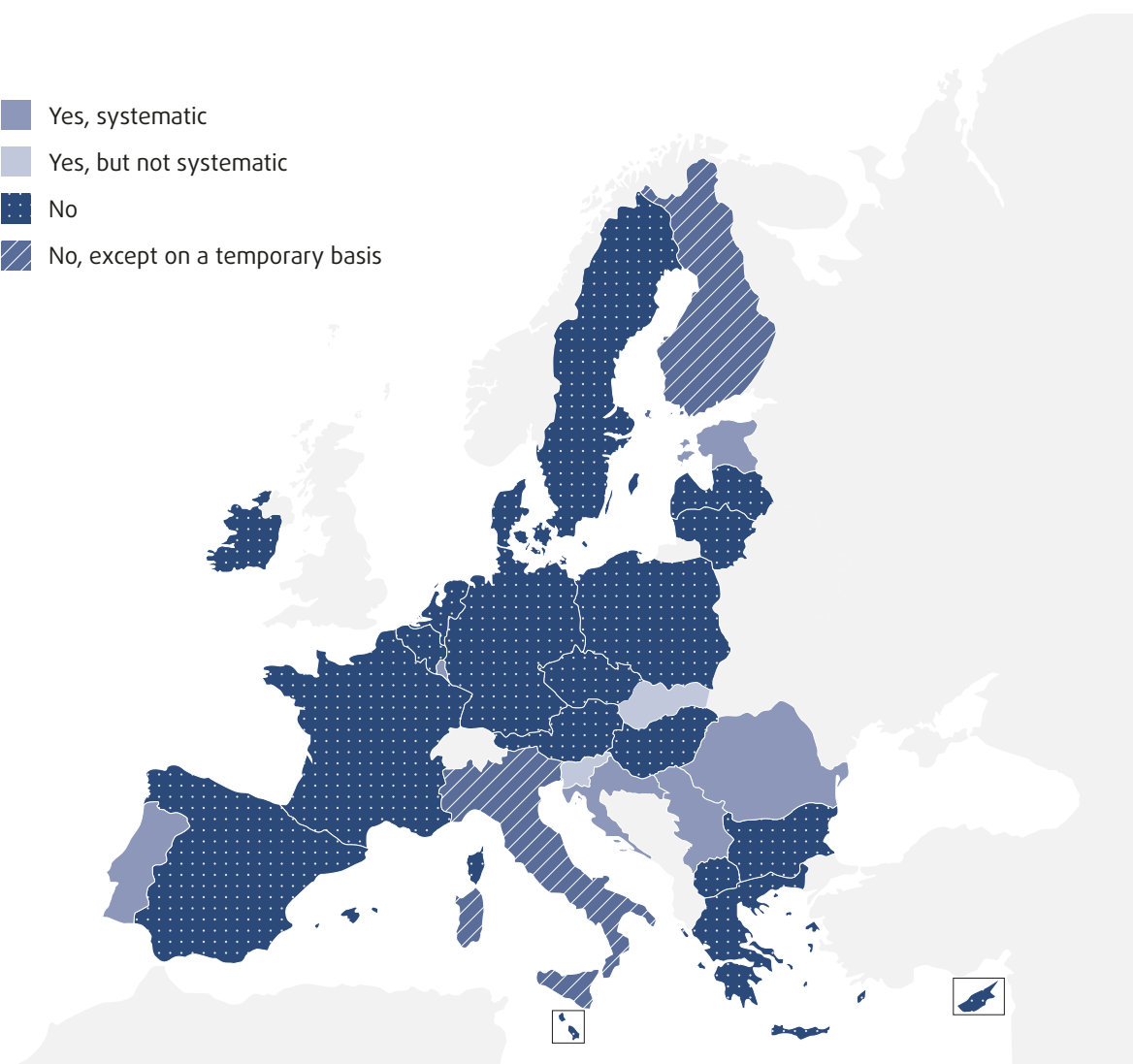
## 2.3. INDEPENDENCE OF THE GUARDIANSHIP AND THE LEGAL REPRESENTATION SYSTEMS

The independence of guardians is one of the fundamental principles of guardianship systems. Appointed guardians and legal representatives must be able to act independently and impartially, guided by the best interests of the child. FRA recommends that organisations, institutions and individuals whose interests conflict, or could conflict, with those of the child should not be assigned guardianship and/or legal representation duties.<sup>25</sup> This includes staff in reception centres or other accommodation facilities or social services staff or staff working for authorities involved in decisions related to asylum claims. If they are assigned as guardians or legal representatives, they may face conflicts of interest despite their intentions to do the best they can to help children.

The situation has improved slightly over the past few years. Four Member States – Bulgaria, Hungary, Latvia and Poland – no longer appoint staff of reception facilities as guardians. However, five Member States and Serbia continue to systematically assign the role of guardian to staff at reception centres where children are accommodated. This is shown in Figure 2.

**FIGURE 2: GUARDIANSHIP ASSIGNED TO THE ACCOMMODATION FACILITY HOSTING THE CHILD, 27 EU MEMBER STATES, NORTH MACEDONIA AND SERBIA**

-  Yes, systematic
-  Yes, but not systematic
-  No
-  No, except on a temporary basis



*Note: The relevant national legislation is listed in Annex 1.  
Source: FRA, 2021*

In Bulgaria, following the amendments to the Asylum and Refugees Act in October 2020, lawyers selected from the legal aid register of the National Legal Aid Bureau are assigned to represent unaccompanied children seeking or having received international protection.<sup>26</sup> The transitional and closing provisions of the amendments allow proceedings that started before the entry into force of the amendments to continue as previously. This means that the social assistance directorate where the child resides will continue serving as guardian when they have already been appointed until the child reaches 18 years of age.<sup>27</sup> In Poland, local courts often appoint non-state actors as guardians, such as employees of NGOs providing assistance to refugees and migrants.<sup>28</sup>

In Hungary, as of 1 January 2014, child protection guardians, employed full-time by regional child protection services as public sector employees, may only undertake tasks related to guardianship.<sup>29</sup> Formerly, a guardian could also head a childcare institution where the child was placed. A further amendment, in 2017, further reinforces the independence of the guardian from the facility providing accommodation. The amendment allows the guardian to meet the child without the head of the child protection service provider (children's home where the child is accommodated) or their colleagues (including a foster parent) being present.<sup>30</sup>

However, since Hungary declared a state of crisis because of mass migration,<sup>31</sup> no guardians have been designated to unaccompanied children between the ages of 14 and 18 until their refugee or protection status has been established. Under the new regulations, asylum seekers, including unaccompanied children, cannot directly submit an asylum application in the territory of Hungary until 31 December 2021.<sup>32</sup> They are able to make a 'declaration of intent' on their wish to apply for asylum only at the Hungarian Embassies in Kiev (Ukraine) and Belgrade (Serbia). Based on this declaration of intent and a remote interview, a special entry visa (valid for 30 days) may be issued, allowing asylum seekers to apply for international protection. In practice, these measures prevent asylum seekers, including children, who are on Hungary's territory or appear at its borders from applying for international protection. The European Commission launched an infringement procedure against Hungary in 2020 for breaching the Asylum Procedures Directive.<sup>33</sup>

Maltese authorities have made efforts to improve their guardianship service based on the Minor Protection Act, introduced in 2020.<sup>34</sup> AWAS has founded a new service – Unaccompanied Minors Protection Services – to manage guardianship. However, this service lacks independence as it functions under the same authority in charge of providing reception facilities to unaccompanied children and carrying out age assessments.

Finland continues to assign responsibility for guardianship of unaccompanied children to the Finnish Immigration Service.<sup>35</sup> During the asylum process the Finnish Immigration Service pays the court-appointed guardians.<sup>36</sup> This is the same service that makes decisions on children's applications for international protection. A report commissioned by the Ministry of Economic Affairs and Employment suggests that the payment of guardians should be transferred to a body that is not involved in the processing of asylum and residence permit applications; it also suggests that the recruitment of guardians should be transferred to a neutral body.<sup>37</sup> The Central Union for Child Welfare holds that the guardianship system urgently needs to be reformed to guarantee the independence and quality of guardians and that this can only be ensured through a single coordinating body.<sup>38</sup>

In 2018, the Commissioner for the Rights of the Child in Cyprus highlighted the inherent conflict of interest in the institution of the guardian. This institution

represents a state authority implementing government policy at the same time as the interests of the unaccompanied child.<sup>39</sup> The Council of Europe’s Human Rights Commissioner also identified this issue after his visit to Cyprus in 2015. He said that this conflict of interest effectively leaves unaccompanied children without proper legal representation in asylum procedures.<sup>40</sup>

## 2.4. EMPLOYMENT STATUS OF GUARDIANS

In most cases the guardian appointed for an unaccompanied child will be either a professional employed by a guardianship institution or other responsible authority, or a volunteer who is not related to the child and is recruited by the guardianship authority or other competent authority. Occasionally, a relative and/or another person affiliated with the child will be appointed as the child’s guardian. This is the preferred choice of national legal systems.

Nineteen Member States, North Macedonia and Serbia (Figure 3) assign the guardianship role to staff of organisations or self-employed professional guardians. For example, in Bulgaria, the recent legal amendments entrust the procedural and practical representation of unaccompanied children seeking or having received international protection to lawyers from the legal aid

**FIGURE 3: EMPLOYMENT STATUS OF GUARDIANS, 27 EU MEMBER STATES, NORTH MACEDONIA AND SERBIA**



Source: FRA, 2021

## PROMISING PRACTICE

# Ethical Charter of Voluntary Guardianship

In Italy, the National Authority for the Protection of Childhood and Adolescence, the Italian Association of Magistrates for Minors and the Family and the NGO Save the Children have promoted an Ethical Charter of Voluntary Guardianship.

The charter is based on the CRC. It provides a list of core principles to guide and orient the activities and roles of voluntary guardians. These include respect for fundamental rights and the implementation of the child's best interests.

The charter is the result of a consultation process involving guardians. This was carried out through an online survey, focus groups and interviews with unaccompanied children and young adult migrants attending the activities.

*For more information, see 'Ethical charter of the voluntary guardian' (Carta etica del tutore volontario).*

register.<sup>41</sup> In Greece, Law 4554/2018 established a registry of professional guardians to be implemented by EKKA under the Ministry of Labour and Social Affairs.<sup>42</sup> EKKA was to recruit, train and provide guidance to these professional guardians and the prosecutor was to appoint a guardian for each child.<sup>43</sup> This was not done and a new law allows EKKA to delegate the responsibility and competences of representation to a legal entity responsible for the care and well-being of unaccompanied or separated children.<sup>44</sup> The legal entity must nominate a natural person to perform the duties of a legal representative. As the new scheme is not yet in place, the NGO METAdrasi was contracted to carry out guardianship tasks in the meantime.<sup>45</sup>

Only two Member States, Italy and Sweden, rely mainly on volunteers. Six Member States have both volunteers and professional guardians.

The handbook on guardianship<sup>46</sup> considers that a system based solely on volunteers may lack continuity and sustainability. Volunteer guardians may not have the necessary knowledge and expertise. In addition, accountability mechanisms and monitoring for volunteer guardians may be inadequate or difficult to enforce.

It is therefore very important to ensure that the same standards apply to both volunteer guardians and professional guardians. This includes as regards their qualifications, vetting procedures, training, monitoring mechanisms and accountability measures. Codes of conduct and written guidance on recruitment, training, monitoring, evaluation and supervision developed for professional guardians should also be used for volunteer guardians. In Italy, Law 47/2017 on the protection of unaccompanied migrant children established a new system relying primarily on volunteer guardians.<sup>47</sup> Training, recruitment and supervision of volunteers are carried out by regional branches of the National Authority for the Protection of Childhood and Adolescence. The national authority considers "that the volunteer can really establish a relationship of trust with the child, due also to the fact that he/she does not belong to any institutional body and, for this reason, is able to better understand the needs of the child." However, it highlights the inability of the volunteer to be always present for the child. This occurs specifically when volunteers care for more than one child and lack knowledge of their languages and cultures.<sup>48</sup>

## 2.5. ACCOUNTABILITY AND OVERSIGHT MECHANISMS

Accountability is a fundamental principle of guardianship systems. FRA recommends that national laws should provide the legal basis of guardianship and define the authority responsible for it. The guardianship authority should be held responsible and accountable for the acts of the appointed guardians. The exercise of guardianship and other representation functions should be monitored regularly and independently. The legal basis of guardianship in national law should include sufficiently precise legal provisions defining a guardian's duties and functions.<sup>49</sup>

The research shows that Member States have generally established both an internal and an external system of supervision and monitoring. Judicial authorities exercise the external system in most cases. Table 5 provides an overview of the authorities in charge of monitoring and oversight of guardians in the 27 EU Member States, North Macedonia and Serbia.

Most countries rely mainly on internal monitoring mechanisms. Some of the authorities responsible for internal monitoring have changed recently. In most cases, this has not substantially affected the way monitoring is carried out.

Internal monitoring includes the regular supervision of guardians and provision of training and guidance. Social welfare centres at municipal or national level provide supervisory support in most Member States and in North Macedonia and Serbia. In Italy, under Law 47/2017, the National Authority for the Protection of Childhood and Adolescence monitors the recruitment, training and supervision of voluntary guardians at regional level.<sup>50</sup>

Courts usually provide external monitoring. This takes place when reviewing individual cases. Judicial authorities usually have no capacity to proactively monitor the work of each guardian. However, in some Member States, such as Czechia and Italy, the court must approve all important decisions affecting the child taken by the guardian.<sup>51</sup>

**TABLE 5: BODIES ENTRUSTED WITH OVERSIGHT AND MONITORING OF GUARDIANS, EU MEMBER STATES, NORTH MACEDONIA AND SERBIA**

Country	Responsible authority	
	External	Internal
AT	District court	Child and youth welfare offices
BE	Justice of the Peace	Guardianship Service
BG	State Agency for Child Protection (specialised authority under the Council of Ministers)	Mayor
		National Legal Aid Bureau
CY	Minister of Labour and Social Insurance	Head of the Department for Family and Children under which the Social Welfare Office operates
CZ	Court	Office for International Legal Protection of Children
	Public defender	
DE	Family court	N/A
DK	N/A	N/A
EE	Court	Municipalities
EL	Court (the responsibilities of the court are exercised by the competent public prosecutor)	Directorate for the Protection of Unaccompanied Minors of EKKA and Guardianship Supervisory Board
ES	Public prosecutor's office	Youth welfare authority of the Autonomous Community
FI	N/A	Finnish Immigration Service (during the asylum phase)
		Regional state administrative agencies (during the integration phase)
FR	Family court judge (the magistrate that assigned the guardian)	N/A
HR	Ministry of Labour, Pension System, Family and Social Policy	Centre for Social Welfare
HU	Metropolitan and county government offices	Regional Child Protection Service
	District offices of the metropolitan and county government offices	
IE	Health Information and Quality Authority	N/A
IT	Juvenile court (guardian judge)	National Authority for the Protection of Childhood and Adolescence and its regional branches
LT	N/A	Director of the municipal administration Territorial division of the State Child Rights Protection and Adoption Service
LU	Judge	N/A

Country	Responsible authority	
	External	Internal
LV	Orphan's court State Inspectorate for Protection of Children's Rights	N/A
MK	Ministry of Labour and Social Policy	Institute for Social Affairs Centre for Social Work
MT	Court	Minors Care Review Board AWAS Quality Assurance Department
NL	Inspectorate for Health and Youth Care (implementation of guardianship) Inspectorate for Justice and Security (implementation of guardianship) Independent board of Nidos (organisational performance) Certification Institute (certification as youth care institution)	Nidos (supervises employed guardians)
PL	Guardianship court Family court	N/A
PT	Family and children's court	N/A
RO	National Agency for Payments and Social Inspection National Authority for the Rights of Persons with Disabilities Office of the Ombudsperson	General Directorate for Social Assistance and Child Protection
RS	Ministry of Labour	Social work centres
SE	County boards supervise chief guardians	Chief guardian
SI	Ministry of Labour, Family, Social Affairs and Equal Opportunities	Social work centres Government Office for the Support and Integration of Migrants Ministry of the Interior Reception facilities
SK	Court	Office of Labour, Social Affairs and Family

Notes: Cells highlighted in grey show changes since 2014. N/A, not applicable.

Source: FRA, 2021

Internal and external monitoring are mainly based on guardians' reports. In most Member States the submission of a report is done at the beginning and end of the guardianship, once or twice a year during the guardianship and on request.

Some Member States provide concrete guidance on the timing and content of reporting. For example, in Slovenia, under an implementing act of the 2017 Family Code,<sup>52</sup> the guardian submits the report for the previous year to the responsible social work centre by 15 February of the current year. The report must contain individual data on health, education and training, the ward's property, monthly income and expenses, and any other important elements concerning the child. It must elaborate on tasks performed and pending and include a plan for pending tasks. The social work centre examines the report within 60 days.<sup>53</sup>

The content and regularity of reporting may vary in Member States with decentralised systems. For example, in Sweden, the chief guardian councils of different municipalities require reports every three or every six months.

Those reports may become annual once the child receives international protection and enters the integration phase.<sup>54</sup>

FRA recommends that an effective monitoring system must include a well-functioning complaint mechanism accessible to children. Children should be informed, in a child-friendly manner and in a language they understand, about how and to whom they can complain about their guardians, in confidence and safety. This includes through telephone helplines.<sup>55</sup>

A complaints system related to guardianship is available in almost all Member States;<sup>56</sup> however, the research shows that complaints against guardians are rare. This raises questions about the accessibility of complaints mechanisms, which usually involve courts, guardianship institutions or ombudspersons. Efforts have been made to improve this. For instance, in Greece, Law 4554/2018 introduced a more accessible complaints system in its implementing acts.<sup>57</sup> Children can file a complaint against a guardian or legal representative and request his or her substitution. A child may file a complaint in a hearing before the supervisory board or during the periodic evaluation of the professional guardian by the unaccompanied child, using the means and tools determined by the Directorate for the Protection of Unaccompanied Minors of EKKA.<sup>58</sup>

### **Role of national human rights institutions**

National human rights institutions are playing an increasing role in the support and monitoring of guardianship systems.

In several Member States, national human rights institutions have regularly reported on and identified challenges regarding the protection of migrant children. This relates specifically to guardianship for unaccompanied children from non-EU countries. For example, in Croatia, the Ombudsperson for Children regularly reports on the practice of appointing unrelated persons arriving in the same group as children as guardians.<sup>59</sup> In Cyprus, the Commissioner for Children's Rights raised concerns about the lack of independent legal representation during the examination of a child's asylum application. The representative – the director of welfare services – was also the guardian of the child and at the same time implements government policy in the area of asylum.<sup>60</sup> In France, the National Consultative Commission on Human Rights and the Defender of Rights regularly report on the situation of unaccompanied children in Calais and other camps in the North of France.<sup>61</sup> This includes the lack of guardianship.

In Slovenia, the Human Rights Ombudsperson reports on the inconsistent application of the Protocol on cooperation between social work centres and the police.<sup>62</sup> This protocol deals with the provision of assistance to unaccompanied minors during police procedures. It has been in operation since August 2012.

In Italy, Law 47/2017<sup>63</sup> assigns the Ombudsperson for Children a greater role beyond monitoring.<sup>64</sup> The Ombudsperson for Children exercises temporarily the functions of regional ombudspersons for children in regions where such ombudspersons have not been appointed. This includes the recruitment and training of volunteer guardians. The Ombudsperson for Children has also developed guidelines to assist in the recruitment, training, together with the European Asylum Support Office, and registration of volunteer guardians.<sup>65</sup>

## **2.6. GUARDIANSHIP AND THE RESIDENCE STATUS OF THE CHILD**

All national systems provide for guardian or legal representation when a child applies for asylum. However, this is not always the case for unaccompanied children who do not request asylum.<sup>66</sup> It appears that states prefer to apply



migration and asylum law over child protection law in cases of unaccompanied children. Such children can thus be excluded from some national child protection law provisions and services.

Many unaccompanied children arriving in Europe do not request international protection for various reasons. For instance, they may not be aware that they can do so or how they can do so; they may not have a guardian and qualified lawyer to assist them in the process; they may want to reach another Member State to join family members and do not trust the official channels for family reunion; they may not be able to apply because of failures and dysfunctions of the asylum system; or they may not have any grounds to request international protection. Regardless, every child is entitled to assistance and special protection as provided by the CRC until a durable solution in their best interests is found.

Ignoring the specific situation of child victims of trafficking, five Member States appoint a guardian in connection with an asylum application (Table 6). This means that only children applying for asylum will have the support of a guardian. Children going through other procedures, such as return or applying for residence permits, may not receive support from a guardian/legal representative.

**TABLE 6: GUARDIAN/LEGAL REPRESENTATION IN DIFFERENT PROCEDURES, MEMBER STATES, NORTH MACEDONIA AND SERBIA**

Country	Asylum	Other procedures	Country	Asylum	Other procedures
AT	$\alpha$	$\alpha$	IT	$\alpha$	$\alpha$
BE	$\alpha$	$\alpha$	LT	$\alpha$	$\alpha$
BG	$\alpha$	$\alpha$	LU	$\alpha$	$\alpha^*$
CY	$\alpha$	$\alpha$	LV	$\alpha$	$\alpha$
CZ	$\alpha$	$\alpha$	MK	$\alpha$	$\alpha$
DE	$\alpha$	$\alpha$	MT	$\alpha$	
DK	$\alpha$		NL	$\alpha$	$\alpha$
EE	$\alpha$	$\alpha$	PL	$\alpha$	$\alpha$
EL	$\alpha$	$\alpha$	PT	$\alpha$	
ES	$\alpha$	$\alpha$	RO	$\alpha$	
FI	$\alpha$		RS	$\alpha$	$\alpha$
FR	$\alpha$	$\alpha$	SE	$\alpha$	$\alpha$
HR	$\alpha$	$\alpha$	SI	$\alpha$	$\alpha$
HU	$\alpha$	$\alpha$	SK	$\alpha$	$\alpha$
IE	$\alpha$	$\alpha$			

\* An ad hoc administrator, but not a legal representative (tuteur).

Source: FRA, 2021

Denmark, Finland, Malta, Portugal and Romania appoint a guardian or representative when a child applies for asylum. Lithuania has amended its legislation in the past few years so that non-asylum-seeking children can also be beneficiaries of guardianship.<sup>67</sup>

Twenty-two Member States, Serbia and North Macedonia provide for the legal possibility of appointing a guardian for children who are not in the asylum procedure; however, actors in the field claim that this is not always implemented in practice.

## 2.7. CHILD PARTICIPATION TO IMPROVE GUARDIANSHIP SYSTEMS

Listening and considering the views of children in any decision that affects them is one of the guiding principles of the CRC. Article 12 provides children the right to express their views freely in all matters affecting them. In particular, this refers to the right to be heard in any judicial and administrative proceedings affecting them. This principle is reflected in the EU Charter of Fundamental Rights, relevant EU directives and legal frameworks of the Member States. A child can take part as an individual when asked, for example, for his or her opinion on a care plan. Children can also take part collectively when they are consulted in legislative, policy or practical discussions.<sup>68</sup> For more information on individual child participation in the guardianship process, see [Section 3.1](#).

The promotion of child participation in different forums has increased over the last years. The European Commission<sup>69</sup> and the Council of Europe<sup>70</sup> have consulted hundreds of children in the preparation of their new strategies on the rights of the child. They have also developed a number of reports and tools in the area of child participation.<sup>71</sup> Strengthening child participation policies across the EU is a key priority area of the EU Strategy on the Rights of the Child, adopted in March 2021.<sup>72</sup> It recommends allocating adequate resources for this.

Child participation in general, as well as specifically around guardianship, has also been expanded in several Member States. Usually, guardianship authorities consult groups of children under guardianship or young adults who had a guardian when they were children on how to improve guardianship services. Other issues discussed include reception conditions.

For example, unaccompanied children in the Netherlands can take part in the development of policies by the guardianship authority Nidos through two special groups: Trusted Juniors and Connected Youngsters.<sup>73</sup> Trusted Juniors is a group of about 15 children still under the guardianship of Nidos. The aim of Trusted Juniors is to raise the profile of Nidos among recently arrived unaccompanied children and give Nidos feedback on what could be improved. Connected Youngsters is a group of six former unaccompanied children. They set up a digital platform where unaccompanied children who are over 18 and former unaccompanied children can virtually exchange experiences and ask for and give advice. In addition, Nidos organises World Cafés. These are regional meetings where children can say what sort of support they need from Nidos.

In Finland, the Red Cross supports the Influencer Team, a group of young migrants with residence permits who were under guardianship before reaching majority. The Influencer Team has actively taken part in discussing the challenges of unaccompanied children, and their success stories, with authorities, politicians, civil society and researchers. They have also engaged actively in general policy issues of concern for young people and regularly respond to requests for comments on the design of materials and training for young people.<sup>74</sup>

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# 3

## APPOINTMENT PROCEDURES

### MAIN FINDINGS

- Several Member States have established mechanisms to hear the child before the appointment of the guardian, throughout the guardianship period and at the end of the guardianship. Some Member States allow the child to choose the sex of their guardian.
- In 2016, the European Commission proposed that a guardian should be appointed as soon as possible and no later than five working days after an unaccompanied child applies for asylum. However, this is still not current practice across the EU. In 12 Member States the average time for the appointment of a guardian is less than a week. About 10 Member States take between a week and a month to appoint a guardian. Some Member States take more than one month.
- Eleven Member States, North Macedonia and Serbia have set up mechanisms to provide a person of support to a child from the first contact with the police or at the border. This can be a social worker or NGO staff member; it is not necessarily a guardian.
- Most Member States have set up internal and external systems for monitoring guardians' work. Most Member States assign internal monitoring to social welfare/social work centres. This includes supervision and training and the provision of guidance. Courts mainly provide external monitoring when requested to do so in individual cases.
- Internal and external monitoring are mainly accomplished through guardians' reporting obligations. In most Member States guardians submit reports at the beginning, during and at the end of guardianship, and on request.
- In most Member States complaints against guardians are rare. This raises questions about the accessibility and effectiveness of complaints mechanisms. In most Member States complaints can be filed with courts, guardianship institutions or ombudspersons.

How and when a guardian is appointed can have a significant impact on the well-being of the unaccompanied child. If the appointment is delayed it can prevent the child from accessing basic social services or applying for asylum. It may also influence the child's decision to continue their migratory path to another Member State.

Listening to and considering the views of the child is an essential principle of child protection, including in the context of guardianship. Moreover, considering the views of the child before the guardian's appointment can facilitate a better match between the guardian and the child and his or her specific needs. This chapter examines several processes related to the appointment of guardians, the timing of appointment, and management as regards oversight and accountability. It also looks at available complaints mechanisms.





### 3.1. HEARING THE CHILD

One of the key principles of child protection is the right of the child to express their views freely in all matters that affect them. The child's views must be taken into consideration according to their age and maturity, as Article 24 of the EU Charter of Fundamental Rights<sup>1</sup> and Article 12 of the CRC<sup>2</sup> stipulate.

Child participation is one of the fundamental principles of guardianship systems: guardianship and legal representation arrangements and procedures should respect children's right to be heard and give due weight to their views. Children should receive appropriate information on the scope of guardianship arrangements and available support services in a manner they understand. Children should also be adequately informed about their rights and how they can complain if they feel that their guardians are not respecting their rights.<sup>3</sup>

The right to be heard is embedded in the legislative frameworks of all Member States through general or specialised law instruments, including sometimes in relation to guardianship. For example, the Spanish Civil Code provides that the judge who appoints a natural person as guardian should hear children over the age of 12.<sup>4</sup> In Germany, the family court is obliged to hear and take into account the child's views on the selection of a particular guardian.<sup>5</sup> Hearing the child on the appointment of the guardian is an option in all Member States. This usually occurs when a natural person is appointed as guardian, for example a relative. However, as mentioned in [Section 2.1](#), guardianship for unaccompanied children from non-EU countries is in most cases assigned to a legal person (institution) and only rarely to a natural person.

Hearing the child and considering their views in matters that affect them should be part of the day-to-day practice of guardians, social workers and other persons working with migrant children. This is sometimes specified in guidelines, regulations or protocols. For example, the Finnish Immigration Service guidelines indicate that guardians need to ensure that children's opinions and wishes are considered in asylum and other decision-making processes. This should be done in the form expressed by the children themselves, considering their age and ability to express themselves. Guardians should also inform children about the progress of the procedures.<sup>6</sup>

In some cases, children are heard before the appointment of a guardian. For example, in Sweden, unaccompanied children may be able to express their views concerning guardians *ad litem*, assigned for specific legal procedures depending on the municipality. Local guardianship systems stress that they always try to match a child with the person they appoint as guardian *ad litem*.



Some guardian councils hear the child and try to meet their preference as regards the guardian *ad litem's* gender or knowledge of a specific language.

In Slovenia, the Family Code sets out that the social work centre that initiates court proceedings to appoint a guardian must inform a child capable of understanding the meaning of the procedure and the consequences of the decision about the initiation of proceedings and their right to express their opinion. This should be done in an appropriate manner. The social work centre conducts an interview with the child, taking into consideration their age and other relevant aspects. A person who the child trusts may also attend the interview if this is in the child's best interests.<sup>7</sup>

In some Member States, asylum laws allow applicants to express a preference for the gender of the person who will interview them or provide interpretation. This is the case in Bulgaria,<sup>8</sup> for example. Children can also request a legal representative of the same gender. In this case their wishes are communicated to the appointing authority, the National Legal Aid Bureau.<sup>9</sup>

A few Member States have developed structured ways of asking children for their views at the end of the guardianship. This to improve the services provided. In Belgium, children are asked to fill in a questionnaire about their specific experiences.<sup>10</sup> Guardianship authorities also visited reception centres to talk with unaccompanied children in small groups about their experiences; however, the COVID-19 pandemic disrupted this practice. Guardianship authorities are currently developing a board game to make the interactions with unaccompanied children more child-friendly.

The guardianship organisation Nidos in the Netherlands has developed an assessment form for use when a child reaches majority and the guardianship terminates. The child can use the form to provide feedback about the performance of the guardian, progress made on their set objectives, the networks they developed, their education and leisure time activities, and their thoughts about the future. Children can indicate how satisfied they are and how they think things could have been done better.

The frequency of a child's interaction with the guardian affects the level of trust and whether they feel able to express their views. The frequency of contact depends on many factors. Member States do not usually specify how often the guardian should meet the child. In Finland, for instance, the guardian must be in 'regular contact' with the child.<sup>11</sup> In Greece, contact is required at least once a week, depending on the individual case.<sup>12</sup> In Germany, the guardian is expected to visit the child once a month in the child's usual environment; however, individual cases may require shorter or longer intervals between visits or visits to take place in a different location.<sup>13</sup>

### 3.2. TIME OF APPOINTMENT AND LENGTH OF PROCEDURES

The prompt appointment of a guardian is an important safeguard to ensure the child's well-being. Member States' legislation or procedures specify that a guardian should be appointed as soon as possible or without undue delay. However, they do not set deadlines.

In 2016, the European Commission proposed that a person or an organisation should be appointed as guardian as soon as possible and no later than five working days after an unaccompanied child makes an application.<sup>14</sup> However, this is not the current practice of Member States, as Figure 4 shows. At times of increases in arrivals, the delay in appointing a guardian can increase considerably.<sup>15</sup>

#### PROMISING PRACTICE

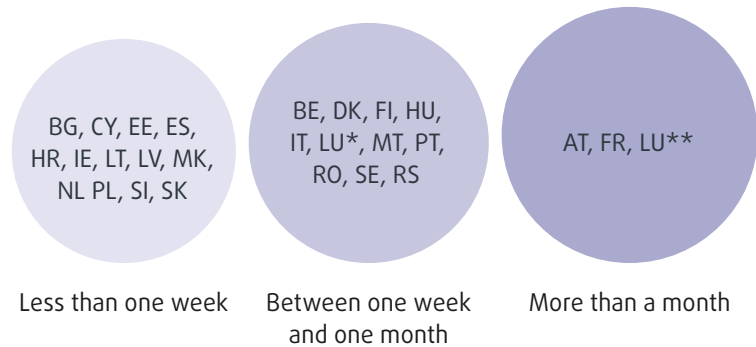
### Tools for collecting children's views on guardianship

CONNECT, an EU-funded project, has developed several practical tools related to unaccompanied children. These include a tool on the right to be heard and to participate and a tool on local cooperation.

One of the tools is an evaluation sheet for collecting a child's views on their guardian at the end of the guardianship. The sheet consists of an easy-to-understand questionnaire to be filled in by the child.

*For more information, see 'CONNECT Tools'.*

**FIGURE 4: AVERAGE TIME REQUIRED TO APPOINT A GUARDIAN, EU MEMBER STATES, NORTH MACEDONIA AND SERBIA, DECEMBER 2020**



Notes: LU: \*for the 'administrateur ad hoc'; \*\*for the 'tuteur'. Unknown: CZ, DE, EL.

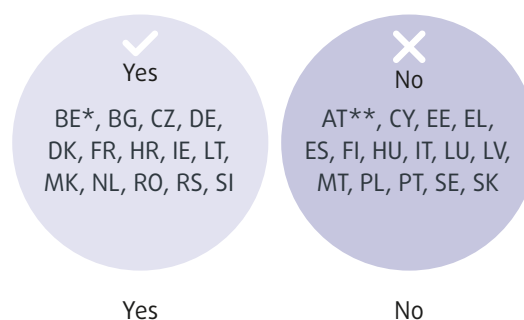
Source: FRA, 2021

Countries that appoint a guardian or legal representative in less than a week generally have systems where guardianship is automatically given to an institution. This is often the social welfare authority. This is the case, for example, in Croatia, Cyprus and North Macedonia. These institutions generally appoint a contact person for the child internally among the staff already employed. For example, in Cyprus, the institution Social Welfare Services is automatically appointed as guardian by law.<sup>16</sup>

In countries where the appointment takes longer, efforts are made to provide interim representation. For example, in Finland, once an unaccompanied child is registered at a reception centre, its director temporarily represents the child legally until a guardian is appointed by the court.<sup>17</sup> In the Netherlands, the first contact between Nidos, the guardianship authority, and an unaccompanied child must take place within five days of the child's arrival at the application centre.<sup>18</sup> In Germany, the youth welfare office must take temporary custody of a foreign child as soon as his or her unaccompanied entry into Germany is established.<sup>19</sup>

Twelve EU Member States have mechanisms to provide unaccompanied children with a person of support from their first contact with the police or at the border, as Figure 5 shows. This is also the case in North Macedonia and Serbia. These support persons may not be assigned legal representation but can play an important supporting role. For example, in Croatia, a protocol adopted in 2018 requires the presence of a social worker from the regionally competent social welfare centre at the initial interview with the police.<sup>20</sup> A similar practice is established in Slovenia.<sup>21</sup>

**FIGURE 5: SUPPORT PERSON FOR UNACCOMPANIED CHILDREN AT BORDERS, EU MEMBER STATES, NORTH MACEDONIA AND SERBIA, DECEMBER 2020**



Notes: \*BE: In urgent cases. \*\*AT: Except in the Tyrol region.

Source: FRA, 2021

## Endnotes

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# 4

## KNOWLEDGE AND SKILLS OF GUARDIANS

### MAIN FINDINGS

- Most Member States provide a general description of the qualifications required to become a guardian. In institutional guardianship the guardian role is generally given to an employee of the institution; the guardian must comply with the general professional requirements of their employer. Often, these guardians will be social workers, legal professionals or psychologists. Recent changes in Greece and Hungary exclude staff in accommodation centres from becoming guardians. This is an important step in enhancing the independence of appointed guardians.
- National laws, policies or guidelines do not always acknowledge the need for training. The European Guardianship Network has recognised that the lack of training for guardians is an ongoing challenge. Recently, training requirements were strengthened in several Member States. These include Greece, Italy, Malta, Poland and Slovenia.
- Seven Member States reported systematically providing induction training to new guardians in 2014. Eleven Member States now report doing so. However, only a few Member States regularly provide additional support to guardians. This includes technical assistance with difficult cases and legal advice.

FRA recommends that persons appointed as guardians and legal representatives have appropriate professional qualifications in child welfare and/or child protection. In addition, they should receive appropriate initial and ongoing training. Guardians should also have the knowledge and skills required to detect child victims of trafficking. Guardians dealing with children with particular needs, such as victims of trafficking or torture, must have the necessary expertise to respond effectively to such needs. This includes, for instance, knowledge and experience in working with traumatised children.<sup>1</sup>

This chapter discusses recent developments in the qualifications required by guardians and the initial and ongoing training provided. It includes examples of on-the-job support for guardians.



#### 4.1. QUALIFICATIONS REQUIRED TO BECOME A GUARDIAN

Legal descriptions of guardians usually include the terms ‘fair’, ‘suitable’, ‘experienced’ and ‘not in a conflict of interest’. Member States define other characteristics or requirements depending on the type of guardianship and the tasks assigned. In institutional guardianship the guardian role is generally given to an employee of the institution; the guardian must comply with the general professional requirements of their employer. Often, these guardians will be social workers, legal professionals or psychologists. For example, in the Netherlands, Nidos guardians are youth professionals registered at the Supervisory Authority of the Youth Quality Register Foundation. They are subject to a professional code and their registration must be renewed every five years.<sup>2</sup> In Malta, guardians assigned under AWAS must have a recognised degree in social work.<sup>3</sup>

Most Member States provide exclusion grounds. Some were reviewed in recent years. For example, in Latvia, the 2015 amendments to the Civil Law included additional exclusion grounds. These relate to criminal record, past performance as guardian and removal of custody rights.<sup>4</sup> Recent changes in Greece<sup>5</sup> and Hungary<sup>6</sup> exclude staff in accommodation centres from becoming guardians. This is an important step in enhancing the independence of the appointed guardians.

In addition to the qualifications required, some Member States have also set up vetting procedures to check for criminal records, physical and psychological suitability and conflicts of interest.<sup>7</sup> The EU directive on sexual abuse and sexual exploitation and child pornography requires that the criminal record of any person working with children is checked.<sup>8</sup>

#### 4.2. TRAINING AND SUPPORT

FRA recommends that guardians must possess the knowledge and skills required to perform their tasks.<sup>9</sup> This includes child protection expertise to ensure that they always act in the child’s best interests. It also includes other skills to allow them to interact and work with children effectively. They must also understand the special needs of child victims of abuse and exploitation, and cultural issues related to the children entrusted to them.

The need for training is often not acknowledged in national laws, policies and guidelines across the EU.<sup>10</sup> However, recent developments have strengthened

#### PROMISING PRACTICE

### Training and support for guardians

The **Belgian** Federal Public Service for Justice provides a basic five-day training course in the first month of guardianship activity through its Guardianship Service. The training covers foreigners law, youth law, civil law relating to the management of property, notions of pedagogy and psychology, and notions of multicultural reception. Guardians must also undertake at least 15 hours of training annually during the exercise of their guardianship. Organisations that employ professional guardians (Caritas International and Red Cross Flanders) also provide training to strengthen guardians’ specific skills, knowledge and know-how related to guardianship.

The Guardianship Service has also developed and finances a coaching project for guardians. The coaching project consists of:

- a helpdesk for guardians – guardians can call or email the helpdesk for advice on practical or juridical issues relating to unaccompanied children;
- individual coaching – guardians can meet the employee for advice in individual cases;
- a coaching course for new guardians – new guardians meet four times a year in small groups to exchange experiences and promising practices;
- training – the project provides one training session a year (in addition to other training provided by the Guardianship Service).

*For more information, see Belgian Federal Public Service, Training (Formation).*

## FRA ACTIVITY

# Supporting the training of guardians

The European Guardianship Network has highlighted the need for additional training.\* FRA has initiated the development of a training manual on guardianship for unaccompanied children. It is being developed in close cooperation with the network, and is based on experiences of previous training that the European Commission (Directorate-General for Justice and Consumer Affairs) co-funded.

The manual, to be published in 2022, will contain information, instructions and promising practices on the fundamental rights of children and the role of guardians. It builds on previous guidance set out in the handbook on guardianship for children deprived of parental care, EU and international standards, and other resources. An online e-learning tool will complement the manual.

*For more information see FRA (2020), 'Strengthening guardianship for unaccompanied children'.*

*\* European Guardianship Network (2020), Workplan September 2020–December 2025, December 2020.*

training requirements in several Member States, such as Greece, Italy, Malta, Poland and Slovenia.

In Malta, the Minor Protection (Alternative Care) Act specifies that the Children's Advocate should also receive or have received training on issues affecting children seeking international protection.<sup>11</sup>

In Slovenia, as of 2016 a legal representative of an unaccompanied child applying for asylum must undertake at least 40 hours of practical and theoretical training.<sup>12</sup> They must also undertake eight hours of training at least every three years on family law, social work, psychology, human rights and fundamental freedoms, and asylum law.<sup>13</sup> In Poland, professional guardians must show special knowledge of matters relating to the child or have completed child rights training.<sup>14</sup>

Training requirements in law and policy should be implemented in practice. In 2014 FRA found that seven Member States systematically provided induction training to new guardians.<sup>15</sup> This research finds that 11 Member States report doing so, as Table 7 shows. Moreover, Greece<sup>16</sup> and Hungary have also developed a training course, which is not yet implemented; this will be compulsory for new guardians. Italy is now providing training to all volunteer guardians.

**TABLE 7: EU MEMBER STATES WHERE INDUCTION TRAINING IS GENERALLY PROVIDED**

Member State	Organised by
BE	Guardianship Service
DK	Red Cross
EL*	EKKA and its contracted parties
FI	Finnish Immigration Service, Ministry of Economic Affairs and Employment, and Centres for Economic Development, Transport and the Environment
HU*	Directorate-General for Social Affairs and Child Protection/ National Institute for Social Policy
IT	Regional ombudspersons for children
LT	Refugees Reception Centre
LV	Local government
NL	Nidos
SE	Chief guardian councils
SI	Faculty of Social Work, University of Ljubljana

*\* Compulsory training course developed but not yet implemented.*

*Source: FRA, 2021*

In addition to training, guardianship authorities should also provide ongoing technical assistance and legal advice to guardians, as necessary. This can help to address some of the complex issues that may arise when assisting a child, for example as regards behavioural issues or legal questions related to asylum or return proceedings.

Some Member States do provide support services, especially legal advice. For example, in Ireland, social workers acting as guardians may access legal advice before making an application for international protection on behalf of an unaccompanied child.<sup>17</sup>



In Italy, the National Authority for the Protection of Childhood and Adolescence is implementing an institutional support system for volunteer guardians with funding from the Asylum, Migration and Integration Fund. It will include an interinstitutional support network for voluntary guardians and a helpline where voluntary guardians can direct their questions or request advice.<sup>18</sup>

#### PROMISING PRACTICE

## Informal network for guardians *ad litem* for unaccompanied children

In **Sweden**, individuals who were appointed as guardians *ad litem* created two networks of guardians *ad litem* for unaccompanied children in the cities of Gothenburg and Örebro.

The networks meet about once a month and provide guardians *ad litem* with an opportunity to exchange experiences. Newly appointed guardians have a safe space where they can discuss difficult situations with more experienced guardians *ad litem*. The networks are independent of the chief guardian councils and based on voluntary initiatives and participation.

*For more information, see the websites of the Gothenburg network and the Örebro network.*





## Endnotes

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# 5

## TASKS OF A GUARDIAN

### MAIN FINDINGS

- The duties and tasks of guardians are often defined in law in a general manner. However, several Member States include detailed descriptions in their legislation or have developed protocols and guidelines that detail guardians' tasks. Member States sometimes allocate to the same person and sometimes to different persons the tasks of ensuring the well-being of the child, safeguarding their best interests and legally representing them.
- Determining a durable solution for the child is an intrinsic part of safeguarding the best interests of the child. However, not all Member States give a prominent role to guardians in the decision-making process or in the implementation of a durable solution. The solutions available are to stay in the country and apply for a residence permit, relocate or transfer to a third country or return to the country of origin. In several Member States a different guardian supports the child during the integration phase once they have received a residence permit; however, there is evidence of efforts being made to retain the same guardian whenever possible.
- Some Member States have established promising practices to facilitate coordination between guardians and other services. These include reception centres and Dublin Units. This can help safeguard the child's well-being and help in cases of family reunion or relocation.
- One of the main tasks of a guardian is legal representation. This is mostly well defined in national legislation. In addition, the child may be entitled to free legal aid and the services of a lawyer, depending on the procedure.
- The assignment of guardians when age assessment is involved varies across Member States. In most cases a guardian is appointed only once it is established that the person is under the age of 18 and thus legally a child. However, most Member States allow for another independent person to support the child during the age assessment process. The consent of a guardian for medical examination is not necessary in all Member States. These Member States consider the consent of the concerned individual sufficient.
- Some Member States provide for the possibility of extending certain social support measures to children once they reach the age of 18. However, this depends on the specific circumstances of the child and does not include legal guardianship. Guardians can play a critical role in preparing children for their transition to adulthood, ensuring that they are connected to support networks.
- The data retention policies of Member States as regards guardians and unaccompanied children vary. Some Member States retain data for less than 10 years whereas some retain data indefinitely.

Guardians are responsible for safeguarding the best interests of the child, ensuring the child's overall well-being and exercising legal representation to complement a child's limited legal capacity. The way these tasks are distributed among different institutions or among different persons with different roles varies among Member States. FRA recommends that a guardian's rights and duties should be defined in domestic law or policy and, where necessary, further clarified in official guidelines.<sup>1</sup>

This chapter examines how Member States define the role of a guardian. This includes in relation to day-to-day care, legal representation and the provision of assistance in certain procedures, such as age assessment or in establishing

a durable solution. It also covers the role of the guardian in supporting the child when reaching majority, and the management of the child's personal data acquired during the performance of the guardian's tasks.

## 5.1. NATIONAL PROVISIONS DEFINING A GUARDIAN'S TASKS

Member States usually define in law only in general terms the role and responsibilities of guardians. The most common tasks of guardians are to ensure that the child receives care, accommodation, education and healthcare, manage the child's finances and exercise legal representation. Guardians of unaccompanied children are to some extent also involved in decisions on long-term, durable solutions for them. The tasks assigned to guardians are further defined in implementing acts or administrative guidance. This is because the tasks may depend on the procedure a child is involved in, such as applying for asylum, or whether they are presumed to be a victim of trafficking.

When guardianship is assigned to a natural person, family law usually defines the tasks. These usually correspond to parental rights and duties to care for the personality, rights and benefits of the child and to manage their assets. The guidance provided for institutional guardianship is usually more detailed. This is the most common type of guardianship assigned to children from non-EU countries. Guardians cannot carry out or be held accountable for tasks that are not defined in a legally binding instrument.

FRA's 2015 report noted that several Member States had defined in detail in law or in implementing acts the responsibilities assigned to guardians.<sup>2</sup> Since then, several other Member States have also done so. For example, Portugal adopted a decree-law in 2019 defining the role of residential institutions.<sup>3</sup> Residential institutions are usually assigned the guardianship role for unaccompanied children. In Greece, Law 4554/2018 provides a list of a guardian's tasks.<sup>4</sup> These include the representation of the child in judicial and administrative proceedings, including asylum procedures, and ensuring the provision of legal assistance and interpretation. The law requires the guardian to ensure that the unaccompanied child is duly informed in a timely and adequate manner. This is especially the case as regards the meaning and possible consequences of the personal interview, and how to prepare for the interview. The guardian may attend the child's interview and submit questions or make observations to facilitate the procedure. A ministerial decision further describes other tasks, including the role of the guardian in age assessment and in the determination of the best interests.<sup>5</sup>

In Bulgaria, the legal representative's role is to represent children before social, health, educational and other services to protect their best interests.<sup>6</sup> National Legal Aid Bureau guidelines require legal representatives during international protection proceedings to sign applications for registration of children with a general practitioner and consent forms for hospitalisation. This includes supplying their personal data. They are also required to sign applications for registration of children at school.<sup>7</sup>

The 2018 protocol on the protection of unaccompanied children in Croatia provides a very detailed list of guardians' tasks.<sup>8</sup> These include the provision of appropriate information to the child, participation in age identification procedures and ensuring that all procedures conducted and all decisions taken promote the well-being of the child. Special attention should be paid to risks and indications of trafficking for referral to the competent authorities.



## 5.2. ENSURING THE WELL-BEING OF UNACCOMPANIED CHILDREN

Guardianship encompasses the duty to ensure the adequate care of the child and to promote the child's well-being. Guardians are not always responsible for providing care directly, but for guaranteeing that the child receives sufficient care to ensure his or her well-being. The guardian thus needs to liaise with the relevant services to ensure the child's access to housing, education and health services.

The roles of guardian and care provider are not always clearly separated. This may be the case in countries where reception centres also assume guardianship. Sometimes different persons are assigned to a child and have different roles. For example, in Luxembourg, the Asylum Act assigns the guardian, who is the manager of the reception centre, the daily care needs; an ad hoc administrator, a lawyer, represents the child in asylum proceedings.<sup>9</sup>

The guardian often facilitates the link between the child and specialist agencies and individuals responsible for covering the legal, social, health, psychological, material and educational needs of the child. In this context, and to ensure the well-being of the child, the guardian should monitor certain services and intervene and suggest changes when necessary. For example, in Croatia, the description of the guardian's tasks explicitly states that the guardian can propose to the competent social welfare centre a change of accommodation if it is deemed that the conditions of accommodation are not in line with the well-being of the child.<sup>10</sup> In Slovenia, the guardian may enrol or withdraw the child from school, with the approval of the social work centre.<sup>11</sup>

When children are at risk, guardians play an important role. In most countries the guardian or the guardianship service oversees the reporting of a child's disappearance to the police.<sup>12</sup>

Guardians often play a role, together with child protection services, in determining children's needs, assessing their best interests and developing care plans. In Hungary, the child's individual educational and care action plan is compiled by the head of the children's home and the child protection guardian.<sup>13</sup> The Croatian protocol on unaccompanied children assigns the guardian the responsibility of conducting the initial needs assessment for the child.<sup>14</sup>

## 5.3. BEST INTERESTS AND DURABLE SOLUTIONS FOR UNACCOMPANIED CHILDREN

Safeguarding the best interests of the child is one of the fundamental principles of guardianship. The guardian must apply this principle for all decisions concerning the child, no matter how trivial. The guardian must also ensure

### PROMISING PRACTICE

## Promoting alternative family care

EU-funded projects have developed several tools on foster care. For example, the Alternative Family Care (ALFACA) project explores the benefits of foster care for unaccompanied children. The project has developed training and guidance on family-based care, including a manual on working with families and unaccompanied children living in families. The manual is a useful tool for guardians to ensure the well-being of children when daily care is the responsibility of a foster family.

The International Organization for Migration (IOM) has also developed practical tools to promote foster care in Belgium, Germany and Greece.

*For more information, see 'Alternative Family Care (ALFACA)'; 'ALFACA II', Forum, Foster care for unaccompanied migrant children; and IOM, 'Unaccompanied Children in Alternative Residence (U-Care)'.*



that decisions taken by social services or other bodies are guided by the best interests of the child as the primary consideration.

Determining a durable solution is particularly important for the future of an unaccompanied child. The child may stay in the country of arrival, be relocated or transferred to another country or be returned to the country of origin. The choice of a durable solution depends on the circumstances of the child, especially their protection needs, safety concerns and the possibility of family reunion.

Providing sufficient child-appropriate information is a precondition for the successful participation of the child in the process of determining the best durable solution. This is clearly stipulated in the descriptions of guardians' tasks across the Member States.

Guardian or legal representatives play a role not only in determining durable solutions, but also in implementing them. Guardians, and often qualified lawyers, play an important role in asylum proceedings and sometimes also in migration proceedings related to application for a residence permit. For example, in Germany, the law assigns guardians the responsibility for any other legal residence procedure. This includes applications for a residence permit not connected to the asylum procedure, or providing assistance in the Dublin procedure or the family reunification procedure involving family members from the country of origin.

Luxembourg established by law in 2019 a consultative commission to evaluate the best interests of the child.<sup>15</sup> The regulation containing the rules on the composition and functioning of the consultative commission provides that "the ad hoc administrator, appointed to represent the unaccompanied minor, is invited to bring his/her point of view to the committee".<sup>16</sup>

In some Member States, once the child receives a residence permit, either through migration or asylum proceedings, a new guardian is appointed to support the integration phase. This is the case, for example, in Finland and Sweden. In Finland, once the unaccompanied child receives a residence permit their integration becomes the responsibility of the municipality.<sup>17</sup> In most cases, the guardian appointed during the asylum phase can continue working with the child; however, if the child moves to another municipality a new guardian may be appointed.<sup>18</sup> In Sweden, temporary guardianship ends when an unaccompanied child is granted a residence permit. The chief guardian then assigns a specially appointed custodian,<sup>19</sup> who has similar tasks as the temporary guardian, but is more focused on the child's long-term development and social integration.<sup>20</sup>

#### PROMISING PRACTICE

## Guidelines on assessing and determining the best interests of the child

The UNHCR updated its procedure guidelines on assessing and determining the best interests of the child in 2021. The guidelines cover the legislative framework and the key steps in a best interests assessment and determination. This includes the role of guardians, but also practical aspects, such as staffing, verifying existing information on the child, storing and sharing information and amending a child's registered age.

In relation to the guardian, the guidelines indicate that, where legal guardianship arrangements exist, the appointed person must be involved in the best interests determination.

*For more information, see UNHCR (2021), Best interests procedure guidelines: Assessing and determining the best interests of the child.*



The outcome of the best interests assessment might be the transfer of the child under a Dublin procedure<sup>21</sup> or under other schemes of relocation to another EU country. During transfer or relocation procedures, the guardian will have different tasks. These include informing the child about procedures and accompanying them to and handing them over to authorities in the receiving country. The Croatian protocol for unaccompanied children provides a detailed list of such responsibilities. It stipulates that during Dublin procedures the guardian must inform the child about all steps in the process; be present during the interview; inform the Department for Asylum, Migration and Integration about new facts or information about the child; and escort the unaccompanied child to the Member State responsible for processing their asylum claim.<sup>22</sup>

FRA's research on the relocation of unaccompanied children found that guardians, if appointed, did not always play an active role. There was also sometimes weak cooperation with Dublin Units.<sup>23</sup> The research also highlighted successful cases where the guardian played a central and continuous role. For example in Italy, the guardian, or temporary guardian, accompanied the child during the asylum application, applying the best interests principle, and informed the child. The Italian guardian's assessment of the best interests of the child was a precondition for relocation under the 2015 European Emergency Relocation Mechanism and in the voluntary relocation under the Dubs scheme to the United Kingdom.

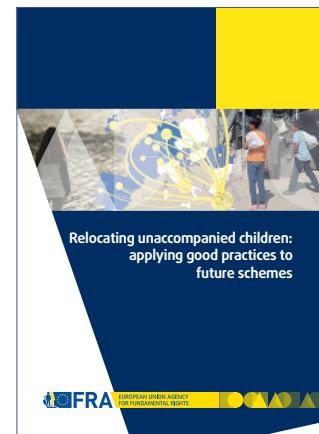
In cases of relocation from Greece to the United Kingdom under the Dubs scheme, the guardian was often in charge or prepared the evaluation of the child and requested the relocation. The UNHCR and EKKA set up a best interests determination panel to determine if relocation was in the child's best interests. Either the guardian or social workers working in the child's shelter submitted the standardised form for each child.<sup>24</sup>

The outcome of the best interests assessment can also be the return of the child to the country of origin. The UN Committee on the Rights of the Child and the CMW advise that states should appoint a legal representative (qualified lawyer) free of charge for every child that arrives, in addition to the guardian appointed to unaccompanied children. Moreover, they advise states to ensure that due process safeguards are established. This includes the right to free, qualified and independent legal representation during all decision-making processes affecting children.<sup>25</sup> States assign different tasks to guardians in return proceedings. Sometimes a central role is assigned to them, such as helping with family tracing or liaising with guardians in the country of origin. For example, in North Macedonia, the decision on a child's return is adopted by the guardian, together with the expert team, after they have identified the child's parents or close relatives. In addition, a positive security report must be obtained on the family with whom the child is to be reunited. This must be approved by the country of reception.<sup>26</sup>

Guardians in Italy cooperate with the reception facility hosting the child in family-tracing procedures. The results of these procedures must be communicated to both the child and the guardian. If family members are located in the country of origin or in another non-EU country, the juvenile court is in charge of hearing the social services, the child and the guardian and deciding whether voluntary return is an option that complies with the child's best interest.<sup>27</sup>

## FRA ACTIVITY

# Relocating unaccompanied children: lessons learned



Following the request by Greek authorities to relocate unaccompanied children from Greece in 2019, FRA published a compilation of lessons learned from previous relocation exercises. The report includes promising practices and provides practical guidance, including in relation to the role that guardians should play in the relocation process.

The report aims to support national authorities of sending and receiving Member States when relocating unaccompanied children under current or future relocation schemes.

*For more information, see FRA (2020), [Relocating unaccompanied children: Applying good practices to future schemes](#), Luxembourg, Publications Office.*

## PROMISING PRACTICE

# Sustainable reintegration of child returnees

The IOM carried out EU-funded research to identify promising practices in monitoring child reintegration after return. A toolkit was developed to help stakeholders monitor the extent to which child returnees are reintegrated in a sustainable manner in the communities to which they return, and to identify the main factors that contribute to that sustainability. It also addressed the important role of guardians.

*For more information, see the web page dedicated to the IOM study on monitoring the sustainable reintegration of child returnees.*

## PROMISING PRACTICE

# Voluntary return: double commitment approach

In the **Netherlands**, if return has been considered in the best interests of the child, the guardianship organisation Nidos seeks a double commitment to ensure a successful return: from the family in the country of return and from the unaccompanied child.

The family's commitment is achieved by contacting family members in the country of origin and involving them from the start through telephone communication. The aim is to support the child and deal with any problems and their future plans. The parents or other family members are involved in the preparation of the return plan.

The child's commitment is achieved by working on a sustainable return plan. This should include a safe residence for the child in the country of return, sustainable future prospects for the child through education, work or development opportunities for the child, and family-based care.

*For more information, see Nidos, 'Vision Nidos on return'.*

## FRA ACTIVITY

# Fundamental rights concerns when considering the return of unaccompanied children

FRA's focus paper on returning unaccompanied children points at the key role of guardians in ensuring a fundamental rights-compliant return. The unaccompanied child's guardian should be fully involved in assisting the child during each step of the return process, if return is considered in the best interests of the child.

*For more information, see FRA (2019), [Returning unaccompanied children: Fundamental rights considerations](#), Luxembourg, Publications Office.*







#### 5.4. LEGAL REPRESENTATION AND ENSURING ACCESS TO FREE, QUALIFIED LEGAL AID

One of the main tasks of a guardian included in national legislation is the legal representation of the child. The guardian must assist the child in all legal actions for which the child lacks legal capacity. Guardians complement the child's limited legal capacity in all civil, administrative and criminal proceedings. The rights and duties of guardians in such proceedings are in principle clearly defined in respective legislation.<sup>28</sup>

In addition to their legal representation by the guardian, a child who is party to an administrative, civil or criminal procedure may also have access to legal assistance. As already mentioned, both the Committee on the Rights of the Child and the CMW recommend that states provide free legal assistance in judicial proceedings to all unaccompanied children entering a country.<sup>29</sup> The Asylum Procedures Directive provides guarantees for unaccompanied children applying for asylum. These include the right to have a representative or legal advisor or other counsellor assist during the asylum interview and the right to be provided free of charge with procedural and legal information.<sup>30</sup>

The interaction between the guardian or legal representative and the child's lawyer varies across Member States and for different procedures. For example, in Bulgaria, lawyers from the National Legal Aid Bureau provide legal representation in international protection proceedings since 2020.<sup>31</sup> The lawyers represent and provide legal aid to the child. In Belgium, the Guardianship Act clearly tasks the guardian with requesting legal assistance to represent the child in various proceedings.<sup>32</sup> In Germany, certain family courts' practice of appointing a migration lawyer as a supplementary guardian was discontinued by the Federal Court of Justice in 2017.<sup>33</sup> It declared that guardians should be competent to act in all relevant procedures, including asylum applications and migration proceedings, although they can appoint a lawyer in complex cases.

In Finland, the guardian also ensures that the child has access to a lawyer when necessary. When a child receives a decision on an asylum application, the guardian should contact the child's lawyer to assess if there is a need to appeal the decision. In other hearings, the task of the guardian is to give the child information about the hearing and its purpose, as well as take part with the child and support the child.<sup>34</sup>

Access to free legal aid is not always available, especially in administrative procedures. For example, the Commissioner for the Rights of the Child in

#### PROMISING PRACTICE

### Ensuring high-quality legal assistance

The European Council on Refugees and Exiles' (ECRE) guiding principles on high-quality legal assistance provide several suggestions for ensuring that unaccompanied children receive adequate legal assistance. Principle 2 indicates how legal advisors can complement the work of guardians and child protection systems.

*For more information, see ECRE (2014), **Right to justice: Quality legal assistance for unaccompanied children.***

#### PROMISING PRACTICE

### Free legal advice during refugee family reunification procedures

In **Ireland**, state-provided legal aid is not available for applications for refugee family reunification. Thus, it is difficult for children to apply for family reunification and meet administrative requirements.

The Immigration Council of Ireland Independent Law Centre and the Irish Refugee Council partner with private law firms to provide free legal advice to unaccompanied children seeking to reunite with their families.

*For more information, see Immigrant Council of Ireland, 'Child migration matters.'*

## FRA ACTIVITY

# Focus on immigration detention of children



FRA's research shows that the detention of children is a major fundamental rights challenge. It is in line with EU law only if limited to very exceptional cases.

The accompanying report aims to support practitioners, including guardians and legal representatives, in implementing relevant policies in line with applicable law. It does this by outlining available safeguards against unlawful and arbitrary detention and highlighting promising practices.

*For more information see FRA (2017), European legal and policy framework on immigration detention of children, Luxembourg, Publications Office.*

Cyprus raised several concerns in this regard. The lack of clarity in the law as to who provides the child and guardian with free legal and procedural advice was highlighted; the law does not provide for representation by a lawyer at the administrative examination of the asylum claim. Moreover, the Commissioner considered the existing representation by the Social Welfare Service as problematic, given the dual role of the social welfare officer and their lack of legal training.<sup>35</sup> The legal representative of children in judicial proceedings for annulling a negative asylum decision is the Commissioner for the Rights of the Child, who will provide a lawyer.<sup>36</sup>

Guardians should also provide legal representation if a child is detained for asylum or return purposes. Half of the EU Member States do not allow unaccompanied children to be detained for asylum and/or return purposes.<sup>37</sup> Some national laws ban children's detention in both situations; others national laws disallow it only in asylum procedures, but make it possible in return procedures. In most Member States, national law includes a duty to notify the guardianship authority whenever an unaccompanied child is identified and/or detained. However, FRA's research has shown that often authorities detain a child before the appointment of a guardian.<sup>38</sup>

## 5.5. AGE ASSESSMENT

Children under the law are persons under the age of 18. When there is doubt about the age of a person, almost all Member States conduct a specific assessment to determine their age.

The EU Asylum Procedures Directive requires the consent of the child and/or their legal representative if the assessment includes a medical examination.<sup>39</sup> In most Member States, however, a guardian is appointed only after an age assessment has confirmed that the person is under 18. According to EASO (European Asylum Support Office), most Member States allow the presence of an independent person during the age assessment. This may be a lawyer, a social worker, an NGO staff member, a friend or, in some cases, a guardian or legal representative if they have already been appointed.<sup>40</sup>

When a guardian is appointed before the age assessment, they can play an important role in supporting the child. The guardian's most common tasks are to consent to medical examination, provide information and accompany the child to the medical examination. The guardian's consent is required for all age assessment methods in Bulgaria, Italy, Lithuania and Slovenia. The guardian's consent is required only for medical examination in 11 Member States. The consent of the child is required only for medical examination in thirteen Member States.<sup>41</sup> For example, in Slovenia,<sup>42</sup> both the guardian and the child must agree to a medical age assessment process. In Greece, the consent of either the child or the guardian is required.<sup>43</sup> In Czechia<sup>44</sup> and Portugal<sup>45</sup> the guardian's consent is sufficient.

In countries where the guardian is appointed before the age assessment, they may accompany the child during the assessment. In Italy, in addition to the guardian, a child developmental psychologist can attend the age assessment procedure. If necessary, a cultural mediator can also attend.<sup>46</sup>

Standard operating procedures in North Macedonia suggest that medical examinations should be conducted only in exceptional cases. The child should be informed about any medical assessment, the types of examinations that will be performed and why this procedure is necessary. During the assessment, the guardian or a member of the expert team accompanies the child.<sup>47</sup>

The lack of presence and individualised support of a guardian was the focus of a decision of the Committee on the Rights of the Child regarding Spain.<sup>48</sup> The case was brought to the attention of the Committee under the third protocol on a communications procedure. It dealt with an unaccompanied asylum-seeking girl who had been the victim of sexual violence. She underwent a medical examination that included genital exploration and nudity without the support of a guardian. In its decision the Committee considered that Spain violated several articles of the CRC, given the invasive character of the test and the lack of support of a representative during the examination. Spain has since adopted legislation that explicitly prohibits invasive methods when assessing age, such as genital exploration or full nudity.<sup>49</sup>

## 5.6. REACHING MAJORITY

A guardianship generally ends when the child is reunited with his or her parents or family or when the child reaches majority. Legal majority is reached in all EU Member States, North Macedonia and Serbia at 18 years, unless reached earlier through marriage.<sup>50</sup>

FRA's research with young refugees shows that turning 18 is a challenging moment. Children usually need to change their housing arrangements and other social support measures are reduced.<sup>51</sup> The guardian plays an important role in preparing the child for this transition by providing sufficient and appropriate information and developing together with the child a transition plan. FRA recommends that this plan supports the child to develop their capacities and allows them to acquire and strengthen the skills necessary to become independent, responsible and active in society.<sup>52</sup>

When the child reaches 18, the guardian ends his or her supporting role as the child becomes a legally responsible adult. Most Member States do, in principle, continue to provide certain support through youth welfare services. This, however, depends on many factors, such as the vulnerability of the young adult, their residence status and whether they are still in education.

Some Member States have provisions to extend the guardianship, as happens for national children with special needs on reaching 18.<sup>53</sup> These measures are, however, not commonly applied to those from non-EU countries. On turning 18, guardians in Italy provide children with information on and practical support in procedures concerning the conversion of their residence permit into a residence permit for study or work. This application must be filed within 90 days of the child's 18th birthday.<sup>54</sup> When an unaccompanied child, on reaching the age of majority, needs extended support, the juvenile court may at the request of social services order the child to be placed in foster care until the age of 21.<sup>55</sup>

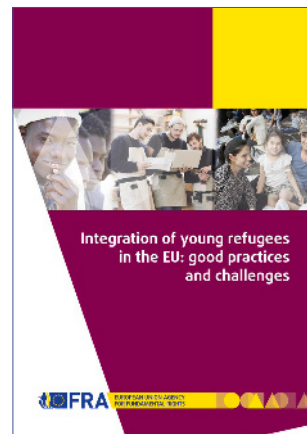
In Sweden, a specially qualified contact person can be assigned to a young person with a residence permit when they need support, as is done for Swedish citizens, until they reach the age of 21.<sup>56</sup> This may be because of drug abuse, participation in criminal activities or other social problems.

In Luxembourg, if there is a risk that the child cannot acquire employment, the guardian can continue to support them if necessary for their well-being. A judge decides on an extension up to the age of 21, with the agreement of the young person concerned.<sup>57</sup>

In Portugal, protection measures ordered by a court can be maintained until a child reaches the age of 21, although the child acquires full legal responsibility at 18.<sup>58</sup> In exceptional cases, if requested by the young person, measures of "promotion and protection of support for the autonomy of life" may be

### FRA ACTIVITY

## Integrating young refugees in the EU: promising practices and challenges



FRA carried out research into the experiences of young people between the ages of 16 and 24 years who fled armed conflict or persecution and arrived in the EU in 2015 and 2016. The young persons interviewed who arrived as unaccompanied children reported the difficulties they faced when reaching 18.

Many had to move to an adult facility, which they found frightening as it sometimes meant losing their social network, such as school and community networks. The research also shows that sufficient, consistent and systematic support from guardians, lawyers and social workers is a key factor for successful integration.

*For more information, see FRA (2019), [Integration of young refugees in the EU: Good practices and challenges](#), Luxembourg: Publications Office.*

## PROMISING PRACTICE

### Turning 18: cooperation between the guardian and the municipality

The Association of Municipalities in the **Netherlands** and the guardianship authority Nidos have developed a manual on how to transfer unaccompanied children from the care of Nidos to an independent living home under the responsibility of the municipality on turning 18.

The manual recommends holding two case management meetings between the guardian, the child and the municipality, one when the child is 17 years and six months and one when the child turns 18. The manual also suggests holding a meeting between the guardian and a representative of the municipality.

*For more information, see Nidos, Turning 18 – cooperation between guardian and municipality (Handreiking voor de overdracht van amv's die 18 jaar worden).*

extended until the age of 25, provided they are in education or professional training.<sup>59</sup>

Young persons who have obtained a residence permit in Finland may receive support until they reach the age of 25. If the municipality of residence decides to provide support, the state compensates the costs. The measures may include the provision of a support person or mentor.<sup>60</sup>

In Ireland, young people aged up to 21, or 23 if in education, who have had a care history are entitled to an aftercare service based on a needs assessment. Access to accommodation, education, employment or training, and family support is prioritised. Various parties can request support, including the allocated social worker for the young person in care, a family/foster family member or the young person him- or herself. Aftercare services provided can include an allocated aftercare worker, drop-in services and financial support.<sup>61</sup>

Research shows that guardians sometimes decide to continue supporting the child into adulthood on a voluntary basis. For example, in Belgium, some guardians voluntarily continue to support the child as a trusted person, in an informal capacity, with no specific tasks assigned.<sup>62</sup> In Germany, guardians who are private persons or from associations who have formed a close relationship with young refugees will often keep in touch with them after they have become of age. They provide advice and support on practical matters.<sup>63</sup> In France, a study found the following in relation to ad hoc administrators: "a matter of conscience arises for all professionals: whether to leave the young adult to continue alone or to continue support on a voluntary basis until the end of the procedure. In almost all cases, the ad hoc administrators do not think about this for long; not feeling able to 'abandon' the young person they are supporting, they continue the support until the trial."<sup>64</sup>

Supporting children in the challenging transition to adulthood on a voluntary manner is a commendable action. However, support systems should be formally available for all children and young people who require them, regardless of the guardians' goodwill.

## PROMISING PRACTICE

### Support for unaccompanied children after the age of majority: the Moses project

In **Austria**, the organisation Don Bosco runs the Moses project. This project provides counselling and support services for former unaccompanied children who have had to move out of residential communities on turning 18. It provides affordable housing, counselling and support for independent living as refugee adults in Austria, especially in dealing with authorities. The initiative also helps to find appropriate training and counselling centres and organises tutoring and learning support provided by volunteers. It also provides overall assistance in finding a job.

*For more information, see Don Bosco Sozialwerk Austria, The follow-up project Moses (Die Nachbetreuung Moses).*

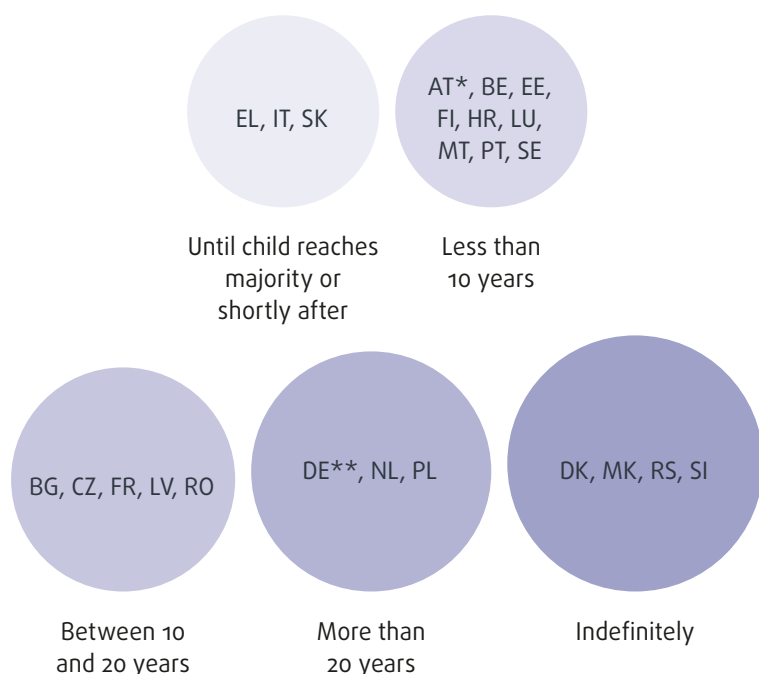
## 5.7. CASE ADMINISTRATION AND DATA PROTECTION

FRA recommends that guardianship authorities keep records of all children referred to them and individual case files on every child under their care. Guardianship authorities should ensure the confidentiality of all records, based on applicable EU and national privacy and data protection law.<sup>65</sup>

The individual case files about the child will contain personal data and sometimes also sensitive health or other data. EU Member States are obliged to protect these data according to the General Data Protection Regulation (GDPR).<sup>66</sup> The guardianship service should also develop a retention policy defining how long such case files with personal data will be maintained.

Figure 6 provides an overview of how long the Member States, North Macedonia and Serbia retain the personal data of a child. There are significant differences across the EU. Some guardianship services keep personal data until the child reaches 18 years; others keep personal data indefinitely. According to the GDPR, personal data should not be kept longer than necessary in relation to the purposes for which they were collected. Personal data should be processed in a manner that ensures the appropriate security and confidentiality of the data. This includes preventing unauthorised access to or use of the data. According to the principle of transparency, the child should be informed about the collection and processing of personal data in a clear and accessible manner.<sup>67</sup>

**FIGURE 6: LENGTH OF TIME GUARDIANSHIP AUTHORITIES RETAIN THE CHILD’S PERSONAL DATA, EU MEMBER STATES, NORTH MACEDONIA AND SERBIA**



Notes: \*AT: Varies depending on the region. \*\*DE: Varies depending on the type of file. No information available for CY, ES, HU, IE, LT.

Source: FRA, 2021



# Endnotes

- 1 FRA (2015), *Guardianship systems for children deprived of parental care in the European Union*, Luxembourg, Publications Office, pp. 67-75.
- 2 *Ibid.*, pp. 53 and 54.
- 3 Portugal, Decree-Law 164/2019, which regulates the regime for the implementation of the residential placement (*Decreto-Lei n.º 164/2019, que estabelece o regime de execução do acolhimento residencial, medida de promoção dos direitos e de proteção das crianças e jovens em perigo*), 25 October 2019.
- 4 Greece, Law 4554/2018 on the social security and pension provision, addressing undeclared work, reinforcing of protection of workers, guardianship for unaccompanied minors and other provisions [Fine for undeclared work - December 26th as a day of compulsory public holiday], OΓ 130/A/18-7-2018 (*Νόμος 4554/2018 – Ασφαλιστικές και συνταξιοδοτικές ρυθμίσεις – Αντιμέτωπη της αδήλωτης εργασίας – Ενίσχυση της προστασίας των εργαζομένων – Επιτροπεία ασυνόδευτων ανηλίκων και άλλες διατάξεις [Πρόστιμο για την αδήλωτη εργασία – 26η Δεκεμβρίου ως ημέρα υποχρεωτική αργίας]*), 18 July 2018, Art. 18.
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- 6 Bulgaria, Asylum and Refugees Act (*Закон за убежището и бежанците*), 1 December 2002, Art. 25.
- 7 Bulgaria, National Legal Aid Bureau (*Национално бюро за правна помощ*) (2020), Representation under Art. 25 of the Asylum and Refugees Act and obligations of the representative during the proceedings for granting international protection (*Представителство по чл. 25 от ЗУБ и ангажираност на представителя по време на производството за представяне на международна закрила*).
- 8 Croatia, Protocol on procedures for unaccompanied and separated children (*Protokol o postupanju prema djeci bez pratnje*), August 2018.
- 9 Luxembourg, Asylum Act (*Loi du 18 décembre 2015 1. relative à la protection internationale et à la protection temporaire; 2. modifiant – la loi modifiée du 10 août 1991 sur la profession d’avocat, – la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l’immigration, – la loi du 28 mai 2009 concernant le Centre de rétention; 3. abrogeant la loi modifiée du 5 mai 2006 relative au droit d’asile et à des formes complémentaires de protection*) December 2015.
- 10 Croatia, Protocol on procedures for unaccompanied and separated children (*Protokol o postupanju prema djeci bez pratnje*), August 2018.
- 11 Slovenia, Family Code (*Družinski zakonik*), 21 March 2017, and subsequent modifications.
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- 13 Hungary, Decree 15/1998 (IV. 30) of the Minister of Public Welfare on the professional tasks and conditions of operation of child welfare and child protection institutions and persons providing personal care (*15/1998. (IV. 30.) NM rendelelet személyes gondoskodást nyújtó gyermekjóléti, gyermekvédelmi intézmények, valamint személyek szakmai feladatairól és működésük feltételeiről*).
- 14 Croatia, Protocol on procedures for unaccompanied and separated children (*Protokol o postupanju prema djeci bez pratnje*), August 2018.
- 15 Luxembourg, Act of 4 December 2019 amending the amended law of 29 August 2008 on the free movement of persons and immigration (*Loi du 4 décembre 2019 portant modification de la loi modifiée du 29 août 2008 sur la libre*), Art. 3.
- 16 Luxembourg, Grand-ducal regulation of 4 November 2020 relating to the composition and functioning of the advisory commission for the assessment of the best interests of unaccompanied minors provided for in Article 103 of the amended law of 29 August 2008 on the free movement of people and immigration (*Règlement grand-ducal du 4 novembre 2020 relatif à la composition et au fonctionnement de la commission consultative d’évaluation de l’intérêt supérieur des mineurs non accompagnés prévue à l’article 103 de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l’immigration*), Art. 2 (1).
- 17 Finland, Law on the promotion of immigrant integration (Integration Act) (*Laki kotoutumisen edistämistä/Lag om främjande av integration*), Act No. 1386/2010), Sections 56 and 57.
- 18 Finland, Lundqvist, K., Toivonen, V.-M., Saari, J., Halttunen, T., Qvist, L.-M., Mikkonen, A. and Castrén, E. (2018), *Edustajat lapsen edun takaajina, Ilman huoltajaa turvapaikanhakijoina saapuneiden alaikäisten edustajajärjestelmä*, Publications of the Ministry of Economic Affairs and Employment 26/2018, Helsinki, Ministry of Economic Affairs and Employment, p. 38; Law on the promotion of immigrant integration (Integration Act) (*Laki kotoutumisen edistämistä/Lag om främjande av integration*), Act No. 1386/2010, Sections 35, 37 and 38.
- 19 Sweden, Law on guardians *ad litem* for unaccompanied children (*Lag [2005:715] om god man för ensamkommande barn*), 1 July 2005, Section 10.
- 20 Sweden, Ministry of Justice (*Justitiedepartementet*), Government Bill, Strengthened protection for unaccompanied children (*Stärkt skydd för ensamkommande barn, prop. 2004/05:136*), 23 March 2005, pp. 54-54; National Board of Health and Welfare (*Socialstyrelsen*) (2020), *Handbook for the National Board of Health and Welfare – Unaccompanied children and youths (Handbok för Socialstyrelsen – Ensamkommande barn och unga)*, p. 60.
- 21 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ 2013 L 180.
- 22 Croatia, Protocol on procedures for unaccompanied and separated children (*Protokol o postupanju prema djeci bez pratnje*), August 2018.
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- 26 North Macedonia, National Commission for Combating Trafficking in Human Beings and Illegal Migration, Standard operating procedures (SOPs) for dealing with unaccompanied or separated children (UASCs) (*стандардни оперативни процедури за постапување со непридружувани деца – странци*), November 2015.
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- 28 FRA (2015), *Guardianship systems for children deprived of parental care in the European Union*, Luxembourg, Publications Office, p. 10.
- 29 UN, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the Committee on the Rights of the Child, *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017.
- 30 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ 2013 L 180, Art. 25 (1) (b) and (4).
- 31 Bulgaria, Asylum and Refugees Act (*Закон за убежището и бежанците*), 1 December 2002, as amended in October 2020.
- 32 Belgium, Guardianship Act (*Loi-programme (I) (art. 479) – Titre XIII – Chapitre VI: Tutelle des mineurs étrangers non accompagnés*), 31 December 2002, Section 5.
- 33 Germany, Federal Court of Justice (*Bundesgerichtshof*), Order XII ZB 497/16 of 13 September 2017 in the family case (*Beschluss XII ZB 497/16 vom 13 September 2017 in der Familiensache*).
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- 37 FRA (2017), *European legal and policy framework on immigration detention of children*, Luxembourg, Publications Office.
- 38 *Ibid.*, p. 21.
- 39 **Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection**, OJ 2013 L 180, Art. 25 (5).
- 40 European Asylum Support Office (EASO) (2021), *Age assessment practices in EU+ countries: Updated findings*, Luxembourg, Publications Office, p. 15.
- 41 *Ibid.*, p. 17.
- 42 Slovenia, International Protection Act (*Zakon o mednarodni zaščiti*), 4 March 2016, Art. 17.
- 43 Greece, Law 4636/2019 on international protection and other provisions, OG 169/A/1-11-2019 (*Νόμος 4636/2019, Περί Διεθνούς Προστασίας και άλλες διατάξεις, ΦΕΚ 169/A/1-11-2019*), 1 November 2019, Art. 75, para. 3 ©.
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- 45 Portugal, Portuguese Council for Refugees, Written response to the information request for the research project Guardianship systems for unaccompanied children from the European Union Agency for Fundamental Rights (FRA), 13 January 2020.
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- 47 North Macedonia, National Commission for Combating Trafficking in Human Beings and Illegal Migration (2015), *Standard operating procedures (SOPs) for dealing with unaccompanied or separated children (UASCs) (стандардни оперативни процедури за постапување со непридружувани деца – странци)*
- 48 UN, **Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication**, No. 76/2019, 17 August 2021, paras. 8.8 and 8.10.
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- 50 FRA (2017), *Mapping minimum age requirements concerning the rights of the child in the EU*.
- 51 FRA(2020), *Fundamental rights report 2020, Luxembourg, Publications Office, p. 131; FRA (2019), Integration of young refugees in the EU: Good practices and challenges*, Luxembourg, Publications Office.
- 52 FRA and European Commission (2014), *Guardianship for children deprived of parental care*, Luxembourg, Publications Office, p.98.
- 53 FRA (2020), *Fundamental rights report 2020*, Luxembourg, Publications Office, p. 131.
- 54 Italy, Law No. 47 of 7 April 2017 on dispositions for the protection of unaccompanied migrant children (*Legge 7 aprile 2017, n. 47, Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*), 7 April 2017, Art. 13 (2).
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- 57 Luxembourg, Youth Protection Act (*relative à la protection de la jeunesse*), 10 August 1992, Art. 1.
- 58 Portugal, *Law 147/99, approving the Law for the Protection of Children and Young People at Risk (Lei n.º 147/99, que aprova a Lei de proteção de crianças e jovens em perigo)*, 1 September 1999. This law had several amendments. The last amendment was by Law 26/2018, of 5 July.
- 59 *Ibid.*
- 60 Finland, Act on the promotion of immigrant integration (Integration Act) (*Laki kotoutumisen edistämisestä/Lag om främjande av integration*), Act No. 1386/2010, 30 December 2010, Sections 27 and 49.
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- 64 France, Association for Professionalisation, Research, Support and Development in Social Intervention (*Association pour la Professionnalisation, la Recherche, l'Accompagnement et le Développement en Intervention Sociale*) (2018), *Ad hoc administration for minors: Difficulties and benefits (L'exercice de l'administration ad hoc pour mineurs: Difficultés et bienfaits)*, p. 118.
- 65 FRA and European Commission (2014), *Guardianship for children deprived of parental care*, Luxembourg, Publications Office, p. 44.
- 66 **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)**, OJ 2016 L 119.
- 67 *Ibid.*, recital 39.



# Concluding remarks and way forward

International and European standards assign a prominent role to guardians in the protection of the unaccompanied child. In the context of migration and asylum, given the often dire circumstances of these children and the complex procedures they face, a guardian's support is critical for their protection and well-being.

This report shows how legal and policy frameworks, as well as practices, differ across the EU, North Macedonia and Serbia, and sometimes also within states. With the increase in arrivals of unaccompanied children in 2015 and 2016, guardianship systems came under increased pressure and the challenges they faced became pressing problems. There was a lack of sufficient numbers of qualified and trained guardians, and existing guardians were unable to fully support the large numbers of children they were assigned to. This meant that many unaccompanied children reached adulthood or went missing without ever receiving the support of a guardian. Some of these challenges persist, despite the decrease in the number of unaccompanied children since then.

The report also identifies positive developments. Since 2014, 17 Member States have introduced legislative changes, although these changes were substantial in less than half of them. Many Member States have also introduced protocols, guidance and training for new guardians. Some have improved the independence of guardians and child participation.

In past reports, FRA has made recommendations on how to address the challenges and improve the diverse guardianship systems in the EU. These are mainly included in FRA and the European Commission's handbook on Guardianship for children deprived of parental care,<sup>1</sup> which the European Commission and FRA prepared and published in 2014. A number of elements are still relevant today and should be priority themes for action. These are included in the 'Main findings and guidance' section of this report.

- Equal protection for all children. The guardianship of unaccompanied children should be placed within the broader framework of national child protection and not only in the migration context. The CRC, ratified by all Member States and North Macedonia and Serbia, is the guiding human rights framework of paramount significance for the protection of children. This is regardless of residence status, nationality or any other characteristic. Member States should ensure that they allocate sufficient resources, including in regard to guardianship, to deliver on this obligation.
- Role of guardians. The fundamental task of a guardian is to ensure the child's well-being and that their best interests are at the heart of any decision taken. This is the fundamental aspect of guardianship and goes beyond mere representation in proceedings or complementing the child's legal capacity. In unfamiliar surroundings, a guardian may be the only adult the unaccompanied child has as reference point in their daily life. The guardian should therefore be prepared and able to fulfil this important responsibility.
- Training and capacity building. For guardians to perform their tasks effectively, systematic training and capacity building is essential. This research shows that, despite some progress, sufficient training support is still not widely available for guardians. As FRA develops together with the European Guardianship Network training material for different national

contexts, Member States are encouraged to make use of this material. The material will be available as an online tool on FRA's e-learning platform.

The EU is making efforts to improve the protection of unaccompanied children. The Commission's proposal for a Pact on Migration and Asylum contains several elements that can serve to standardise across the EU the protection of unaccompanied children from non-EU countries. This includes through guardianship. Moreover, the EU Strategy on the Rights of the Child and the Anti-trafficking Strategy, both adopted in 2021, can reinforce the actions and resources that Member States dedicate to the protection of children in migration. This could improve the effectiveness of guardianship systems in the EU, ensuring that all children enjoy the support, services and protection to which they are entitled.



## Endnotes

- 1 FRA and European Commission (2014), **Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking**, Luxembourg, Publications Office.

# Annex 1: Key national legislation covering guardianship and/or legal representation of children deprived of parental care

EU Member State	Legislation	Text	See in particular
AT	General Civil Code ( <i>Allgemeines Bürgerliches Gesetzbuch</i> ), Justice Law Collection No. 946/1811 ( <i>Justizgesetzsammlung, Nr. 946/1811</i> )	de	
BE	Guardianship Act of 24 December 2002, Title XIII, Chapter VI 'Unaccompanied minor aliens' of the Programme Law of 24 December 2002 ( <i>Loi sur la tutelle du 24 décembre 2002, Titre XIII, Chapitre VI 'Mineurs étrangers non accompagnés', de la loi-programme du 24 décembre 2002</i> )	fr nl	Arts. 5, 7–11, 20–22, 25
	Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI 'Unaccompanied minor aliens' of the Programme Law of 24 December 2002 ( <i>Arrêté royal du 22 décembre 2003 portant exécution du Titre XIII, Chapitre VI 'Tutelle des mineurs étrangers non accompagnés', de la loi-programme du 24 décembre 2002</i> )	fr nl	
	Law amending the judicial code to improve access to second-line legal aid and legal assistance by increasing the income ceilings applicable in this area ( <i>Loi modifiant le code judiciaire afin d'améliorer l'accès à l'aide juridique de deuxième ligne et à l'assistance judiciaire par l'augmentation des plafonds de revenus applicables en la matière</i> )	fr	Art. 3
	Circular Letter of 23 December 2016 relating to the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human trafficking ( <i>Circulaire du 23 décembre 2016 relative à la mise en œuvre d'une coopération multidisciplinaire concernant les victimes de la traite des êtres humains et/ou certaines formes aggravées de trafic des êtres humains. Published in the Belgian Official Gazette, 10 March 2017 (last accessed 25 January 2021)</i> )	fr	
BG	Family Code ( <i>Семеен кодекс</i> )	bg en	Arts. 129 (1), 153–155, 170–173
	Persons and Family Act ( <i>Закон за лицата и семейството</i> )	bg	Arts. 3, 4
	Child Protection Act ( <i>Закон за закрила на детето</i> )	bg en	Art. 15 (7), <i>in fine</i>
	Implementing Regulation on the Child Protection Act ( <i>Правилник за прилагане на Закон за закрила на детето</i> )	bg en	Arts. 59, 61 Arts. 15, 20
	Legal Aid Act ( <i>Закон за правната помощ</i> )	bg en	Art. 22 (1)
	Foreigners in the Republic of Bulgaria Act ( <i>Закон за чужденците в Р България</i> )	bg en	
	Asylum and Refugees Act ( <i>Закон за убежището и бежанците</i> )	bg en	

EU Member State	Legislation	Text	See in particular
	Combating Trafficking in Human Beings Act ( <i>Закон за борба с трафика на хора</i> )	bg en	Art. 24 Art. 25
	Asylum and Refugees Act ( <i>Закон за убежището и бежанците</i> ), transitional and closing provisions to Amendments and Supplements to the Asylum and Refugees Act, amended in October 2020	bg	Art. 55
	Ethical Code of the Attorney ( <i>Етичен Кодекс на адвоката</i> )	bg	Art. 13 (1)
<b>CY</b>	Children's Law (Cap 352) of 1956, ( <i>Ο Περί Παιδων Νόμος, (Κεφ. 352)</i> )	en	
	Parents and Children Relations Law of 1990 (216/1990) ( <i>Ο Περί Σχέσεων Γονέων και Τέκνων Νόμος</i> )	el en	
	Legal Aid Law of 2002 (165(I)/2002) ( <i>Ο Περί Νομικής Αρωγής Νόμος</i> )	el	Art. 22 (1)
	Combating of Trafficking and Exploitation of Human Beings and the Protection of Victims Law of 2007 (L.87(I)/2007) ( <i>Ο περί της καταπολέμησης της εμπορίας και της εκμετάλλευσης προσώπων και της προστασίας των θυμάτων νόμος</i> )	el en	Sections 36 (3), 37 (3), 39 (1)
<b>CZ</b>	Civil Code (No. 89/2012 Coll.) ( <i>Občanský zákoník</i> ), 1 January 2014	cs	
	Code of Civil Procedure (No. 99/1963 Coll.) ( <i>Občanský soudní řád</i> ), 1 April 1964	cs	
	Code of Administrative Procedure (No. 500/2004 Coll.) ( <i>správní řád</i> ), 24 June 2004	cs en	
	Family Act (No. 94/1963 Coll.) ( <i>Zákon o rodině</i> ), 1 April 1964	cs en	
	Act on the Social and Legal Protection of Children (No. 359/1999 Coll.) ( <i>Zákon o sociálně-právní ochraně dětí</i> ), 1 April 2000	cs en	Art. 17 (54)
	Act on the Residence of Foreign Nationals on the Territory of the Czech Republic (No. 326/1999 Coll.) ( <i>Zákon o pobytu cizinců na území České republiky</i> ), 1 January 2000	cs en	
	Asylum Act (No. 325/1999 Coll.) ( <i>Zákon o azylu</i> ), 1 January 2000	cs en	
	Act on Special Judicial Proceedings (No. 292/2013 Coll.) ( <i>Zákon o zvláštních řízeních soudních</i> ), 1 January 2014	cs	
	Act on the Public Defender of Rights (No. 349/1999 Coll.) ( <i>Zákon o veřejném ochránci práv</i> ), 8 December 1999	cs en	
<b>DE</b>	Civil Code ( <i>Bürgerliches Gesetzbuch</i> )	de en	Book IV. (Divisions 2 and 3)
	Social Code ( <i>Sozialgesetzbuch</i> )	de	Book VIII (Sections 42 (2), 53, 72a, 87c (3) and (4)) and Book II. 1
	Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction ( <i>Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit Familienverfahrensgesetz</i> ),	de en	Book II, Division 3 (Sections 151-168a) Book I, Division 4 (Sections 49-57)
	Residence Act ( <i>Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz</i> )	de en	Section 80
	Asylum Procedure Act ( <i>Asylverfahrensgesetz</i> )	de en	Section 12



EU Member State	Legislation	Text	See in particular
	Act on Senior Judicial Officers ( <i>Rechtspflegergesetz</i> )	de en	Section 14 (1), No. 10
DK	Criminal Code, Consolidated Act No. 1650 of 17 November 2020 ( <i>Straffeloven, lovbekendtgørelse nr. 1650 af 17. november 2020</i> )	da	
	Act on Social Services, Consolidated Act No. 1287 of 28 August 2020 ( <i>Serviceloven, lovbekendtgørelse nr. 1287 af 28. august 2020</i> )	da	Section 57
	Act on Parental Responsibility, Consolidated Act No. 1768 of 30 November 2020 ( <i>Forældreansvarsloven, lovbekendtgørelse nr. 1768 af 30. november 2020</i> )	da en	Section 28
	Act on Guardianship, Consolidated Act No. 1015 of 20 August 2007 with amendments ( <i>Værgemålsloven, lovbekendtgørelse nr. 1015 af 20. august 2007 med senere ændringer</i> )	da	
	Administrative Order No. 1075 of 11 December 2003 on the processing of cases on guardianship and guardians and on permanent guardians and their payment ( <i>Bekendtgørelse om behandling af værgemåls- og værgesager samt om faste værger og værgens vederlag m.v.</i> )	da	Section 11
	Circular Letter No. 11494 of 24 October 1996 on approving permanent guardians ( <i>Cirkulæreskrivelse nr. 11494 af 24. oktober 1996 om antagelse af faste værger</i> )	da	Section 3
	Aliens Act, Consolidated Act No. 1513 of 22 October 2020 ( <i>Udlændingeloven, lovbekendtgørelse nr. 1513 af 22. oktober 2020</i> )	da	Section 56a (1)
	Act on the Agency of Family Law, Consolidated Act No. 766 of 7 August 2019 ( <i>Familieretshusloven, lovbekendtgørelse nr. 766 af 7 August 2019</i> )	da	
EE	Family Law Act ( <i>Perekonnaseadus</i> ), RT I 2009, 60, 395	et en	Arts. 175, 176
	Social Welfare Act ( <i>Sotsiaalhoolekande seadus</i> ), RT I 1995, 21, 323	et en	
	Act on Granting International Protection to Aliens ( <i>Välismaalasele rahvusvahelise kaitse andmise seadus</i> ), RT I 2006, 2, 3	et en	Art. 6.1 (4)
	Child Protection Act ( <i>Lastekaitseseadus</i> ) 19 November 2014	et en	
	Obligation to Leave and Prohibition on Entry Act, ( <i>Väljasõidukohustuse ja sissesõidukeelu seadus</i> ), 21 October 1998	et en	
EL	Civil Code	el	Art. 24, Arts. 1589–1654
	Code of Civil Procedure ( <i>Κώδικας Πολιτικής Δικονομίας</i> ), 16 September 1968	el	Art. 681 C
	Law 4554/2018, Social Security and Pension Provision, Addressing Undeclared Work, Reinforcing of Protection of Workers, Guardianship for Unaccompanied Minors and Other Provisions ( <i>Νόμος 4554/2018, Ασφαλιστικές και συνταξιοδοτικές ρυθμίσεις – Αντιμετώπιση της αδήλωτης εργασίας – Ενίσχυση της προστασίας των εργαζομένων – Επιτροπεία ασυνόδευτων ανηλίκων και άλλες διατάξεις [Πρόστιμο για την αδήλωτη εργασία – 26η Δεκεμβρίου ως ημέρα υποχρεωτική αργίας]</i> ) and its implementing acts	el	
	Law 4636/2019, On international protection and other provisions, OGGG A/1-11-2019, ( <i>Νόμος 4636/2019, Περί Διεθνούς Προστασίας και άλλες διατάξεις, ΦΕΚ 169/A/1-11-2019</i> )	el	Arts. 25, 32, 60, 71, 83, 90
	Law 4686/2020, Improvement of the migration legislation, amendment of L. 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) and other provisions, OGGG A' 96/12-5-2020 ( <i>Νόμος 4686/2020, Βελτίωση της μεταναστευτικής νομοθεσίας, τροποποίηση διατάξεων των νόμων 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) και άλλες διατάξεις</i> ), 18 December 2020	el	Art. 75, para. 1



EU Member State	Legislation	Text	See in particular
ES	Civil Code ( <i>Código Civil</i> ), BOE No. 206, 25 July 1889	es en	Arts. 172–174, 222–228
	Organic Act 1/1996 of 15 January on the Legal Protection of Minors, modifying the Civil Code and the Code of Civil Procedure ( <i>Ley Orgánica 1/1996, de 15 de enero, de protección jurídica del menor, de modificación del Código Civil y de la Ley de Enjuiciamiento Civil</i> ), BOE No. 15, 17 January 1996	es	
	Ministries of Justice, Home Affairs, Employment, Social Security, Health, Social Services, Equality, Public Prosecutor, and General Council of the Judiciary ( <i>Ministerios de Justicia, Interior, Empleo, Seguridad Social, Salud, Servicios Sociales, Igualdad, Fiscalía General del Estado y Consejo General del Poder Judicial</i> ) (2011), Framework protocol for protection of victims of human trafficking ( <i>Protocolo Marco de protección de las víctimas de trata de seres humanos</i> )	es en	
	Organic Law 26/2015 which amends the system of protection for children and adolescents ( <i>Ley de modificación del sistema de protección a la infancia y a la adolescencia</i> ), 29 July 2015	es	
	Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence ( <i>Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia</i> )	es	
	Circular Order 9/2015 of 22 December on the intervention of the Public Prosecutor's Office in the new Law on Voluntary Jurisdiction ( <i>de 22 de diciembre, sobre la intervención del Ministerio Fiscal en la nueva Ley de la Jurisdicción Voluntaria</i> )	es	
FI	Child Welfare Act ( <i>Lastensuojelulaki</i> ), 417/2007	fi en	
	Guardianship Services Act ( <i>Laki holhoustoimesta</i> ), 442/1999	fi en	Sections 50, 56–58
	Act on the Integration of Immigrants and Reception of Asylum Seekers ( <i>Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanotosta</i> ), 493/1999	fi en	Section 26 (1)
	Act on the Promotion of Integration ( <i>Laki kotoutumisen edistämisestä</i> ), 1386/2010	fi en	Sections 56 (1), 57, 58
	Act on the Reception of Asylum Seekers ( <i>Laki kansainvälistä suojelua hakevan vastaanotosta</i> ), 746/2011	fi	Sections 33, 39–42
	Decree on Fees and Compensations for the Representatives of Unaccompanied Children ( <i>Valtioneuvoston asetus ilman huoltajaa olevan lapsen edustajalle maksettavasta palkkiosta ja kulukorvauksesta</i> ), 115/2012	fi	
FR	Civil Code ( <i>Code civil</i> )	fr	Arts. 50, 373,375–5, 383, 389, 390, 395, 399, 408, 411, 510, 511,706
	Code of Criminal Procedure ( <i>Code de procédure pénale</i> )	fr	Arts. R.53-1, R.53-2
	Code of Social Action and Families ( <i>Code de l'action sociale et des familles</i> )	fr	Arts. L.223-2, L.226-2-1
	Code for Entry and Stay of Foreigners and of Asylum ( <i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> )  Code for the entry and stay of foreigners and the right to asylum, established by Law No. 2015-925 of 29 July 2015 on the reform of the right to asylum ( <i>Article L.752-3 du Code de l'entrée et du séjour des étrangers et du droit d'asile, crée par la loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile</i> )	fr  fr	Arts. L.221-5, L.751-5  Article L.752-3

EU Member State	Legislation	Text	See in particular
	Ministry of Justice (2005), Circular No. CIV/01/05 issued in application of decree No. 2003-841 of 2 September 2003 ( <i>Circulaire n° CIV/01/05 prise en application du décret n° 2003-841 du 2 septembre 2003 relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc institués par l'article 17 de la loi n° 2002-305 du 4 mars 2002 relative à l'autorité parentale</i> )	fr	
HR	Protocol on identification, assistance and protection of victims of human trafficking, consolidated text ( <i>Protokol za identifikaciju, pomoć i zaštitu žrtava trgovanja ljudima, pročišćeni tekst</i> )	en	
	Criminal Procedure Act ( <i>Zakon o kaznenom postupku</i> ), Official Gazette ( <i>Narodne novine</i> )	hr	Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19
	Protocol on procedures for unaccompanied and separated children ( <i>Protokol o postupanju prema djeci bez pratnje</i> ), August 2018	hr	
	Family Act ( <i>Obiteljski zakon</i> ), Official Gazette ( <i>Narodne novine</i> ) Nos. 103/15, 98/19, effective from 1 January 2020	hr	
	Social Welfare Act ( <i>Zakon o socijalnoj skrbi</i> ) (2013), Official Gazette ( <i>Narodne novine</i> )	hr	Nos. 157/13, 152/14, 99/15, 52/16, 16/17, 130/17, 98/19, 64/20, 138/20
HU	Act IV of 1952 on Marriage, Family and Guardianship ( <i>1952. évi IV. törvény a házasságról, a családról és a gyámságról</i> )	hu	Arts. 9, 98 (1)
	Act XXXI of 1997 on the Protection of Children and Guardianship Administration ( <i>1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról</i> )	hu	Art. 85 (4)
	Amended by Act VI of 2015 on the modification of certain acts related to administration ( <i>2015. évi VI. törvény egyes közigazgatási tárgyú törvények módosításáról</i> )	hu	Art. 11 (1)
	Government Decree No. 331 of 2006 (XII.23.) on Tasks of Child Protection and Guardianship and Organization of the Guardianship Authority and its Scope ( <i>331/2006. (XII. 23.) Korm. rendelet a gyermekvédelmi és gyámügyi feladat- és hatáskörök ellátásáról, valamint a gyámhatóság szervezetéről és illetékességéről</i> )	hu	Art. 14 (1)
	Government Decree No. 114 of 2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of third-country nationals ( <i>114/2007. (V. 24.) Korm. rendelet a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról</i> )	hu	
	Act LXXX of 2007 on Asylum ( <i>2007. évi LXXX. törvény a menedékjogról</i> ) As amended by Article 26 of Act CXXVII of 2015 on the modification of acts related to the setting of pf the temporary border closure and migration ( <i>2015. évi CXXVII. Törvény az ideiglenes biztonsági határzár létesítésével, valamint a migrációval összefüggő törvények módosításáról</i> )	hu en hu	
	Act XX of 2017 on the modification of certain acts in relation to the aggravation of procedures conducted in the border protection zone ( <i>2017. évi XX. törvény a határőrizeti területen lefolytatott eljárás szigorításával kapcsolatos egyes törvények módosításáról</i> )	hu	
	Act XXVII of 2013 on the modification of certain social and child protection related acts in relation to the Magyar Simplification Programme ( <i>2013. évi XXVII. törvény a szociális és gyermekvédelmi tárgyú törvények Magyar Egyszerűsítési Programmal összefüggő módosításáról, valamint egyéb törvények módosításáról</i> )	hu	
	Act LVIII of 2020 on the transitional rules related to the termination of the state of danger and on the epidemiological preparedness ( <i>2020. évi LVIII. törvény a veszélyhelyzet megszűnésével összefüggő átmeneti szabályokról és a járványügyi készületségről</i> )	hu	

EU Member State	Legislation	Text	See in particular
	Government Decree 93/2021 (II. 27.) on the amendment of GD 41/2016 (III. 9.) on ordering the state of crisis due to mass migration on the entire territory of Hungary as well as on the rules related to the ordering, existence and cessation of the state of emergency (93/2021. (II. 27.) <i>Korm. rendelet a tömeges bevándorlás okozta válsághelyzet Magyarországon egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról szóló 41/2016. (III. 9.) Korm. rendelet módosításáról</i> )	hu	
IE	Child Care Act 1991	en	Section 3 (2) (a)
	Updated to 3 February 2021	en	Sections 3, 4, 13, 17, 18
	Health Act 2007	en	Section 8 (1)
	Child and Family Agency Act 2013, No. 40/2013	en	
	International Protection Act, 2015, No. 66/2015	en	Sections 14, 15
IT	Civil Code ( <i>Codice civile</i> )	it	Arts. 343, 348, 357, 371
	Presidential Decree No. 616 of 24 July 1977 ( <i>Decreto Presidente Repubblica 24 luglio 1977, n. 616</i> )	it	Art. 25 (1)
	Law No. 184/1983 of 4 May 1983, Right of a minor to family ( <i>Diritto del minore ad una famiglia</i> )	it	Arts. 2, 3 (2)
	Law Decree No. 286 of 25 July 1998, Consolidated text of provisions governing immigration and the status of foreigners ( <i>Decreto Legislativo 25 luglio 1998, n. 286</i> <i>,Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero</i> )	it	Art. 18
	Legislative Decree No. 24 of 4 March 2014, implementing the Directive 2011/36/EU (Art. 4, <i>Decreto Legislativo 4 marzo 2014, n. 24, Attuazione della direttiva 2011/36/UE, relativa alla prevenzione e alla repressione della tratta di esseri umani e alla protezione delle vittime, che sostituisce la decisione quadro 2002/629/GAI</i> )	it	Art. 4
	Law Decree No. 142 of 18 August 2015, implementing the Directive 2013/32/EU and 2013/33/EU ( <i>Decreto Legislativo 18 agosto 2015, n. 142, Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale</i> )	it	Art. 19
	Law No. 47 of 7 April 2017 on dispositions for the protection of unaccompanied migrant children ( <i>Legge 7 aprile 2017, n. 47, Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati</i> )	it	
LT	Civil Code of Lithuania ( <i>Civilinis kodeksas</i> ), No. VII-1864, 18 July 2000, amendment No. XI-1484, 31 December 2021	lt	Art. 3.254
	Regulations of the organisation of the child's guardianship ( <i>Vaiko globos organizavimo nuostatai</i> ), No. 56, 18 April 2002, amendment No. A1-790, 29 December 2019	lt	
	Ministry of the Interior and Ministry of Social Security and Labour (2005), Order on the approval of the rules of providing accommodation to unaccompanied underage asylum-seekers at the Refugee Reception Centre ( <i>LR Vidaus reikalų ministro ir LR Socialinės apsaugos ir darbo ministro įsakymas Dėl nelydimų nepilnamečių prieglobsčio prašytojų apgyvendinimo pabėgėlių priėmimo centre taisyklių patvirtinimo</i> ), No. 1V-31/A1-28, 2 February 2005	lt	

EU Member State	Legislation	Text	See in particular
	Ministry of the Interior and Ministry of Social Security and Labour (2014), Procedure for Assessment of the Age of Non-asylum Seeking Unaccompanied Minor Aliens Identified in the Republic of Lithuania, Accommodation and Other Procedural Action, approved on 23 April 2014, by order No. A1-229/1V-289/V-491 ( <i>LR socialinės apsaugos ir darbo ministro ir LR vidaus reikalų ministro įsakymas Dėl Lietuvos Respublikoje nustatytų nelydimų nepilnamečių užsieniečių, kurie nėra prieglobsčio prašytojai, amžiaus nustatymo, apgyvendinimo ir kitų procedūrinių veiksmų bei paslaugų jiems teikimo tvarkos aprašo patvirtinimo</i> )	lt	
	Law on the legal status of aliens, No IX-2206, 29 April 2004, as amended on 26 November 2015 by Law No. XII-2080 ( <i>Lietuvos Respublikos įstatymo „Dėl užsieniečių teisinės padėties“ Nr. IX-2206 pakeitimo įstatymas</i> )	lt	Art. 2
LU	Civil Code ( <i>Code civil</i> )	fr	Arts. 382–441
	Act of 29 August 2008 on free movement of persons and immigration ( <i>Libre circulation des personnes et immigration</i> )	fr	Art. 103
	Act of 9 April 2014 on strengthening the rights of victims of trafficking in human beings ( <i>Renforçant le droit des victimes de la traite des êtres humains</i> )	fr	Art. 3
	Act of 8 September 1998 on the relations between the State and organisations working in the social, family and therapeutic fields ( <i>Relations entre l'Etat et les organismes œuvrant dans les domaines social, familial et thérapeutique</i> )	fr	
	Grand-ducal regulation of 4 November 2020 relating to the composition and functioning of the advisory commission for the assessment of the best interests of unaccompanied minors provided for in article 103 of the amended Law of 29 August 2008 on the free movement of people and immigration ( <i>règlement grand-ducal du 4 novembre 2020 relatif à la composition et au fonctionnement de la commission consultative d'évaluation de l'intérêt supérieur des mineurs non accompagnés prévue à l'article 103 de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration</i> )	fr	
	Asylum Act ( <i>Loi du 18 décembre 2015 relative à la protection internationale et à la protection temporaire</i> ), 18 December 2015	fr	Arts. 2, 5, 20, 63
	Law of 18 December 2015 on the reception of applicants for international and temporary protection ( <i>Loi du 18 décembre 2015 relative à l'accueil des demandeurs de protection internationale et temporaire</i> )	fr	Arts. 2, 20
LV	The Civil Law ( <i>Civillikums</i> ), Official Journal, 20 February 1937, No. 41	lv en	Sections 219–354
	Protection of the Rights of the Child Law ( <i>Bērnu tiesību aizsardzības likums</i> ), Official Journal, 8 July 1998, No. 199/200	lv en	Chapter V
	Law on Orphan's Courts ( <i>Bāriņtiesu likums</i> ), Official Journal, 7 July 2006, No. 107	lv en	Section 25–36.
	Asylum Law ( <i>Patvēruma likums</i> ), 17 December 2015.	lv en	Sections 6, 7
MK	Family Law ( <i>Закон за семејството</i> ), Official Gazette of the Republic of North Macedonia ( <i>Службен весник на Република Северна Македонија</i> ), Nos. 80/1992, 9/1996, 38/2004, 33/2006, 84/2008, 67/2010, 156/2010, 39/2012, 44/2012, 38/2014, 115/2014, 104/2015 and 150/2015.	mk	Arts. 4, 12, 14–14a, 93, 94d, 124–164, 173, 175, 177, 177a–m
	Law on Social Protection ( <i>Закон за социјалната заштита</i> ), Official Gazette of the Republic of North Macedonia ( <i>Службен весник на Република Северна Македонија</i> ), No. 104/2019	mk	Arts. 10, 16–26, 110–116, 190, 262, 265, 272, 287, 316–323, 343–349

EU Member State	Legislation	Text	See in particular
	Law on International and Temporary Protection ( <i>Закон за меѓународна и привремена заштита</i> ), Official Gazette of the Republic of North Macedonia ( <i>Службен весник на Република Северна Македонија</i> ), No. 64/2018.	mk	Arts. 33, 34, 37, 39
	Law on Foreigners ( <i>Закон за странци</i> ), Official Gazette of the Republic of North Macedonia ( <i>Службен весник на Република Северна Македонија</i> ), Nos. 97/18, 108/19	mk en	Arts. 146, 159
MT	Civil Code, Chapter 16 of the Laws of Malta, 11 February 1870 and subsequent amendments	en	Arts 158–187
	Refugees Act, Chapter 420 of the Laws of Malta, 1 October 2001 and subsequent amendments	en	
	Chapter 602 Laws of Malta, Minor Protection (Alternative Care) Act, 1 July 2020	en	
	Subsidiary Legislation 420.07, Procedural Standards for Granting and Withdrawing International Protection Regulations, 11 December 2015	en	Arts. 3, 4, 5, 17, 18
NL	Civil Code, Book 1 ( <i>Burgerlijk Wetboek, Boek 1</i> )	nl en	Arts. 1:241, 1:245, 1:253f, 1:302, 1:336
	Decision on recognition Legal Entity Civil Code Book 1 ( <i>Besluit aanvaarding rechtspersoon Burgerlijk Wetboek Boek 1</i> ), 12 January 2005	nl	
	Aliens Decree ( <i>Vreemdelingenbesluit</i> ), 20 June 2015	nl	Art. 3.109d
	Youth Act ( <i>Jeugdwet</i> ), Law of 1 March 2014	nl	Arts. 3, 4
PL	Code of Administrative Procedure ( <i>Kodeks postępowania administracyjnego, Dz.U.z 2021r., poz. 735 j.t.</i> ), 14 June 1960	pl	Art. 570
	Code of Civil Procedure ( <i>Kodeks postępowania cywilnego, Dz.U. z 2020r., poz. 1575 j.t.</i> ), 17 November 1964	pl	
	Family and Guardianship Code ( <i>Kodeks rodzinny i opiekuńczy, Dz.U. z 2020r., poz. 1359 j.t.</i> ), 25 February 1964	pl	
	Act of 16 May 2019 amending the Act – Family and Guardianship Code and Act – Code of Civil Procedure ( <i>Ustawa z dnia 16 maja 2019 r. o zmianie ustawy – Kodeks rodzinny i opiekuńczy oraz ustawy – Kodeks postępowania cywilnego, Dz.U.z 2019r., poz. 1146</i> ), 16 May 2019 (entry into force 20 September 2019)	pl	Arts. 145, 148, 178 (2)
	Law on family support and the system of substitute care ( <i>Ustawa o wspieraniu rodziny i systemie pieczy zastępczej, Dz.U. z 2020r., poz. 821 j.t.</i> ), 9 June 2011	pl	Art. 103(1)
	Law on granting protection to foreigners within the territory of the Republic of Poland ( <i>Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz. U. z 2021r., poz. 1108 j.t.</i> ), 13 June 2003	pl en	
	Act of 12 December 2013 on Foreigners ( <i>Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach.</i> )	pl en	
PT	Law 147/99 for promoting and protecting children and young people at risk ( <i>Lei n.º 147/99 de Promoção e Protecção de Crianças e Jovens em Perigo</i> ), Government Gazette, 1st Series-A, No. 204, 1 September 1999 ( <i>Diário da República, 1ª Série-A, N.º 204 de 1 de setembro de 1999</i> )	pt pt	Arts. 49–51, 97 Art. 3
	Amended by Article 2 of Law No. 26/2018 ( <i>Diário da República No. 128/2018, Series I 2018-07-05</i> ), 5 July 2018		
	Law 23/2007 on the entry, permanence, exit and removal of foreigners into and out of national territory (Aliens Act) ( <i>Lei n.º 23/2007 Aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional</i> ), Government Gazette, 1st Series, No. 127, 4 July 2007 ( <i>Diário da República, 1ª Série, N.º 127 de 4 de Julho de 2007</i> )	pt en	Art. 114 (4)

EU Member State	Legislation	Text	See in particular
	Law 27/2008 ( <i>Lei n.º 27/2008</i> ) (Asylum Act), Government Gazette, 1st Series, No. 124, 30 June 2008 ( <i>Diário da República, 1ª Série, N.º 124 de 30 de junho de 2008</i> ), Amended by Law 26/2014, of 5 May.	pt en	
	Decree-Law 164/2019, which regulates the regime for the implementation of the residential placement ( <i>Decreto-Lei n.º 164/2019, que estabelece o regime de execução do acolhimento residencial, medida de promoção dos direitos e de proteção das crianças e jovens em perigo</i> ), 25 October 2019.	pt	
RO	Law 287/2009 on the Civil Code ( <i>Legea 287/2009 privind Codul Civil</i> )	ro	Art. 151 (1) Art. 110
	Law 272/2004 on the protection and promotion of children's rights ( <i>Legea 272/2004 privind protecția și promovarea drepturilor copilului</i> ), including amendments by Law 257/2013 on the modification and completion of Law 272/2004	ro en	Art. 64 (3)
	Governmental Decision 1434/2004 on the attributions and organisation and functioning regulations of the General Direction for Social Assistance and Child Protection ( <i>Hotărârea Guvernului 1434/2004 privind atribuțiile și Regulamentul-cadru de organizare și funcționare a Direcției generale de asistență socială și protecția copilului</i> )	ro	Arts. 2–3
	Government Ordinance 194/2002 on the legal status of foreigners in Romania ( <i>Ordonanța de Guvern 194/2002 privind regimul străinilor în România</i> )	ro en	Art. 131
	Law 122/2006 on asylum in Romania ( <i>Legea 122/2006 privind azilul în România</i> )	ro en	Arts. 16, 39, 40, 41, 47
	Law 678/2001 on the prevention and combating of trafficking in persons ( <i>Legea 678/2001 privind prevenirea și combaterea traficului de persoane</i> )	ro	
	Amendments by Law No. 331/2015 amending several legal acts regarding the regime of foreigners ( <i>Legea nr. 331 din 16 decembrie 2015 pentru modificarea și completarea unor acte normative în domeniul străinilor</i> ), December 2015, entered into force on 24 December 2015	ro	
	Decision 49/2011 of the Government for the approval of the Framework methodology on the use of a multidisciplinary team and network for the prevention and intervention in situations of violence against children and domestic violence [...] ( <i>Hotărâre de Guvern 49/2011 pentru aprobarea Metodologiei-cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie [...]</i> )	ro	
RS	Family Law ( <i>Porodični zakon</i> ), Official Gazette of the RS ( <i>Službeni Glasnik</i> ), Nos. 18/05, 72/11 and 6/15	sr	Arts. 124–145, 329–341
	Social Protection Law ( <i>Zakon o socijalnoj zaštiti</i> ), Official Gazette of the RS ( <i>Službeni Glasnik</i> ), No. 24/11	sr	
	Law on asylum and temporary protection ( <i>Zakon o azilu i privremenoj zaštiti</i> ), Official Gazette of the RS ( <i>Službeni Glasnik</i> ), No. 24/18	sr	
	Instruction on procedures of social work centres and social protection institutions for accommodation of beneficiaries for provision of assistance and accommodation of unaccompanied migrant children ( <i>o postupaњу centara za socijalni rad i ustanova socijalne zaštite za smetaј korisnika u obezbeđivaњу zaštite i smetaја малолетних миграната без пратње</i> )	sr	
SE	Children and Parents Code 1949:381 ( <i>Föräldrabalk, SFS 1949:381</i> ), Stockholm ( <i>Justitiedepartementet</i> )	se	
	Act on guardian <i>ad litem</i> for unaccompanied children ( <i>Lag [2005:429] om god man för ensamkommande barn</i> ), 1 January 2017	se	Section 3
	Aliens Act ( <i>Utlänningslag [2005:760]</i> ), May 2017	se	Chapters 13, 18
	Social Services Act ( <i>Socialtjänstlag [2001:453]</i> ), 1 January 2016	se	Chapter 6, Section 1



EU Member State	Legislation	Text	See in particular
SI	Aliens Act ( <i>Zakon o tujcih, ZTuj-2</i> ), 15 June 2011 (Official Gazette No. 50/2011, 27 June 2011)	sl	
	International Protection act ( <i>Zakon o mednarodni zaščiti</i> ), 4 March 2016, and subsequent modifications.	sl	Arts. 16, 18
	Family Code (Official Gazette of the Republic of Slovenia, No. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C and 200/20 – ZOOMTVI) ( <i>Družinski zakonik (Uradni list RS)</i> )	sl	
	Decree on the manner of carrying out the legal representation of unaccompanied children and the manner of providing adequate accommodation, care and treatment of unaccompanied children outside the asylum home or its branch (Official Gazette of the Republic of Slovenia, No. 35/17) ( <i>Uredba o načinu izvajanja zakonitega zastopanja mladoletnikov brez spremstva ter načinu zagotavljanja ustrezne nastanitve, oskrbe in obravnave mladoletnikov brez spremstva zunaj azilnega doma ali njegove izpostave</i> ), 6 July 2017	sl	
SK	Act No. 161/2015 Coll. Civil Non-litigation Code ( <i>zákon č. 160/2015 Z. z., Civilný mimo-sporový poriadok</i> )	sk	Arts. 143–150
	Act No. 36/2005 Coll. on Family ( <i>Predpis č. 36/2005 Z. z., Zákon o rodine a o zmene a doplnení niektorých zákonov</i> ), 11 April 2005	sk	Arts. 58, 60, 61
	Act No. 305/2005 Coll. on Social and Legal protection of Children and Social Custody ( <i>Predpis č. 305/2005 Z. z., Zákon o sociálnoprávnej ochrane detí a o sociálnej kuratele a o zmene a doplnení niektorých zákonov</i> ), 1 September 2005	sk	Art. 29, Sections 1–4



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## PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

In 2015 and 2016, the numbers of unaccompanied children arriving in Europe increased dramatically, straining national guardianship systems. This report looks at how EU Member States, as well as North Macedonia and Serbia, have adapted their guardianship systems for unaccompanied children since that time.

The report shows that, overall, although legislative changes have taken place in many Member States, national guardianship systems continue to face many challenges. The guardianship systems also still vary greatly across the EU.



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