

# Discussion Paper on a Possible Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children



## Background and objective of the document

Regional and national laws in Europe provide a solid framework for child protection, based on international standards<sup>1</sup>. However these laws have not systematically translated into a positive impact on the wellbeing of refugee and migrant children. Instead, children, state institutions, and non-governmental actors often find themselves confronted with complex, confusing, costly, and bureaucratic procedures which do not adequately take into account the best interests of unaccompanied and separated children (UASC).

UNHCR, UNICEF, and IRC have established a consultative process to support states to better operationalise their response for the protection of UASC in Europe – the Roadmap to Strengthened Policies and Practices. During a set of three consultations, around 100 practitioners (guardians, psychologists, social workers, lawyers, teachers, etc.) from nearly all European countries involved in the current refugee and migrant crisis, developed concrete recommendations to better operationalise existing child protection standards in light of the specific challenges faced<sup>2</sup>. The consultative process developed proposals, captured in this discussion paper, for efficient, lean, and harmonized processes which also ensure children are protected, and can access procedures and solutions in accordance with their best interests.

Following the consultations with practitioners, a roundtable with nine European states (Austria, Denmark, Finland, Germany, Greece, Italy, Norway, Serbia, and Sweden) was organised by the Swedish Government with support from UNHCR on 17 November 2016 to discuss the main key recommendations of the practitioners. The roundtable focused in particular on identification, registration, age assessment, guardianship, care arrangements, best interests in the national systems, and participation of children.

<sup>1</sup> See Overview of all child protection standards codified on EU level under: [http://www.connectproject.eu/PDF/CONNECT-EU\\_Reference.pdf](http://www.connectproject.eu/PDF/CONNECT-EU_Reference.pdf)

<sup>2</sup> The three consultations took place in Berlin (24-25.11.2016), Rome (2-3.11.2016), and Belgrade (14.-15.11.2016)

## The way forward

The main components and suggestions identified in the process of the consultations are outlined below, grouped according to the areas identified as the most critical. They are: identification, registration, age assessment, guardianship and legal representation, care arrangements and services, best interests in the national systems, the provision of comprehensive solutions, child participation, and administrative obstacles. These recommendations have been drafted based on the consultations with practitioners, in addition to the outcome of various studies, technical dialogues, and conferences on this topic. Discussions with European states during the government roundtable in Sweden have also been included to identify potential concrete avenues for future programme planning and implementation.

Four key considerations arose during the course of the consultations:

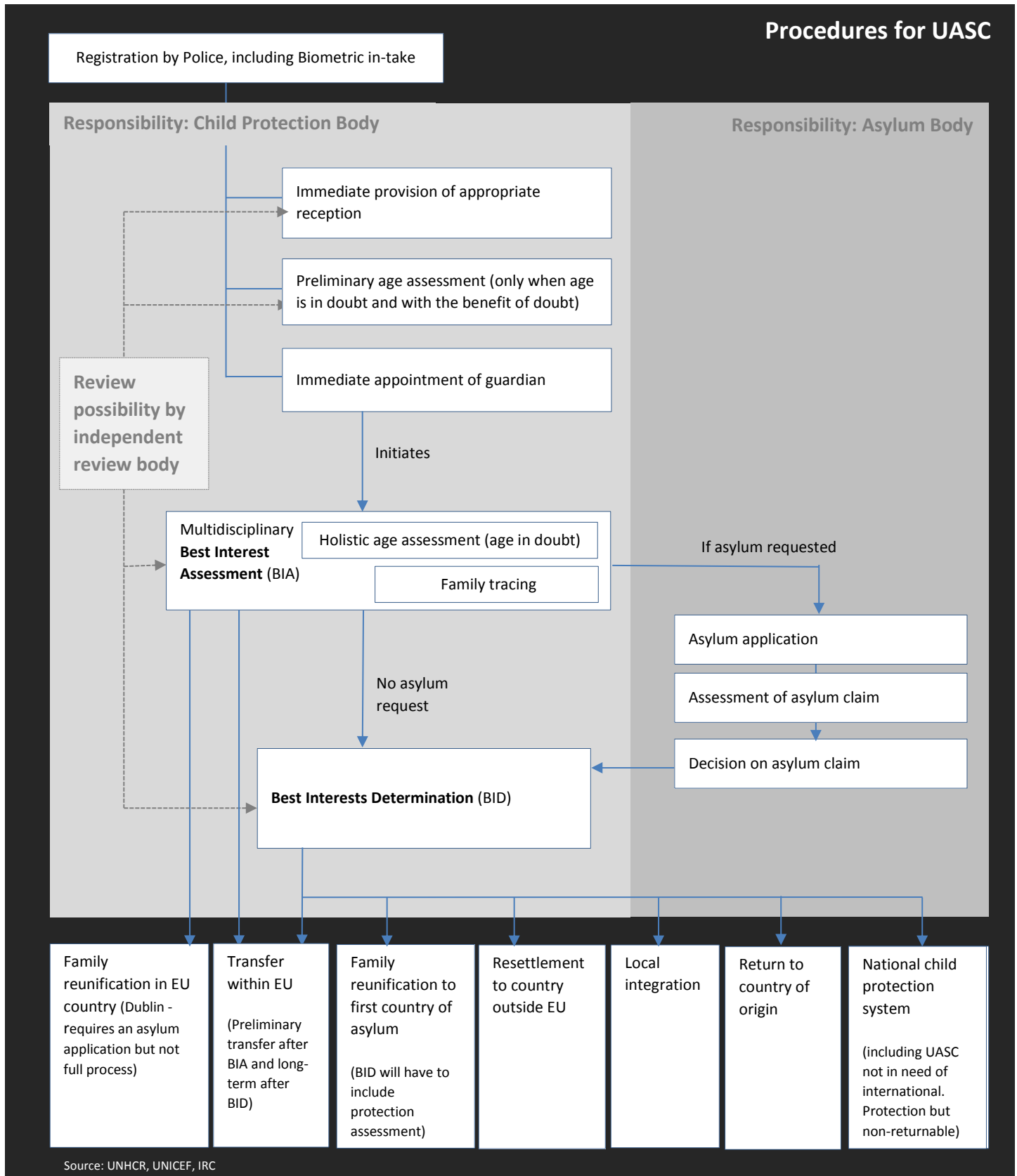
- a) In Europe, strengthened, effective, and protective **guardianship systems** can be a key solution to many current challenges (see details below).
- b) The engagement of community members and properly recruited, trained, and monitored cultural mediators will further help to overcome challenges in a more protective and cost effective way (see details below).
- c) More lean and **effective procedures** will provide more protection for more children and also save resources (see details below).
- d) There must be a **regional solution to the protection of UASC**, even though many of the measures must be taken at the national level. Efficiency in response and cost can only be achieved through a European framework for international cooperation and responsibility sharing.

The list below provides suggestions for the critical areas identified. However, in light of limited resources, states may elect to prioritize efforts in some key areas as a first step. The following areas are suggested as priority areas for initial reform in light of their fundamental nature, and their ability to have an immediate and considerable impact on the wellbeing of children.

- 1. Proper identification, registration in a Europe-wide system, and holistic age assessment procedures.
- 2. Establishment of a rapid and effective guardianship system, including the engagement of effective cultural mediators who can form trusting relationships with UASC, facilitate continuous dialogue with communities, and mobilize communities to support effective identification, referrals, and provision of care.
- 3. Strengthened access to age appropriate and safe care arrangements, including the provision of key services, such as psychosocial support.
- 4. Development of SOPs linking all relevant actors (national, international, governmental and non-governmental, and communities) for an efficient and effective national procedure.

## Areas of improvement

All suggested areas of improvement, including the problem statement, a vision, and a proposed way forward, are outlined below. The following graph depicts the suggested overall procedure for UASC, linking the different areas of improvement into one coherent system.



# 1. Identification, registration and age assessments

## ***Problem statement:***

All procedures should begin with the registration and identification of UASC, as well as an assessment of age when age is in question. A system cannot properly protect a child without registration and identification. However, in many countries, registration has often been incomplete or inaccurate. Children are either not registered at all, or not registered as unaccompanied or separated (as they are registered with other individuals), or they are registered as unaccompanied, even though they are traveling with extended family members, which in turn can lead to family separations.

Identification mechanisms are often not systematic and instead built on ad-hoc identification and referrals. The capacity of existing identification structures are weak and do not build on an engagement with the refugee/migrant communities. In addition, children who are unaccompanied often resist identification, in many cases due to the influence of smugglers and/or instructions from their families, the community, or even peer pressure.

Finally, during the identification process, age assessments are often not carried out in accordance with relevant guidelines<sup>3</sup>. The differences in the procedures for the assessment of age across Europe have resulted in discordant decisions on the age of the individuals and disruptions in the provision of care and protection to UASC, particularly in cases of transfers under Dublin. The response to the protection needs of UASC in the European must be a regional, as well as a national priority, underpinned by harmonized procedures for age assessment, including a systematic use/understanding of the benefit of the doubt. In many circumstances, authorities conducting age assessments focus only on medical aspects, leaving social and cultural aspects aside, frequently leading to incorrect age assessments. Very few countries provide for a formal challenge of questionable results of age assessments in front of an independent body. This procedural safeguard is fundamental as age assessment is not only the gateway for children to access national child protection systems, including specialized services, but is also relevant in other fields, such as for example criminal responsibility.

## ***Vision/ Objective:***

All children including unaccompanied and separated boys and girls arriving to Europe are identified, properly registered and referred to national child protection systems. Children are not deprived of their rights due to an erroneous age determination. All European states establish harmonised domestic statutory guidance on holistic methods for age assessment and implement a statutory appeal remedy for age assessment decisions.

## ***Possible way forward and milestones:***

### Identification

1. **Frontloading of UASC processes:** Identification and registration, as well as an enhanced assessment in the best interest of the child, should be given priority and be conducted as soon as the child is identified.
2. **Training of border authorities:** All border authorities/ police need to be trained in how to identify UASC. Child protection actor/ body should be present at this first point of contact.
3. **Outreach team:** In addition to the border authorities, outreach screening teams, consisting of cultural mediators<sup>4</sup> and protection staff, should be engaged right from the start and as early as the arrival stage in order to identify UASC as soon as possible. In doing so they can be channelled into the specific/appropriate procedures for UASC. These outreach teams can be managed by NGOs and overseen by governmental authorities. Constant engagement with existing populations, for example through cultural mediators, should also form part of the identification process.

<sup>3</sup> EASO, Age assessment in practice in Europe, 2013, <http://www.refworld.org/docid/532191894.html>

<sup>4</sup> Cultural mediators are community members who speak the necessary languages, are trained in sensitive outreach and mediation techniques and closely supervised by an NGO.

4. **Cultural Mediators** play a critical role as they can build the dialogue with the children and mitigate the influence of smugglers and families at home. If appropriately trained and supervised, cultural mediators have proven their value in many instances. However, there is a need for close monitoring by a commissioned NGO or state authority to quickly detect and mitigate malpractice. In addition, state representatives participating in the roundtable suggested that good practices of existing cultural mediator programmes should be documented and the initiative further tested through pilot projects within certain states.

#### Registration

5. **Individual registration:** All UASC should be registered individually, which could include the recording of biometrics in a central European database, taking into account that biometrics evolve with age. During roundtable discussions state representatives agreed that a database was needed but that the current system of EURODAC was not a suitable solution for this. EURODAC is primarily related to asylum procedures and therefore lacks the focus on child protection that a central database would require. For example, separated children must be linked to the relatives they are traveling with, while the enhanced BIA (see below) will assess whether it is in the best interests of the child to stay with the family members or whether an alternative care arrangement has to be found and the registration system as a whole, and the database specifically, needs to accommodate these protection issues.
6. **Separate registration track for UASC:** A separate child friendly registration track should be established at the points of disembarkation or entry to prevent UASC waiting in the same areas with unrelated adults for long periods. The special registration track should mark the beginning of the specific child-friendly procedure for UASC. This can also include an emergency transfer to other provinces of the country if needs cannot be met at the point of disembarkation/ identification, for example in terms of immediate appointing of guardian, age appropriate reception, speedy access to procedures, etc.

#### Age Assessment

7. **Harmonise and mutually recognise age assessment across Europe.** Based on existing guidance, the Fundamental Right Agency (FRA) should be requested to develop standards for the age assessment process which can then be translated into national legal frameworks. It is recommended that this guidance be developed by the FRA rather than the European Asylum Support Office (EASO) since age assessment is not an issue limited to the asylum procedure but actually goes far beyond that to include right to education, criminal liability etc. National actors should ensure that relevant agencies know and understand best practices on age assessment and also receive regular training. State representatives participating in the roundtable agreed with the necessity of harmonising the practice of age assessments across countries to ensure better, timely support and protection for UASC.
8. **Two stage age assessment:** As a general principle, not all children should undergo an age assessment. Age assessment should only be conducted for children where there is a reasonable doubt regarding their age. Furthermore, acknowledging the difficulties in conducting holistic and multidisciplinary age assessments at the point of identification, especially when dealing with several hundred UASC at the same time, the assessment could be divided into the following stages:
  - As a first step at the point of arrival where there is reasonable doubt regarding a child's stated age, a preliminary age assessment can be conducted by a child protection actor through cultural mediators at the point of arrival to ensure fast and effective placement in the appropriate first reception stream. The assessment should largely build on the statements of and documentation presented by the child, but also on the impression of the cultural mediator.
  - As a second step, a holistic and multi-disciplinary (medical, social, cultural, psychological) age assessment should be conducted as part of the enhanced BIA (see graph 1 and section below), including the views of the child, in order to produce a reasoned and documented decision. The

multi-disciplinary age assessment can be done by the same team that conducts the enhanced BIA to save resources, as long as it is independent and separated from the asylum procedure.

9. **Establish an effective legal remedy** enabling individual children to challenge the age assessment decision. This remedy could fall into the competency of the child protection review body (see Best Interests section below) with the ombudsperson for children, the national human rights institutions (NHRI), or the respective court dealing with youth and welfare affairs. The child should have access to legal assistance, also to assist them in understanding their right to a legal remedy to challenge age assessment outcomes.
10. **The child should never bear the financial costs of any assessment of his or her age.**

## 2. Guardianship and Legal Representation<sup>5</sup>

### ***Problem statement:***

If appropriately prepared, equipped, and supported, guardians can play a key role in overcoming a number of the current challenges that UASC face in Europe. A guardian that has built a trusting relationship and functions as the agent and voice of the child can ensure that the best interests of the child is considered at every stage in the process, while mitigating the influence of smugglers, traffickers, or criminal organisations and encourage the child's cooperation, for example in tracing his or her family.

However, guardianship services for unaccompanied children have thus far not been considered in a systemic approach to child protection, which also results in a lack of a harmonized approach to guardianship across countries in Europe with different understanding of their roles and responsibilities. Often, guardians play a dual role: that of a guardian and that of the legal representative, which can lead to a lack of clarity regarding responsibilities in each role. Furthermore, in the current context, guardianship systems are often overloaded and cost heavy, and guardians generally take a long time to be appointed, with negative consequences for the UASC. In some countries, practitioners have flagged that guardians represent up to 75 UASC, and rising arrival numbers pose serious capacity issues for guardianship systems.

Throughout the region, guardians are overwhelmed, may not be thoroughly screened, and receive little training in how to address the needs of the children they are supporting. This is frequently coupled with a lack of appropriate guidance and institutional support on their role and responsibilities, which is particularly worrying, considering that guardians have to establish a trusting relationship and are required to take key decisions on behalf and supposedly in the best interests of the children to whom they have been assigned. While structures for guardianship are in place throughout Europe, the limited investment in training and effective support of the structures undermines their efficiency. A cost efficiency analysis based on evidence from Scotland and the Netherlands demonstrated that qualified support from a guardian improved the quality of decision making processes leading to not only more positive outcomes in the best interests of the child but also a positive cost-benefit outcome.<sup>6</sup>

### ***Vision/ Objective:***

Every UASC in Europe is provided with effective legal representation and with a qualified independent guardian who actively seeks to achieve the best interests of the individual child and who is trained to communicate with children in an appropriate manner and to respond to the child's protection needs.

### ***Possible way forward and milestones:***

1. **Focus efforts on strengthening guardianship:** A strengthened, efficient and effective guardianship system will save resources while also responding to other gap areas (such as best interest considerations, care arrangements, prevention of exploitation, abuse and violence, identification and achievement of comprehensive solutions). Efforts should focus first on strengthening guardianship due to its key role in achieving protection and solutions in the best interests of the child in a timely, efficient, and effective manner. Concrete suggestions for reform have already been developed in view of the high influx<sup>7</sup> and during

<sup>5</sup> A representative "means a person or organisation appointed by the competent bodies in order to assist and represent an unaccompanied [child] in [international protection] procedures with a view to ensuring the best interests of the child and exercising legal capacity for the [child] where necessary." Reception Conditions Directive (2013/33/EU), Article 2 (j). Representatives or legal representatives differ from the qualified lawyer or other legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings as provided in national law.

<sup>6</sup> Association 'I Girasoli', Defence for Children International: SafeGuard, safer with the guard, transnational report Europe, 2016

<sup>7</sup> Association 'I Girasoli', Defence for Children International: SafeGuard, safer with the guard, transnational report Europe, 2016, FRA, Guardianship systems for children deprived of parental care in the European Union [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiJ29S1wpfQAhUHAsAKHXmpBOoQFggfMAA&url=http%3A%2F%2Fec.europa.eu%2Fdocs%2Fhome-affairs%2Flibrary%2Fdocs%2Fguardianship\\_for\\_children%2Fguardianship\\_for\\_children\\_deprived\\_of\\_parental\\_care\\_en.pdf&usq=AFQjCNHbxu3vXdPhekF-ad12-JteJ\\_cOpQ&sig2=X-XxVbHonIKTK34A4aRXfw](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiJ29S1wpfQAhUHAsAKHXmpBOoQFggfMAA&url=http%3A%2F%2Fec.europa.eu%2Fdocs%2Fhome-affairs%2Flibrary%2Fdocs%2Fguardianship_for_children%2Fguardianship_for_children_deprived_of_parental_care_en.pdf&usq=AFQjCNHbxu3vXdPhekF-ad12-JteJ_cOpQ&sig2=X-XxVbHonIKTK34A4aRXfw), 2015.

roundtable discussions there was consensus by state representatives to further explore existing good practices as well develop pilot projects to ensure guardianship systems are streamlined and effective.

2. **One independent guardian institution:** Good practices in countries such as the Netherlands have demonstrated the advantages of having one independent guardianship institution, recognized and commissioned by law to recruit, train, appoint, and monitor guardians for UASC. The proposed system has proven to be more cost and time effective and also ensured more effective protection of UASC right from the start.<sup>8</sup> The institution should be specialised and independent, can be an NGO or a public institution, and should be separate from the service and care providers to avoid any possible conflict of interest. The institution can deal with both, refugee/migrant and national children or not, depending on the context, and the capacities. In addition to managing the guardians, the institution also serves as main interlocutor and centre of expertise for the local authorities relieving them from the responsibility to coordinate with hundreds of guardians. This also provides for better control as the institution should be monitored and evaluated on a regular basis. The Dutch model also includes a reimbursement scheme per child, maximizing cost efficiency and flexibility (if combined with a mixed volunteer/ professional model – see below) for the authorities. Finally, the institution is accountable for proper guardianship, and also for the selection of appropriate care, the provision of protection, and solutions, as these are the main tasks of a guardian.
3. **Guardians have to be appointed at the point of arrival/ identification,** without delay or pre-condition (for example irrespective of whether the child has applied for asylum). This is fundamental not only for psychological stabilization and trust building but also for the concrete protection of the child. The model with one commissioned independent guardianship institution provides the required flexibility and efficient management, as it does not require court decisions or any other administrative procedure before a guardian is appointed. Timely appointment can also reduce the number of children going missing from care soon after arrival.
4. **A mixed professional/ volunteer model** ensures flexibility in responding to a great influx and the compliance with standards at the same time. The guardianship institution would be responsible for recruiting a sufficient base of professional guardians and developing a roster of volunteer guardians from different communities to ensure an appropriate ratio of children to guardians. State practitioners during the roundtable concurred that a cap in the number of UASC per guardian is essential for effective guardianship. In times of high influx, the volunteer roster helps to quickly expand the number of guardians while mixing the two sets of experiences (Germany is a good example) and fostering skills and experience transfer between groups. The guardianship institutions would be responsible for the competency based recruitment and vetting process as well as for establishing clear accountability lines between the guardian and the institution. Whenever volunteers are appointed as guardians, the same standards must 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. Particular consideration should be given to gender and cultural aspects. For separated children, the appointment of relatives as guardians should be considered. However, the same vetting and monitoring system should apply at least at the beginning as to the other guardians.
5. **Cultural mediators should form part of the team.** Both guardians and sufficiently trained cultural mediators will have to build the bridge between the child, the child's community, the host community, state institutions and authorities. Interpreters are often not sufficient to fulfil this role. Experience, for example in Netherlands, has proven that the establishment of trust requires more than interpretation. The guardianship institution would be responsible for bringing in the cultural mediators.

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<sup>8</sup> Counter Human Trafficking Bureau, Cost Benefit Appraisal of Legal Guardianship for Unaccompanied and Separated Migrant Children in England and Wales, Commissioned by UNICEF UK and The Children's Society, June 2014, pp. 3-4, 49. See also: UNICEF United Kingdom, The Children's Society, Indicative Costs and Efficiencies of Guardianship, March 2014.

6. **Ensure guardians are regularly trained and monitored.** According to the SafeGuard initiative, four main competence areas are critical for the performance of guardians: procedural and legal matters; building a trustful communication with the child; psycho-social issues concerning the child, including specifically child victims of crime; cultural mediation and effective linkages with all relevant actors and services. Participants to the roundtable agreed that guardians should undergo a substantive recruitment process, vetting, and monitoring. The FRA handbook on guardianship<sup>9</sup> also provides good guidance on the content. As a good practice, guardians should have access to a multidisciplinary team of professionals to seek expertise, advice and assistance when performing their guardianship duties. Practitioners have suggested a ratio of one supervisor for 30 guardians. However, regular participatory assessments with children as well as an accessible complaint mechanism should also be established to ensure quality and satisfaction.
7. **Establish a European network/ federation of all national guardianship institutions.** The model of one central guardianship institution supports the other objectives of improved cross border coordination and information sharing. The federation could assist in standardizing guardianship practices and providing training. It could also facilitate information sharing on individual cases, in accordance with data protection principles, if the UASC was transferred to another country. Currently, it is nearly impossible for an individual guardian to identify and engage with a counterpart across borders.
8. **Create an EU wide fund to support the strengthening and creation of guardianship institutions** as well as support their efforts in recruiting, training, and monitoring of guardians. This fund could be administered in coordination with the European network/federation of established national guardianship institutions and would have clear criteria for funding (such as a strategy and implementation plan, established procedures a, a certain number of guardians already recruited). The implementation of the funds would then be monitored by an EU institution to prevent conflict of interest.
9. **Guardianship should follow a holistic approach as described in the FRA Handbook.** Guardians should decide on every aspect that concerns the child and be ultimately accountable that the best interests are considered at every stage. The guardian should serve as primary focal point for the child and serve as a link between the child and the host community, relevant authorities, services providers, and institutions. Practitioners and state authorities from the roundtable suggest a separation of guardianship and legal representation to establish effective checks and balances, and to reduce the workload of guardians. Consulted states agreed with that separation. In addition to guardians, free legal advice and representation by experienced lawyers should be made available according to needs and throughout the procedures. Guardianship should not terminate at 18 years of age but be available up to the age of 21 years (as in Northern Ireland), taking due consideration of the youth's view. Finally, the guardian should work as a mobilizer of host community support mechanisms, to provide the best care for the child.
10. **A complaint mechanism** with immediate follow-up to ensure quality and prevention of harm should be established and communicated to every UASC. The complaint mechanisms should link into the guardianship institutions, but can also be linked to the child protection review body (see below). This is also how a child can express his or her disagreement with the appointed guardian.

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<sup>9</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/docs/guardianship\\_for\\_children/guardianship\\_for\\_children\\_deprived\\_of\\_parental\\_care\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/guardianship_for_children/guardianship_for_children_deprived_of_parental_care_en.pdf).

### 3. Care arrangements and the provision of appropriate services

#### ***Problem Statement:***

The provision of appropriate care arrangement and services which speak to the specific needs of boys and girls is fundamental for children's wellbeing and protection but also for their development and future prospects. However, care arrangement systems throughout Europe are either falling short in capacity, quality, or both. Too often shelter or accommodation is mistakenly used as a synonym for care arrangements, while social and psychological components (in form of mental health and psychosocial support (MHPSS), education, health services, etc.) are neglected.

Large scale institutional care is too often preferred over other forms of care arrangements, despite the general recognition among experts and practitioners that such care arrangements can contribute to (sexual) abuse, violence, criminal activities, and severe psychological distress but is also more cost intensive (in mid- and long-term) than a foster care system<sup>10</sup>. Unfortunately care systems such as small group homes or foster care systems, often the best possible care arrangement, are rarely implemented, largely overstretched, or do not target children with specific needs. In the worst cases, UASC have to stay longer periods in general reception centres or even detention centres often with adults, under inappropriate conditions, and without specific services for children. In these arrangements, UASC are often exposed to severe security, general protection, and physical and mental health risks. Authorities and other actors have also not yet been able to establish an appropriate response to prevent and mitigate the heightened risk of violence and abuse, including sexual violence, in general but also in care arrangements. The lengthy detention of UASC is often related to the lack of identification and timely appointment of a qualified guardian. Different reception conditions and prospects for integration that prevail in different European states contribute to onward movement and expose children to further danger. Even if an appropriate care arrangement is found, it often ends abruptly when children turn 18.

Furthermore, national and international service providers have not yet been able to establish a sufficient coverage of minimum services to respond to the very specific needs and risks of UASC in Europe. This is particularly true regarding the provision of psychosocial support and mental health services. Given the high percentage of UASC and other children in psychological distress, the lack of a proper response affects their lives and the communities and societies in which they live. Both the lack of education and recreation further amplifies distress and harms the children's future prospects and stability. The lack of access to formal education has, in particular, long term effects on the development of the children, but also on the host communities.

Regional, transnational, or even national case management systems are not yet functional. This leads to a loss of information on individual cases, hinders an effective and targeted provision of services across countries, and interferes with the provision of solutions in the best interest of the children. It also hampers the ability to monitor the condition of the children.

#### ***Vision/ Objective:***

All UASC in Europe have access to safe, protective and age appropriate care arrangements that do not amount to deprivation of liberty, and where they can access services, in particular psychosocial and mental health services and education, on an equal basis with the other children living in the community. Appropriate care arrangements also include effective prevention and mitigation of risks of sexual and gender based violence and effective case management systems. Detention for migration control purposes is never in the best interests of a child and therefore is to be prohibited.

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<sup>10</sup> Inter-agency Guiding Principles on unaccompanied and separated children, [https://www.unicef.org/protection/IAG\\_UASCs.pdf](https://www.unicef.org/protection/IAG_UASCs.pdf), 2004.

### ***Possible way forward and milestones:***

1. **Follow a two stage approach in care arrangements:** Age-appropriate first reception should be provided for immediate safety and protection purposes, preferably in age and sex clustered group homes with not more than 15 to 20 other children. The guardian should be appointed at the same time (see graph 1) to initiate (but not conduct) the enhanced multi-disciplinary BIA which will then determine the mid-term care arrangement until a comprehensive solution is found. The guardian should also identify any specific needs so that targeted support can be provided.
2. **Establish or commission a body to monitor reception conditions** and whether reception centres meet the standards. This body should be independent from those providing services and have a national perspective. Again, the ombudsperson for children, or the national human rights institution could take over this function. The body should monitor, provide advice on improvements, and flag remaining gaps.
3. **Target care arrangements and services.** A wide array of care arrangements should be available, to cater to the different needs and circumstances of UASC, including semi-independent supervised living, small group homes and foster care. In view of limited capacities, care and services need to be targeted depending on the specific needs identified in each case. Not every UASC requires a support in every area. Some children might not need specific services, or only require light support for a brief period of time. The interagency MHPSS pyramid<sup>11</sup> provides solid guidance on when to initiate mental health interventions. Again, guardians, with the support of cultural mediators, play a key role to identify specific needs and develop a targeted response. The same approach can be used to determine appropriate accommodation. Younger children (below 15) should ideally be placed in foster care while older children might be accommodated in group homes. Nationally or even regionally harmonized vulnerability criteria help in targeting the support. A simple list defining the different groups, their specific needs, and the required services can help to harmonize the approach. Special attention should be paid to separated children who also need to benefit from a protective environment while being supported by relatives.
4. **Immediately strengthen available mental health and psychosocial support services as well as immediate access to formal education** to mitigate any long-term psychological impact on the child's development. Community-based mechanisms are often the most effective (including cost) mechanism to relieve psychological distress. Again, cultural mediators can facilitate the engagement with the community of the child and guide how to best involve them in the provision of care (play groups with accompanied children, discussion groups, sport, etc.). UASC should be able to access education as soon as possible. Non-formal and informal education can be useful on a short term basis to bridge potential gaps but cannot and should not replace access to the formal education system (such as schools and vocational training)
5. **Strengthen community-based foster care** as it provides a protective care arrangement and is also the most cost effective arrangement. In Netherlands, the foster care model where children were placed in families of their own community has demonstrated its economic benefit and value, providing the most appropriate care. However, as for every foster family, a detailed vetting for example through the guardianship institution and close monitoring is necessary to immediately detect any harm to the child. Networks of old and new foster families help in sharing experiences and training new foster families.
6. **Compile European minimum standards, and good practices**<sup>12</sup>. A regional cost-benefit analysis of various methodologies and programmes should be conducted. On that basis, practitioners recommended developing a best practice handbook/manual which is web-based, targeting children as well as practitioners working with children (teachers, lawyers, medical staff). An accessible handbook, which is also available in child-friendly language, would help to both inform and monitor service providers.

<sup>11</sup> IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings  
[http://www.unicef.org/protection/guidelines\\_iasc\\_mental\\_health\\_psychosocial\\_june\\_2007.pdf](http://www.unicef.org/protection/guidelines_iasc_mental_health_psychosocial_june_2007.pdf), 2007.

<sup>12</sup> UN Guidelines for the Alternative Care of Children, 2010, [http://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf)

7. **Ensure a continuity of care when child turns 18** and transfer the individual gradually from one protection system to another.
8. **Strengthen coordination of service providers, including volunteer groups.** Authorities should take ownership of coordination to ensure that gaps are filled and that the children who need help are targeted with appropriate support. Service providers must be mapped to detect overlap and gaps, and SOPs, detailing who does what when, which should be formalized and agreed upon. Coordination structures should make use of new technical tools which facilitate communication and lessen cost (i.e. web-based coordination platforms which exist in several countries).
9. **Develop a regional, web-based case management mechanism** to ensure continuity of care and sharing of information. Such a system could sit with the federation of guardian institutions, who should be the primary case manager. The case management system should document all decisions and steps taken on behalf of the child and what is recommended for the future, while adhering to national and international data protection standards. Furthermore, the case management system can generate statistical meta data (on background, situation, vulnerabilities, etc.) for national but also regional trend analysis which can be used for programming purposes.

## 4. Comprehensive solutions in children's best interests

### ***Problem statement:***

Positive outcomes for children and hosting communities can only be secured when individual children are provided with solutions that are durable and in their best interests. Without that prospect, children will continue to move outside of regular procedures, exposing themselves to heightened risks, which may result in abuse, violence, exploitation, and even death. However, the provision of solutions are often limited and not always based on solid procedures guaranteeing the best interests of the child. The provision of mid- to long-term solutions still receives limited consideration. However, solutions are crucial to (re) establish normality and stability. As noted in the recent Global Refugee Youth Consultations organized by UNHCR and the Women's Refugee Commission, one of the primary concerns for refugee children and youth is access to opportunities and positive prospects for their future.

The identification and provision of comprehensive and durable solutions for UASC is narrowly focused, lacking flexibility, and plagued with systemic deficiencies that existed before the crisis. The identification of solutions is rarely based on a determination of the child's best interests. Such procedures are missing in nearly all European countries. Family reunification is typically envisaged as taking place in "destination countries" without considering other options which may be in the best interests of the child, including family reunification in a safe third country where the child previously resided with family members. Practitioners emphasized that a conflict remains between national migration policies and a child's best interests, which examine options through the lens of asylum and not child protection, meaning that the child's best interests are not a primary consideration. Furthermore, the provision of solutions is still assessed from a national and not a regional standpoint, resulting in difficulties for UASC to access alternative pathways within and outside Europe. The time which it takes to formalize a durable solution is also a serious barrier, as procedures can take months, or even years, including for family reunification. Relocation from Greece and Italy, is very limited as only few countries accept UASC for relocation and is a very lengthy process<sup>13</sup>. Furthermore, national legal frameworks have restricted family reunification, with mandatory waiting time before reunification, and the limitation of family reunification to only parents.

**Vision/ Objective:** All UASC are provided with a solution that is durable and in their best interests within a reasonable time frame without placing the child at risk.

### ***Possible way forward and milestones:***

1. **EU MS should develop a Comprehensive Solutions Framework** which regularizes all possible comprehensive solutions and the different procedures in a regional protocol/SOP. For example, harmonised European SOPs for the processing of family reunification have to be developed or revised. The network of national Dublin Units has to be strengthened and the coordination institutionalized, perhaps through exchange programmes or deployments of receiving country staff (as the UK Dubs programme has demonstrated), or having one dedicated international or European agency coordinating the network and the processing of family reunification.
2. **Frontload identification of comprehensive solutions to save time and resources.** Start considering comprehensive solutions from the moment of identification, and consider it as a process that goes beyond emergency assistance and protection. This will likely result in continuity of care and long-term positive impact on the child. The appointed guardian should assume the role of a Comprehensive Solutions Coordinator who should develop a comprehensive solution plan based on the enhanced BIA and the family tracing, which then forms part of the BID panel discussion.
3. **Every comprehensive solution decision has to be based on a BID which is based on a BIA.** Furthermore, decisions on a comprehensive solution should be done by the child protection body and not

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<sup>13</sup> UNHCR paper on lessons learnt from relocation February 2016

asylum body, while considering the relevant legal frameworks that steer both. This ensures the right expertise and mitigates the conflict of interest (child's best interests vs migration control interests).

4. **The portfolio of comprehensive solutions needs to be expanded, orienting mainly on the best interests of the child.** It should not be assumed that asylum is automatically in the best interests of a child. Family reunification in the country of first asylum of the family or country of origin (if the child is not in need of international protection), flanked with a support programme in the country, has to be considered. However, also the integration into national child protection systems, even if the child is not in need of international protection but not returnable as a return would not be in the best interests, has to be considered.
5. Furthermore, comprehensive solutions would be facilitated by **common criteria and mutual recognition (age determination, family links, guardianship)** as described above. The above mentioned transnational case management system within the European federation of guardianship institutions could also help to facilitate fast information exchange on individual cases and facilitate continuous care and monitoring of the condition of the child. This would again demonstrate that the backbone of the comprehensive solutions framework would be best placed under authority of the federation of guardianship institutions.
6. **Promote social inclusion and opportunities for participation and skills building while children are waiting for their solutions.** Raise awareness with communities on the need and benefit of social inclusion. Promote social inclusion through participation of children into sports and other leisure activities at community level. Ensure care and support measures that last beyond the 18th birthday, promote social integration/education and vocational integration measures to build resilience and strengthen the skills and resources of the children. The guardian plays again a vital role here but also needs to be provided with the necessary authority.

## 5. Participation of Children

**Problem statement:** Children are not systematically consulted by any actor (state, international organisation, NGOs, civil society organisations, etc.) on their views and opinions in line with their age and maturity, nor are they systematically included in general programme planning and implementation. This not only violates their rights, but also sets them aside as mere recipients of care and assistance rather than active rights holders, and negatively affects the impact of otherwise viable programmes and projects. States have rarely mainstreamed or implemented obligatory and systematized consultation of children in their policy and legal frameworks. In addition, only very few local authorities regularly conduct participatory assessments asking boys and girls for their views and opinions on issues that affect them, even though child participation is a cornerstone of the CRC. One key challenge in this regard is the lack of sufficient interpreters, especially female ones.

**Vision/ Objective:** UASC are systematically consulted throughout Europe and their views and opinions are included in every decision affecting them and in d programme development and implementation.

**Possible way forward and milestones:**

1. Ensure UASC are consulted on all matters concerning their case with both child protection and asylum authorities. Therefore, **institutionalize the consultation of UASC in the national regulatory framework**. The national guardianship institution or the Ombudsperson for children could be commissioned to conduct participatory assessments with all age, gender and diversity groups of UASC on a regular basis. State representatives at the roundtable agreed on the importance of a more systematic inclusion and consultation of children on an individual basis but also highlighted a need for inclusion on a planning and programme implementation level. These assessments should include focus group discussions with the different groups, discussing their current situation, views and opinions. The outcome report should be widely shared with service providers to inform overall programming but also made public to ensure accountability when considering the children's views.
2. Ensure UASC are aware and have access to national **feedback and complaint mechanisms** (through a hotline, web, frontline SMS) through which they can raise their concerns. Enable children to access justice and claim redress for violations of their rights. Hotlines can be one tool, but the national guardianship institution and the child protection review body (ombudsperson, NHRI, court for children welfare) should enable the complaint mechanisms. Feedback and complaint mechanisms must document complaints, while respecting confidentiality, and ensure follow-up. If there is no documentation, follow-up, and response the child, the mechanism will not gain trust and thus will not be used.
3. Tap into communities to form an **advisory group of key informants** from the different communities which is consulted by local and national authorities on a regular basis on programming matters.

## 6. Best interests of the child in national child protection and asylum systems

### ***Problem statement:***

The best interests of a child should be a primary consideration according to the Convention on the Rights of the Child (Art 3 CRC) together with its General Comments No, 6, 12 and 14. The CRC provides a fairly clear reference point for decision makers: the protection, wellbeing of a child as well as sustainable care and solutions can only be provided if the best interests is systematically considered. This means the best interests principle is fundamental not only for the development, stability, and future of a child but also for the society around her or him.

However, national systems still do not consider the best interests of UASC throughout the various processes to which a child is subject. When included, best interests considerations are not often linked to every aspect of the well-being of the child, or solutions under consideration to address his or her circumstances. This systematic gap affects all areas concerning UASC, from the provision of care arrangements to comprehensive solutions. Missing or inadequate best interests assessment and determination procedures are only one part of the problem but demonstrate the seriousness of the gaps. From the consultations with practitioners it became clear that it is not necessarily a problem of the principle but rather the inflexibility and number of administrative procedures facing the children which hinder its application. When asylum bodies take decisions concerning the welfare of a child, responsibilities are frequently unclear and indistinct. These decisions should instead be taken by an independent child protection body that has the right expertise and training to consider the best interests, which do not run the risk of being influenced by a conflict between the child's best interests and national migration policy. Furthermore, practitioners have flagged the culture of disbelief *vis-à-vis* the children's stories from the authorities.

In order to assess and determine the best interests of a child, all factors need to be considered. However, one clear trend in Europe is to examine the child's protection needs only through an asylum procedure, when seeking asylum may not be in the best interests of the child. Furthermore, tracing of parents and relatives of the UASC, and assessing their living conditions is still a major challenge for authorities and relevant actors. Divergent practices exist in Europe as to the degree of consent required to proceed with tracing, despite relatively clear guidance from EASO.<sup>14</sup>

### ***Vision/ Objective:***

All relevant actors systematically consider the best interests of the child at every key decision point. For every UASC in Europe, their family, living circumstances, and the potential implications of a reunification where the family lives, is conducted in a comprehensive and appropriate manner and following a BIA to prevent any risk for the UASC and to provide a solution which is in the best interests of the child.

### ***Possible way forward and milestones:***

1. **Ensuring the consideration of best interests at every key stage is not about developing additional procedures.** Considering best interests is mainly about changing adapting the existing procedures and even making them more holistic by involving child protection actors from the start lean and effective. It does not need to be cost intensive, but instead requires changing how processes are implemented. If all of the above recommendations are implemented it automatically ensures that the best interests is considered.
2. **Clearly separate the asylum and the child protection bodies and their different responsibilities.** Except for the asylum decision, all decisions concerning the child should be taken by a child protection body and not the asylum body (especially decisions in the scope of the BIA and BID). Again, guardians are the key figure in guiding the decision as they are the agent for the best interests. A clarification of the roles and

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<sup>14</sup> EASO practical guide on family tracing, pag. 59: "Family tracing is the search for family members (including relatives or former caregivers of unaccompanied children) with the purpose of the restoration of family links and family reunification when they entail the best interests of the child".

responsibilities (for example in SOPs) can help to ensure the distinction. Children, depending on age and level of maturity, must be involved in all key decisions involving them (see point below). During the roundtable discussions with state practitioners there were opposing views on whether such a separation would be possible under existing legal frameworks and so there is a need for this to be explored further.

3. **Institutionalise an enhanced BIA and the BID in the national regulatory framework.** Develop SOPs on the procedure and anchor it in the regulatory framework. It should include an individual, enhanced, and multi-disciplinary BIA at any new phase, initiated by the guardian. The BIA should be less formal and leave flexibility for manoeuvre. However decisions need to be documented and reasoned. On the basis of the BIA, care arrangements and services are provided. A transfer from one state to another can also be possible, either in the scope of Dublin for EU MS or if it is considered in the best interests as the needs are better catered for until a comprehensive solution is found. The procedure also has to include a formalised BID before a decision with long term impact. The national legal framework should clarify the parameters of the BID (panel composition, process, documentation, etc.), while building on and not redoing the BIA. The BID process has to be formalized with safeguards, but does not automatically mean that it needs to be heavy and cumbersome (especially since it builds on the BIA). The process can still be streamlined and fast if the procedures and the panel composition are clearly defined in SOPs. It is suggested to develop a pilot model procedure based on the recommendations in this document, Safe and Sound, and UNHCR BID guidelines which adapt the existing procedures in one country to demonstrate the efficiency. The child as well as the guardian should be heard in both the BIA and the BID. The BID should entail a protection assessment of the country of asylum of the family, if family reunification in country outside Europe is considered. Beyond that, every decision needs to be documented and key actors involved in the process need training on best interests considerations
4. **Establish an independent review/ conflict resolution body for all decisions taken for or on behalf of the UASC.** The child needs to be provided with a remedy to challenge decisions which he/she thinks are not in his/her best interests (BID, appointment of guardian, provision care arrangement, etc.). The existence of an effective remedy will further foster primary decision maker to consider the best interests. Such a review body has to be equipped with the necessary authority and can be for example with the court on youth and welfare issues, the ombudsperson for children, or the national human rights institution. The appeal to the review body should have suspensive effect while the decision is an administrative and not a substantive review and can return the decision to the original decision taker with the request to re-decide. State representatives at the roundtable expressed reservations regarding the establishment of an independent review body considering the additional costs it would add.
5. **Include robust family tracing in the procedure as part of the BIA.** A reflection is needed at the European level to examine what standards of tracing (length, means, partners, and reasonableness) must be pursued and what degree of cooperation may be sought from children and their appointed guardians, including cases where there are reasonable grounds to believe that children are still under the influence of smugglers or traffickers or family members who want them to reach a certain country. During roundtable discussions state representatives stressed the necessity to explore different partnerships, especially within the present international organisations, to enhance family tracing procedures and time effectiveness. It was also stated that family tracing should be a multi-faceted approach including country of origin, country of first asylum, EU and non-EU states. Family tracing should be frontloaded i.e. given priority as a procedure immediately as the UASC is identified, as well as a common methodology between actors developed for more streamlined coordination. In addition states suggested international agencies with a presence in countries where family members reside should be involved to better facilitate an assessment of the family's situation. However, tracing authorities need to also ensure that the tracing itself cannot cause harm to the child. Also, family tracing in this context has to be understood as including extended family. Again, the guardian but also the cultural mediator and the community are key as the participation of the child can only be ensured with a trusting relationship. However, the guardian can decide to allow family tracing without the consent of the

child if it is in the best interests. Furthermore, family tracing needs to look at a diverse range of factors and not only the mere existence of family members. Nearly all UASC reported for example that the journey was primarily financed through borrowed money, which implies they may be required to pay back these loans, and may also indicate high expectations from the families of UASC with regard to financial support in the future. Distress and anxiety related to these expectations were mentioned by UASC in several UNHCR-led surveys, particularly by members of the Afghan community.

## 7. Heavy bureaucracy and administration

### *Problem statement:*

The provision of appropriate care, protection, and comprehensive solutions depends on the efficiency of administrative procedures. However, bureaucracy and administrative complexity often pose hurdles and challenges, sometimes leaving children living in poor conditions while capacities of appropriate care arrangements are not fully utilized. This can be within a country but also affects cross border cooperation, posing protection risks and wasting State resources. Leaner and more effective procedures are desperately needed as they can ensure operationalization of standards and more efficiency.

### *Vision/ Objective:*

The administrative procedures for UASC at national, but also regional level are lean and cost and time efficient, catering for a prompt provision of care, protection, and a comprehensive solution which is in the best interests of the child.

### *Possible way forward and milestones:*

1. **Minimize procedures** by centralising and empowering guardians of the national guardian institution and by developing SOPs for the whole process (clearly stating who does what when). Both interventions can have an immense impact on the protection of children as well as on the cost effectiveness of a national system. Especially the SOPs will help to streamline processes. A model procedure could be developed, perhaps also bringing in private consulting firms to support with the development of such a lean model procedure, and then be tested in a pilot country.
2. Most of the **above mentioned recommendations will eventually also lead to more effective and streamlined procedures**. As an example, a strong and effective legal guardianship will void delays in decision making and care arrangements and help identifying remaining administrative challenges, the European networks and deployment to Dublin units will help to facilitate faster family reunification, and the above mentioned case management system can facilitate faster exchange of information.
3. **Establish EU-level coordination platform** among authorities who meet on a regular basis to identify gaps and work on solutions to overcome the different challenges. The Child Protection Forum, which meets once a year could provide such a platform although it would be beneficial to set up a more institutionalised group with TORs and the clear aim of harmonizing approaches and helping to develop some of the European initiatives. FRA, EASO, EUAA could possibly play a role in this.

