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Protection and alternative care for unaccompanied and separated migrant and refugee children

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

The Russian Federation's aggression against Ukraine since 24 February 2022 as well as the increase in arrivals of asylum seeker and migrants across the Mediterranean Sea have caused rapidly growing numbers of unaccompanied and separated migrant and refugee children in Europe. This is of high concern to the member States of the Council of Europe which have the positive obligation under Article 8 of the European Convention on Human Rights to protect private and family life, especially of unaccompanied and separated migrant and refugee children who are particularly vulnerable and require higher protection.

Unaccompanied and separated migrant and refugee children should be considered as children, and their best interest should be ensured irrespective of their migration status. Particular attention should be paid to victims of violence, abuse and human trafficking as well as to children with special needs including medical and psychological needs. Member States should adopt alternative care solutions, as interim measures, until the time when children can be reunited with their family members, in particular kinship care, foster care and family-based care with supervised and independent living arrangements.

1. Reference to committee: [Doc. 15112](#), Reference 4520 of 26 June 2020.



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A. Draft resolution²

1. The Parliamentary Assembly is alarmed by the rapidly growing number of unaccompanied and separated migrant and refugee children in Europe. These children have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. However, Article 8 of the European Convention on Human Rights (ETS No. 5) constitutes a positive obligation of member States to protect private and family life, especially of unaccompanied and separated migrant and refugee children who are particularly vulnerable and require higher protection.
2. The ongoing Russian Federation's aggression against Ukraine has the drastic consequence of a massive displacement of migrant and refugee children, many of them unaccompanied and separated. As such, they are extremely vulnerable to exploitation and abuse, and fall easily prey to smugglers and traffickers. It is of utmost importance and urgency that the competent authorities of Council of Europe member States, including members of parliaments, are fully aware of the legal obligations stemming from international and European treaties related to the protection of unaccompanied and separated children, including alternative care, to ensure flawless protection of these children and to ensure their best interest in all aspects.
3. The Assembly recalls in particular the European Convention on Human Rights and the United Nations Convention on the Rights of the Child, which all member States are party to. The United Nations Committee on the Rights of the Child has issued useful General Comments to guide member States in its efficient implementation. The Council of Europe Convention on Protection of Children against sexual exploitation and abuse (CETS No. 201, "Lanzarote Convention") and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), also both ratified by all member States, together with the revised European Social Charter (ETS No. 163) and several non-binding texts provide a comprehensive set of standards and guidance to build a safety net to ensure the necessary protection which these children are entitled to.
4. The Assembly also recalls its [Resolution 1810 \(2011\)](#) "Unaccompanied children in Europe: issues of arrival, stay and return", [Resolution 2020 \(2014\)](#) "The alternatives to detention of children", [Recommendation 2190 \(2020\)](#) "Effective guardianship for unaccompanied and separated migrant children", and [Resolution 2324 \(2020\)](#) "Missing refugee and migrant children in Europe", as well as the findings of its Parliamentary Campaign to End Immigration Detention of Children (2016-2019), in which the Assembly encouraged member States to adopt alternatives to detention that meet the best interest of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their migration status is being decided upon.
5. The Assembly underlines that all member States should adopt a common approach whereby unaccompanied and separated migrant and refugee children are, first and foremost, considered as children. This entails ensuring that their best interest is the primary consideration, irrespective of their migration status in the country concerned. In this context, member States must ensure that unaccompanied and separated migrant and refugee children benefit from:
 - 5.1. all due child protection safeguards, including adequate and immediate identification and registration of their identity and legal, family and social situation;
 - 5.2. a robust and gender sensitive assessment of their immediate protection, support and care needs; particular attention should be paid to victims of violence, abuse and human trafficking as well as to children with special needs including medical and psychological needs;
 - 5.3. the immediate appointment of a guardian, who will act to protect the child's best interest and link the child to required services, while searching for the child's parents and family members;
 - 5.4. an exhaustive assessment and determination of their best interest by their guardians, child protection services or competent courts where necessary.
6. Furthermore, the Assembly underlines that member States are legally responsible for unaccompanied and separated migrant and refugee children within their territory in accordance with Article 8 of the European Convention on Human Rights and, therefore, should offer solid child protection systems, which include strong co-ordination between the competent child protection and migration bodies as well as with other authorities and relevant civil society. Appropriate and sustainable budgeting and investment in human and other resources can ensure adequate and gender sensitive protection and care.

2. Draft resolution adopted unanimously by the committee on 3 June 2022.

7. The Assembly considers that the Council of Europe should facilitate the creation of a European platform for the exchange of knowledge, practical know-how and best practices between its member States in the successful implementation of alternative care for unaccompanied and separated migrant and refugee children.

8. The Assembly invites member States to respond adequately to the needs of unaccompanied and separated migrant and refugee children by providing them with assistance that preserves family unity and keeps them with relatives or other caregivers. For this end, the member States should adopt alternative care solutions, as interim measures, until the time when children can be reunited with their family members. Therefore, member States are invited to:

8.1. create safe, legal and accessible routes for children to reunite with their families in Europe, which spare them from long and dangerous travelling alone;

8.2. adopt a legislative framework, if not already in place, allowing the development of proactive targeted measures, which address specific needs of unaccompanied and separated migrant and refugee children;

8.3. ensure that family reunification requests of unaccompanied and separated migrant and refugee children are considered as a priority matter respecting the best interest of the child;

8.4. integrate asylum reception and migration systems in childcare and protection systems ensuring that unaccompanied and separated migrant and refugee children have access to the same protection and care as all other children; provide necessary funding and designate a public authority responsible for this integration;

8.5. conduct a timely assessment of specific needs of unaccompanied and separated migrant and refugee children aiming at providing the best care adapted to the case of each child;

8.6. take into account all specific aspects of the new environment of migrant and refugee children (language, different culture and living conditions) when proposing a care solution for the children;

8.7. ensure that the views of migrant and refugee children in need of alternative care are considered when identifying care arrangements that are in their best interest;

8.8. ensure that the public authority responsible for the State system of alternative care for unaccompanied and separated children guarantees different care options and employs a sufficient number of well-trained specialists in providing different types of care. It should also monitor different alternative care solutions on a regular basis;

8.9. pay special attention to the recruitment of foster families, ensuring their intercultural awareness, pedagogical and nurturing experience, as well as capacity to create a space for a child. They should also have good awareness of the asylum process and be able to support a child at its different stages, including psychological support.

9. The Assembly reaffirms that when such family reintegration is not possible, member States should develop and implement a range of suitable quality alternative care that responds to the specific and individual needs of unaccompanied and separated migrant and refugee children. Recalling the United Nations Guidelines for the Alternative Care of Children, the Assembly calls on member States to provide the following alternative care models:

9.1. kinship care, whereby children live with an adult member of their extended family;

9.2. foster care, whereby children are formally placed in the domestic care of suitable adults acting as foster parents;

9.3. emergency and transit shelters, in exceptional circumstances while the situation that caused the family separation is assessed and addressed. If minors are placed in emergency and transit shelters, they should not be placed together with adults.

10. Furthermore, member States should develop other family-based care with supervised and independent living arrangements, small-group care and, as a last resort, suitable residential care, ensuring that the principle of non-detention is safeguarded in any of these modalities. The [UN Guidelines for the Alternative Care of Children](#) should be applied when determining the necessity and suitability of arrangements for the care of unaccompanied and separated migrant and refugee children, in particular Part IX.

11. Finally, member States shall also provide services, programmes and measures aimed at supporting unaccompanied and separated migrant and refugee children to transition out of care and continuing emotional and practical support aimed at strengthening their autonomy; this entails appropriate preparation and planning prior to leaving care, regardless of whether the young person is staying in or leaving the country.

12. The Assembly urges, as regards specifically the current emergency situation affecting Ukrainian children, that there is an ongoing need for member States to strengthen a co-ordinated approach at European level amongst countries of first arrival, transit countries and host countries to ensure that children are promptly identified, registered and do not go missing, that they benefit from all protection safeguards and that they are placed, when determined as necessary, in suitable quality alternative care arrangements.

13. The security of all children, including those awaiting family reunification and in temporary care, should be prioritised. Adoption should not be considered in any emergency setting.

B. Explanatory memorandum by Ms Mariia Mezentseva, rapporteur³

1. Introduction

1. The newly adopted Council of Europe's [Strategy for the Rights of the Child 2022-2027](#) identifies children's rights in crisis and emergency situations as one of its priority areas. It makes specific reference to the rights of migrant and refugee children and spells out the steps that can be taken to implement relevant standards. Also, the Council of Europe's Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe 2021-2025 provides valuable guidance. Both are key documents, whose implementation at national level – through legislation, policies and practices – the present report supports. Furthermore, the Parliamentary Assembly has also voiced concern about the need for the protection of unaccompanied and separated migrant and refugee children, and the Committee on Migration, Refugees and Displaced Persons has previously addressed the issue of alternative care for unaccompanied and separated migrant and refugee children in the framework of its Parliamentary Campaign to End Immigration Detention of Children (2016-2019).

2. Thus, the present report examines the issues pertaining to the protection and alternative care of unaccompanied and separated migrant and refugee children in the member States of the Council of Europe. It will provide a brief overview of relevant international and European legal standards and policies, as well as map some of the promising practices in the Council of Europe's member, observer and partner States in the provision of alternative care arrangements for these children and adolescents, with priority given to the necessary safeguards of prevention and protection as well as to family-based care.

3. Given the ongoing war in Ukraine and its devastating impact on high numbers of children fleeing the country with relatives but at risk of being separated, or fleeing unaccompanied and separated, or already placed in alternative care prior to the war, the present report also addresses the specific situation of these children and explores some preliminary initiatives implemented in neighbouring and other European countries in response to their protection and care needs. The key elements of the procedure to ensure the true necessity and suitability and quality of alternative care are fully applicable to the current situation.

2. Unaccompanied and separated migrant and refugee children in Europe: current situation

4. Unaccompanied children are those “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”, whilst separated children “have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members”.⁴

5. For the year 2020, the International Organization for Migration (IOM), the United Nations International Children's Emergency Fund (UNICEF) and the United Nations High Commissioner for Refugees (UNHCR) estimated that 16 750 children arrived in Greece, Italy, Spain, Bulgaria, Cyprus and Malta; of these, 10 343 (62%) were unaccompanied and separated migrant children, whilst child arrivals decreased by 50% in 2020 compared to 2019 (33 200). In this context, it can be noted that 52% of those people in resettlement procedures in Europe were children; Sweden, France, Norway, Germany, the United Kingdom and Finland were the main countries in Europe considering children's resettlement cases. Syrians, Congolese (Democratic Republic of Congo), Sudanese and Eritreans were the most common nationalities of children whose cases were being considered for resettlement by European States.⁵

6. It is worth highlighting the current mass displacement of Ukrainian children, in relation to whom UNICEF had already estimated by 15 March 2022, that “every single minute, 55 children have fled their country. A Ukrainian child has become a refugee almost every single second since the start of the war”. By the end of the same month, the Organisation stated that “two million children have now been forced to flee Ukraine”, among these, “many are unaccompanied or have been separated from their parents or family members”.⁶ These children have been arriving in other Council of Europe member States, mainly Poland, Romania, the Republic of Moldova, Hungary, the Slovak Republic and the Czech Republic. This context will be addressed

3. I would like to thank Ms Mia Dambach, Executive Director of the not-for-profit organisation Child Identity Protection, and Ms Christina Baglietto, Regional Director of the organisation, for their assistance in the preparation of this report.

4. UN Committee on the Rights of the Child, “[General Comment No. 6 \(2005\). Treatment of unaccompanied and separated children outside their country of origin](#)”, CRC/GC/2005/6, 1 September 2005.

5. UNHCR, UNICEF and IOM, “[Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated. Overview of Trends. January to December 2020](#)”.

specifically in Section 6 below. Moreover, one month after the invasion of Ukraine by Russian forces, the number of internally displaced children in the country reached 2.5 million, according to the same Organisation.⁷

3. Key applicable legal standards and policies

7. An extensive legal framework to protect unaccompanied and separated migrant and refugee children exists at global, regional and domestic levels; so do very useful policies and guidelines that offer guidance for their efficient implementation and *de facto* protection.

3.1. United Nations and other global organisations

8. The [Convention on the Rights of the Child](#) (1989) – the most widely-adhered to human rights instrument – establishes four general principles and a set of rights, which should guide the protection of all children, including the consideration for the best interest of the child (Article 3), the principle of non-discrimination (Article 2), the right to be heard and due weight to be given to his or her views (Article 12) and the right to life, survival, and development (Article 6). Particularly relevant for the protection of unaccompanied and separated migrant and refugee children are, among others, the right to preserve his or her identity (Article 8), the right to be cared for and grow up with one's parents and to maintain contact with them (Article 9), including through reunification (Article 10), the right to protection from all forms of violence (Article 19), the right of children deprived of parental care to special protection and assistance (Article 20), the right of children seeking refugee status to receive appropriate protection and humanitarian assistance (Article 22) and the right to non-deprivation of liberty (Article 37).

9. Through authoritative guidance based on the Convention on the Rights of the Child and other international instruments, the UN Committee on the Rights of the Child has issued its [General Comment No. 6 \(2005\). Treatment of Unaccompanied and Separated Children Outside their Country of Origin](#), which sets out guidelines for States to follow to ensure that unaccompanied and separated migrant and refugee children can access and enjoy their rights to the fullest. Further guidance on the rights of children in the context of migration has been provided through the 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, as well as the Joint [General Comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. Both are strongly linked to other General Comments: [General Comment No. 14 \(2013\)](#) stresses the right of the child to have his or her best interests taken as a primary consideration and [General Comment No. 12 \(2009\)](#) emphasises the right of the child to be heard in any process, including migratory procedures.

10. Likewise, the [Global Compact for Safe, Orderly and Regular Migration](#) (2019) promotes “existing international legal obligations in relation to the rights of the child, and upholds the principle of the best interests of the child at all times, as a primary consideration in all situations concerning children in the context of international migration”, and refers to actions to “protect unaccompanied and separated children at all stages of migration” and “ensure that child protection authorities are promptly informed and assigned to participate in procedures for the determination of the best interests of the child once an unaccompanied or separated child crosses an international border, in accordance with international law, including by training border officials in the rights of the child and child-sensitive procedures, such as those that prevent family separation and reunite families when family separation occurs”. The [Global Compact on Refugees](#) (2018) also addresses the needs and rights of refugee children. In relation to the latter, it is worth mentioning UNHCR's [Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child](#) (2021), which reiterates that it is crucial to preserve the family environment, aimed mainly at intending family tracing and reunification.

6. UNICEF, “Particularly shocking – Every single minute, 55 children have fled their country. A Ukrainian child has become a refugee almost every single second since the start of the war”, 15 March 2022; UNICEF, “Two million refugee children flee war in Ukraine in search of safety across borders”, 30 March 2022; UNICEF, “Unaccompanied and separated children fleeing escalating conflict in Ukraine must be protected”, 7 March 2022.

7. UNICEF, “More than half of Ukraine's children displaced after one month of war”, 24 March 2022.

11. In relation more specifically to the provision of alternative care, the [UN Guidelines for the Alternative Care of Children](#) (2010) were developed to enhance the protection of children without, or at risk of losing, parental care, including how to prevent family separation and how to ensure that any alternative care is both necessary and suitable for the individual child. The UN Guidelines include guidance specifically aimed at the protection and alternative care of children, who are already abroad and in emergency situations, including for unaccompanied and separated migrant children. The [2019 General Assembly Resolution on the Rights of the Child](#) 74/133 has called on States to implement these guidelines to prevent the unnecessary separation of children from their parents and reflects a deep concern in relation to the protection of unaccompanied and separated migrant children.

12. It is also worth mentioning the recently-adopted [2022 Resolution of the Human Rights Council on the Rights of the Child](#), which focuses on realising the rights of the child and family reunification. This Resolution “calls upon States to use alternatives to the detention of migrant children, including by promoting the use of non-custodial solutions, implemented by competent child protection actors engaging with the child and, where applicable, his or her family”; it also “calls upon States of origin, transit and destination to find effective and timely responses to the needs of unaccompanied or separated children as soon as they are identified as such”. Similarly, the [United Nations Global Study on Children Deprived of Liberty](#) was launched in November 2019, noting that institutional care, despite being particularly harmful and often characterised by living arrangements that are inherently harmful to children, such as separation and isolation from families and the wider community, continues to be used.

13. Finally, also at global level, it is worth mentioning two instruments developed by the Hague Conference on Private International Law. The [1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#) may indeed be applicable to the protection and alternative care of unaccompanied and separated migrant children, as it “provides competent authorities with the tools and flexibility to implement just about any cross-border or domestic solution that will respond to the best interest of such children, on a case-by-case basis”. This could, for example, be applicable to the large number of children fleeing Ukraine, who were already placed in alternative care in their country of origin and whose protection measures must be recognised abroad. While the [1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption](#) establishes the safeguards for such procedures, it may only be applicable to unaccompanied and separated migrant and refugee children after a significant lapse of time.⁸

14. Another relevant instrument to the protection of unaccompanied and separated migrant and refugee children and their identity is [Convention No. 34 of the International Convention on Civil Status on the issue of multilingual and coded extracts from civil-status records and multilingual and coded civil-status certificates](#) (2014), which promotes the recognition and portability of children’s identity documents.

3.2. Council of Europe

15. Over decades, the Council of Europe has developed standards and tools, which provide for a co-ordinated approach on children’s rights as well as very specific benchmarks and guidance as to how to ensure that unaccompanied and separated migrant and refugee children are entitled to special protection and care, through both legally binding instruments that define States’ rights and obligations and practical guiding tools to support the implementation of standards in practice.

16. In terms of policies in this field, within the framework of its programme “[Building a Europe for and with children](#)”, the Council of Europe has promoted and protected the rights of 150 million children in Europe. In this regard, the new [Council of Europe Strategy for the Rights of the Child \(2022-2027\)](#) addresses the protection of the rights of migrant children generally throughout its priority areas and specifically in a new priority area on children’s rights in crisis and emergency situations. In May 2021, the Committee of Ministers adopted a new [Action Plan on Protecting Vulnerable Persons in the Context of Migration in Europe \(2021-2025\)](#). This Action Plan is co-ordinated by the [Special Representative of the Secretary General on Migration and Refugees](#), who co-ordinates and promotes co-operation with relevant international

8. Permanent Bureau of the Hague Conference on Private International Law, [The application of the 1996 Hague Child Protection Convention to unaccompanied and separated children](#), Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, October 2017; Permanent Bureau of the Hague Conference on Private International Law, [Information Note from the Permanent Bureau of the HCCH on Children deprived of their family environment due to the armed conflict in Ukraine: Cross-border protection and intercountry adoption](#), 16 March 2022. See also: Permanent Bureau of the Hague Conference on Private International Law, [Recommendation on Refugee Children](#), 21 October 1994.

organisations and agencies, and has focused on the protection of children, alternatives to detention and family reunification. The Action Plan builds on lessons learned from the [Action Plan on protecting refugee and migrant children in Europe \(2017-2019\)](#), which was completed in 2019.

17. In terms of applicable legal instruments, children's rights have been enshrined into the [European Convention on Human Rights](#) (1950) (ETS No. 5), within Article 8 on the right to respect for private and family life and the European Court of Human Rights' comprehensive case law (see below). Furthermore, other binding standards developed by the Council of Europe over the years provide further references to its member States, thus complementing efforts at global level. The [Convention on the Protection of children against sexual exploitation and sexual abuse](#) (2007) (CETS No. 201, "Lanzarote Convention"), the [Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse](#), and the [Convention on Action against Trafficking in Human Beings](#) (2005) (CETS No. 197) are examples of relevant standards. In addition, the [Revised European Social Charter](#) (ETS No. 163) contains specific provisions devoted to children's protection, in particular Article 17 requires States to "take all appropriate and necessary measures designed to provide protection and special aid from the State for children and young persons temporarily or definitively deprived of their family's support". Under Article 31.2 of the Revised European Social Charter, States have a duty to provide shelter to migrant children (including those unlawfully present) as long as the children are in the States' jurisdiction.⁹

18. Furthermore, in its [Resolution 1810 \(2011\)](#) "Unaccompanied children in Europe: issues of arrival, stay and return", the Assembly encouraged member States to provide "appropriate care arrangements, preferably foster care, with living conditions suitable for children's needs and for the appropriate period of time". The Assembly also underlined that unaccompanied and separated migrant and refugee children should never be detained and must be treated first and foremost as children, in, *inter alia*, this same [Resolution 1810 \(2011\)](#) as well as [Resolution 2020 \(2014\)](#) "The alternatives to the detention of children" and [Resolution 2136 \(2016\)](#) "Harmonising the protection of unaccompanied minors in Europe".

19. Non-binding texts approved by the Council of Europe's Committee of Ministers also provide a comprehensive set of standards and guidance with a view to strengthening the protection of unaccompanied and separated migrant and refugee children and their care, including:

- [Recommendation CM/Rec\(2019\)11 on effective guardianship for unaccompanied and separated children in the context of migration](#) sets out a set of essential principles and implementing guidelines targeting both decision-makers and practitioners working to secure the protection, reception, care and well-being of unaccompanied and separated migrant and refugee children through guardianship;
- [Recommendation CM/Rec\(2007\)9 on life projects for unaccompanied migrant minors](#) promotes life projects as tools to foster the social integration and personal development of the child, by granting support and training by competent authorities;
- [Recommendation CM/Rec\(2019\)4 on supporting young refugees in transition to adulthood](#) provides guidance with a view to supporting young refugees during their transition to adulthood;
- [Recommendation CM/Rec\(2011\)12 on children's rights and social services friendly to children and families](#) sets key strategies to develop child-friendly social services planning, delivery and evaluation, addressing three children's fundamental rights: the best interests of the child, the right to participation, and the right to protection;
- [Recommendation Rec\(2005\)5 on the rights of children living in residential institutions](#) offers guiding principles to be applied whenever a child is placed outside the family, particularly in a residential institution. The family is identified as the ideal environment for the well-being of the child; hence, the placement of a child outside the family should be exceptional and not be longer than necessary. In June 2021, the Steering Committee on the Rights of the Child held an online Regional Discussion on Children's Rights and Alternative Care to contribute to the UN Committee on the Rights of the Child's Day of General Discussion on this theme;
- [Recommendation CM/Rec\(2010\)2 on deinstitutionalisation and community living of children with disabilities](#) and [Recommendation Rec\(2006\)19 on policy to support positive parenting](#);

9. European Committee of Social Rights, *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, Decision on the merits, 20 October 2009, paragraphs 44 and 64.

- A Draft Recommendation relating to Human Rights Principles and Guidelines on age assessment for children recently received the approval of the Steering Committee on the Rights of the Child and should soon be discussed at the level of the Committee of Ministers for its adoption.¹⁰ The latter contains human rights compliant age assessment procedures aimed at policy makers and professionals.

20. As mentioned above, the European Convention on Human Rights, as interpreted by the important body of case law of the European Court of Human Rights, has offered opportunities to develop and confirm standards for the protection of children in the context of migration that must be respected. Among others, relevant case law has addressed relevant issues, such as:¹¹

- recognition of the mutual enjoyment by a parent and child of each other's company as a fundamental element of family life;
- the need for a best interest assessment before any decision concerning a child is made;
- precedence of a child's extreme vulnerability over his or her immigration status;
- the duty of State authorities to identify unaccompanied and separated migrant and refugee children and take measures to place them in adequate accommodation;
- the obligation to take adequate measures for the care and protection of children, even if the unaccompanied and separated migrant and refugee children's intention is not to seek asylum in the current State but in another State;
- reception conditions to be adapted to the child's age, to not create for them a situation of stress and anxiety, with particularly traumatic consequences;
- appointment of guardian or legal representative for unaccompanied and separated migrant and refugee children;
- violation of Articles 3, 5 and 8 of the Convention when migrant and refugee children are detained in closed detention centres and when they are detained together with adults in the same conditions as them, without installations adapted to their situation of extreme vulnerability;
- children's specific needs related, in particular, to their age and lack of independence, but also to their asylum-seeker status;
- unaccompanied and separated migrant and refugee children without leave to remain fall into "the category of the most vulnerable individuals in society";
- protection of the child's best interests involves both keeping the family together, if in the child's best interest, and considering alternatives to detention;
- the obligation of the State to facilitate the family's reunification when children are unaccompanied;
- placement of a child in public care should normally be regarded as a temporary measure and any measures implementing such care should be consistent with the ultimate aim of reuniting the natural parent and the child;
- a positive obligation of States to grant effective protection from abuse to any person under their authority, and, in particular, to vulnerable persons, such as children;

10. Council of Europe's Children's Rights Division, [Council of Europe's Steering Committee on the Rights of the Child approves human rights principles for children in migration](#), Council of Europe, 11 February 2022.

11. *Olsson v. Sweden*, Application No. 10465/83, Judgment of 24 March 1988, Para. 59; *Rahimi v. Greece*, Application No. 8687/08, Judgment of 5 April 2011, Paras. 90-95, 108; *Tarakhelv. Switzerland*, Application No. 29217/12, Judgment of 4 November 2014, Para. 99; *Popovv. France*, Applications. Nos. 39472/07 and 39474/07, Judgment of 19 January 2012, Para. 91; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, Judgment of 12 October 2006, Para. 55; *Khan v. France*, Application No. 12267/16, Judgment of 28 February 2019, Paras. 92-95; *J.R. and others v. Greece*, Application No. 22696/16, Judgment of 25 January 2018; *Muskhadzhiyeva and Others v. Belgium*, Application No. 41442/07, Judgment of 19 January 2010, Para. 58; *Sh.D. and Others v. Greece, Austria, Hungary, North Macedonia, Serbia and Slovenia*, Application No. 14165/16, Judgment of 13 June 2016, Paras. 52-62; *Tarakhelv. Switzerland*, Application No. 29217/12, Judgment of 4 November 2014, Para. 119, citing with approval *Popovv. France*, at 102; *Abdullahi Elmi and Aweys Abubakar v. Malta*, Applications nos. 25794/13 and 28151/13, Judgment of 22 November 2016; *K.A. v. Finland*, Application No. 27751/95, Judgment of 14 January 2003; *X and Y v. The Netherlands*, Application No. 8978/80, Judgment of 26 March 1985, Paras. 23-24 and 27; *August v. the United Kingdom* (dec.), Application No. 36505/02, 21 January 2003; *M.C. v. Bulgaria*, Application No. 39272/98, Judgment of 4 December 2003; *Abdi Ibrahim v. Norway*, Application No. 15379/16, Judgment of 17 December 2019; *Bistieva and others v. Poland*, Application no. 75157/14, Judgment of 10 April 2018.

- failure to take into account a child's religious and cultural background when placing him or her in a context where continuation of his or her religious and cultural origins would not be possible.

3.3. European Union

21. The European Union established its objective to promote the protection of the rights of the child in Article 3.3 of the Treaty on European Union (2007). Based on the latter, the [Charter of Fundamental Rights of the European Union](#) (2000) guarantees the protection of the rights of the child through Article 24 on the rights of the child, that stresses four main principles in similar terms to the Convention on the Rights of the Child.

22. Furthermore, the Council of the European Union adopted the [Brussels II-A Regulation](#) on cross-border procedural aspects of the placement of children in 2003. In particular, Article 56 could bring valuable solutions with regards to cross-border placements of children, as it states that “where a court ... contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that member State is required for domestic cases of child placement”. Furthermore, “the judgment on placement ... may be made in the requesting State only if the competent authority of the requested State has consented to the placement”.¹² In the same vein, the [European Parliament Resolution of 5 April 2022 on the protection of the rights of the child in civil, administrative and family law proceedings](#) focuses on child-friendly justice, a European Union framework for the protection of the rights of the child in cross-border civil disputes, mediation in cases concerning children and may be applicable to some alternative care measures.

23. Finally, the European Union has set guiding principles for the protection of unaccompanied and separated migrant and refugee children asylum-seeking children through the [Recast Reception Conditions Directive](#) (2013) and the [Recast Qualification Directive](#) (2011), adopted by all member States, except Ireland and Denmark. Both directives provide that, when assessing asylum applications of children and unaccompanied and separated migrant children, the best interest of the child and of the family unity must, as a priority, be taken into consideration. According to Article 23 of the first directive, member States should ensure an adequate standard of living for children's physical and mental development, with particular attention to family reunification possibilities, their well-being and social development, their safety and security, and views. According to Article 24 of the same directive, unaccompanied and separated migrant and refugee children should receive assistance and should be placed, with adult relatives, with a foster family, in accommodation centres with special provisions for minors or in other accommodation suitable to their needs. In addition, Article 31 of the Recast Qualification Directive provides that unaccompanied and separated migrant and refugee children should be assisted by a legal guardian after they have been granted international protection, and their views should be taken into consideration when a choice of accommodation is made. Siblings should be kept together, and changes of residences must be limited. Moreover, member States should ensure the tracing of their family members. The [EASO Guidance on Reception Conditions for Unaccompanied Children](#) is intended to support member States in the implementation of the Reception Conditions Directive, ensuring an adequate standard of living for unaccompanied and separated migrant and refugee children that takes into account their special reception needs and best interests.¹³

24. In line with the latter, it is worth mentioning that the European Parliament recently adopted a [Resolution on the European Union Protection of children and young people fleeing the war in Ukraine](#), to protect children and young people fleeing violence and facilitate their integration into host country communities. The latter “recommend[s] that child protection officers be present at the borders to be able to swiftly and accurately identify vulnerable children, record their identity and nationality as well as their specific needs. Services, such as psychosocial support, maternal health support, protection against gender-based violence, family tracing and support for family reunification should be offered within the national child protection systems along with full access to all basic services and appropriate care”. It also reiterates that “unaccompanied and separated children and children in institutional care should have a guardian appointed”. This resolution follows the European Commission's communication on European Union support to help member States meet the needs of refugees,¹⁴ including unaccompanied and separated migrant and refugee children.

12. It must be noted that [Council Regulation \(EU\) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction \(recast\)](#) will enter into force in 2022 and replace the Brussels II-A Regulation.

13. Lumos Foundation (2020), “[Rethinking care, improving support for unaccompanied migrant, asylum-seeking and refugee children in the European Union](#)”, p. 38.

4. Protection and alternative care for unaccompanied or separated migrant and refugee children: main conditions

25. By referring to promising practices in Europe and partner States, the report provides guidance for the protection of unaccompanied and separated migrant and refugee children throughout their migration and asylum process, at its various stages.

26. **Arrival, detection and identification:** As soon as possible following the arrival or identification of the child in the country of asylum, a best interest assessment should be initiated, which will subsequently be monitored, reviewed and revised throughout the displacement cycle. This process shall address any immediate protection and care needs, and entails establishing or confirming the child's identity and collecting all possible information about the child's situation. It entails registering the child and initiating the co-ordination of services needed to safeguard his or her rights and to respond¹⁵ to his or her immediate needs.¹⁶ Unfortunately, to date, children's identity and family situation is often complex to fully determine, due to the practice of unavailability and/or non-recognition of original identification documents (birth certificates or other documentation) in conflict and emergency contexts. This puts any child at risk of not accessing services and procedures, of becoming stateless or of not having all his or her rights fully safeguarded. For example, even before the current conflict in Ukraine, "only 45% of children born in Donetsk and Luhansk (non-government controlled areas) and 12% born in Crimea [had] obtained a birth certificate issued and recognised by the Ukrainian Government".¹⁷ Efforts to ensure that all unaccompanied and separated migrant and refugee children have their legal identity safeguarded has been seen to prevent statelessness, in line with Target 16.9 of the UN Sustainable Development Goals.¹⁸ [Missing Children Europe](#) is strongly advocating and working to ensure that children, including unaccompanied and separated migrant and refugee children, do not go missing.

27. **Best interests assessment/determination and age assessment:** It has been explained in a report by UNICEF and UNHCR that a Best Interests Assessment (BIA) "would normally be conducted to inform the immigration/asylum decision", whilst the Best Interests Determination (BID) is rather aimed at determining the "scope of the durable solution", namely long term and sustainable option.¹⁹ As part of the identification process, age assessment is important for several reasons, as an incorrect age assessment results in children not having access to education, being housed in shared accommodation with adults, or being placed in an adult facility or immigration detention. In order to provide protection for unaccompanied and separated migrant and refugee children, age assessment is essential to identify those that are children (under 18 years), and, during the procedure, they must be cared for as children according to the presumption of minority.

28. **Prompt appointment of guardian:** The appointment of a guardian for every unaccompanied and separated migrant and refugee children has been enshrined in [Recommendation CM/Rec\(2019\)11 of the Committee of Ministers of the Council of Europe on effective guardianship for unaccompanied and separated children in the context of migration](#). This "is paramount for acting in the best interest of the child, and for ensuring that the child's rights and well-being are respected" throughout the migration and protection process, by taking into account the specific needs of these children. Regrettably, within the European Union, for example, "there are still many differences across member States as regards terminology, appointment, tasks allocated, and training and monitoring of guardians". The delays relating to such an appointment also vary from one member State to another, and so does the distribution of tasks.²⁰ With a view to improving practices, a [European Guardianship Network](#) has been established and member States may resort to a [self-assessment](#)

14. European Parliament, "Ukraine: EU must protect all children fleeing the war", European Union, 7 April 2022; European Commission, "Ukraine: EU support to help Member States meet the needs of refugees", European Union, 23 March 2022.

15. UNHCR and International Rescue Committee, "Field Handbook for the Implementation of UNHCR BID Guidelines", 2011.

16. International Social Service, "Children on the move: From protection towards a quality sustainable solution. A practical guide", 2017, Switzerland.

17. United Nations, "Briefing Note on birth registration, Ukraine", March 2020. In Dambach, M. (2022), "Policy Brief 2: Child's right to identity in alternative care", Child Identity Protection, Switzerland.

18. Corneloup, S. and Verhellen, J. (2021). "SDG 16: Peace, Justice and Strong Institutions". In Michaels, R., Ruiz Abou-Nigm, V. and van Loon, H (Eds.), *The Private Side of Transforming our World. UN Sustainable Development Goals 2030 and the Role of Private International Law*, Intersentia Studies on Private International Law, p. 512.

19. UNHCR and UNICEF (2014), "Safe & Sound. What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe", p. 44. For further information, see: UNHCR, "2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child", May 2021.

20. European Union Agency for Fundamental Rights (FRA) (2022), "Guardianship systems for unaccompanied children in the European Union – Developments since 2014".

[tool for guardianship systems](#) in order to identify potential gaps in the provision of guardianship. It is also worth mentioning here the need to establish complaint mechanisms for unaccompanied and separated migrant children, who may wish to raise issues or concerns during their protection and migration process.

29. **Determination of necessity and suitability of alternative care and sustainable solutions:** Alternative care arrangements, which should help safeguard the best interests of the child, may be provided to unaccompanied and separated migrant and refugee children by the child's extended family or close friends of the family or by caregivers who are not their biological parents or extended family. They may be both short-term and long-term, as well as formal or informal, and should be available to unaccompanied and separated migrant and refugee children immediately after their identification. According to the Steering Committee for Human Rights [Guide on family-based care for unaccompanied and separated children](#), "alternative care is the care provided for children by persons who are not their usual primary caregiver and takes the form of:

- a. Informal care – a private arrangement provided in a family environment, where the child is looked after by relatives, friends or others in their individual capacity, on an ongoing or long-term basis. These arrangements have not been ordered by an administrative or judicial authority or accredited body;
- b. Formal care – care ordered by a competent administrative or judicial authority. Formal care can either be provided in a family environment, or in a residential one.”²¹

Alternative care can take the following forms:

- **Kinship care** is provided by the child's extended family or close friends of the family. This type of care is often used for separated children and can be either formal or informal.
- **Foster care and other family-based care** is care provided by individuals selected and considered qualified to provide care in their domestic environment by a competent authority.
- **Supervised independent living** is a form of accommodation where an adolescent lives independently alone or with a group of other adolescent children. Children receive support from the community and social workers.
- **Residential care** is care provided in a non-family group setting. Children are placed in residential care facilities but also short-term options, such as places of safety for emergency care and transit centres in emergency situations.²² Residential care should be a measure of last resort and only considered when family-based care is not possible.
- **Group care** is a form of residential care where small groups of children are placed in homes where they are provided with care by trained caregivers.²³
- While **institutional care, namely large-scale residential arrangements**, should be seen only as a last resort and on a short-term basis, many unaccompanied and separated migrant and refugee children are placed in reception or detention centres without their consent and without suitable care arrangements and stay there for a long period of time, which often leads to the children absconding.

As further explored below, suitable quality care should be provided together with access to origins, careful preparation for leaving care and transition, preservation of identity and access to remedies.

5. Promising European opportunities and practices in response to existing challenges in the provision of alternative care for unaccompanied and separated migrant and refugee children

30. Many European countries have not yet extensively implemented suitable alternative care for unaccompanied and separated migrant and refugee children. In fact, while governments have incorporated – sometimes even only partially – international and European standards into their legal texts and provisions, they are often still in the process of concretely changing and reforming the alternative care system in practice, aimed at preventing family separation and investing in family-based care solutions. This regional situation reflects certain differences in the protection ensured by each State to these children, but some promising practices will be referred to.

21. Steering Committee for Human Rights, [“Guide on family-based care for unaccompanied and separated children”](#), Council of Europe, 2021.

22. UNHCR, [“Child Protection Issue Brief: Alternative Care”](#), January 2014.

23. For further information, see: UNICEF Europe and Central Asia (2020), [“White Paper. The role of small-scale residential care for children in the transition from institutional- to community-based care and in the continuum of care in the Europe and Central Asia Region”](#).

5.1. The need for solid child protection systems

31. European countries face several difficulties in putting in place appropriate and child-focused alternative care systems, including for unaccompanied and separated migrant and refugee children. For example, in several European countries, there is a lack of co-ordination between the migration/asylum system and the child protection system at administrative level. As a result, unaccompanied and separated migrant and refugee children applying for asylum risk being treated as adults while their application is being processed, without receiving necessary care and protection.

32. In addition, in several European states, the youth care system is decentralised and varies across regions, increasing disparity in the forms and quality of care provided and relying strongly on the involvement of both, public and non-governmental actors. For example, in Italy, the Municipality of Venice guarantees foster care to 50% of unaccompanied and separated migrant refugee children under its responsibility, mainly as kinship care.²⁴ This situation brings non-governmental organisations and local associations to be at the forefront of the protection of unaccompanied and separated migrant children, but with limited available resources.

33. However, several European States are also implementing alternative care systems that have strengthened the protection of unaccompanied and separated migrant and refugee children and which aim to offer the same level of protection to these children as to local children; these constitute promising practices that may inspire other countries. For example, in Italy, [Law 47/2017](#) provides equal treatment to Italian children and foreign unaccompanied and separated migrant children, and the latter have a right to access education, health and social services, in addition to care and protection services. The law also indicates family-based care as the most appropriate and preferred option for unaccompanied and separated migrant and refugee children and provides for the creation of a list of volunteer guardians, who are trained by the State and have to pass a public competition. In Council of Europe partner country Tunisia, the Ministry of Justice has been working on a procedural guide for the placement of migrant children.²⁵

34. The Steering Committee for Human Rights' [Guide on family-based care for unaccompanied and separated children](#),²⁶ which calls for an integrated child protection system: linking the migration or asylum reception system to the national child protection system and its standards is a recommended way of ensuring that there is equity of protection and care for all children, regardless of immigration status. In addition, a supportive legislative framework, which allows for the development of proactive, targeted measures that address specific needs and situation of each child is essential for the implementation of this principle. For the successful practical implementation of an integrated national child protection system, necessary funding should be provided in the national budget. It is also important to designate a responsible governmental agency which will co-ordinate this process among relevant actors.

5.2. Promising practices of quality alternative care for unaccompanied and separated migrant and refugee children

35. When unaccompanied and separated migrant and refugee children indeed cannot be immediately reunited with their family, there is a need for States to offer **suitable forms of alternative care to these children, which take into account all their rights and individual needs**. It is very important to conduct a timely assessment of their specific needs (see 5.2 above) in order to provide the best care option adapted to the particular circumstances of each child. All these factors should be taken into consideration when the decision on his or her future is taken, especially when placing a child in any form of care.

36. In many countries, the provision of alternative care is ensured by governmental and non-governmental institutions, thus providing a mixed model. Thus, the examples and practices that follow stem from both sectors, and in some situations, are undertaken jointly or in co-ordination between both. A difference may also be drawn from the immediate reception of unaccompanied and separated migrant and refugee children and the determination of their medium- and long-term alternative care, in addition to other services that may be provided during their care.

24. Nidos, Swedish Association of Local Authorities and Regions and CHTB, "[Reception and living in families. Overview of family-based reception for unaccompanied minors in the EU Member States](#)", February 2015.

25. www.tap.info.tn/en/Portal-Politics/14681342-ministry-of-justice.

26. Steering Committee for Human Rights, "[Guide on family-based care for unaccompanied and separated children](#)", Council of Europe, 2021.

37. Once the child's situation has been duly assessed, and it has been determined that alternative care is needed (see 5.2 above), it is fundamental that each country offers a **range of forms of care, which will respond to the variety of these children's needs on the medium- or long-term.**

38. In giving priority to family-based care, **kinship care – including cross-border kinship care –** should be explored as a priority. Indeed, continuity in the child's family environment, language, culture and religion are generally a positive element to be sought, although due assessments of such an option should be undertaken to ensure that the child's rights are safeguarded and his or her rights are met, and that this solution is sustainable and in the child's best interests.

39. Further, in line with international and regional standards, various countries have been implementing **specialised foster care** for unaccompanied and separated migrant children. In [the Netherlands](#), unaccompanied and separated migrant and refugee children under the age of 15 are placed in foster families recruited by the Nidos Foundation, the national guardianship institution for unaccompanied and separated children in the Netherlands. Nidos created a network of reception families, who are providing specialised family-based care to these children, for initial reception, short-term reception and long-term.²⁷ In Belgium, Mentor-Escale, a NGO based in Brussels, runs several projects for unaccompanied and separated migrant children. The organisation is matching children with suitable foster families and provides training to foster families and children. Twice a year there is a training for prospective foster families. It concerns different topics such as law on refugee and asylum, the role of a guardian, and the specific psychological and social needs of children. The families interested to host a refugee child are carefully selected based on interviews during which the family's motivation and approach are discussed as well as the living conditions assessed". In Austria, "all foster families undergo an eligibility test ... including psychosocial clearings and house visits. Families receive trainings on legal framework, coping with trauma or guardianship. There are various networking events organised to offer exchange possibilities with other foster families".²⁸ The [Spanish Red Cross](#) has also, for years, been operating a programme of specific foster care for unaccompanied and separated migrant children, in parallel to other potential care options. This programme has been strengthening the recruitment, training and monitoring of these placements. In Italy, [MetaCometa Onlus](#) has a network of host families who provide foster care for children upon their arrival in Sicily, and works with specialists, including psychologists, social workers and cultural mediators to encourage integration of children.²⁹ At regional level, [Fostering Across Borders \(FAB\)](#), a European Union project led by the IOM, developed and granted the distribution of materials and a training package to improve the quality of family-based care in six countries of Europe, aimed at promoting and expanding foster and family-based care in several European countries. Building on the tools developed under FAB, IOM is also leading the [U-Care project](#), which contributes to the development and improvement of alternative care systems for unaccompanied and separated migrant and refugee children in Belgium, Germany and Greece. In addition to foster care, **other forms of family-based care** may also be promoted. In Austria, "the project 'Connecting People', implemented by the NGO Asylkoordination Österreich, aims to bring together (former) [unaccompanied children] who seek asylum or have already been granted refugee status with Austrian sponsors who support them in their integration (for example through leisure activities, educational support or handling of administrative procedures)".³⁰ The [European Union's Alternative Family Care \(ALFACA\)](#) project has explored the benefits of such care and has developed training and guidance on family-based care.

40. In relation to family-based care, in particular foster care, it is worth recalling the work of the Steering Committee for Human Rights of the Council of Europe. The latter has developed important documents on alternatives to immigration detention and family-based care arrangements for unaccompanied and separated migrant children. The above-mentioned practices are all examples of potential implementation of the its 2021 "Guide on family-based care for unaccompanied and separated children". In addition to promoting access to quality care and appropriate accommodation options for unaccompanied and separated migrant and refugee children and outlining the advantages of family-based care, the guide underlines the need to promote the exchange of knowledge, practical know-how and best practices between Council of Europe member States. Specifically, it calls for some key elements to be taken into account when identifying host families, such as intercultural awareness, pedagogical and nurturing experience, sincere interest in the child's well-being and capacity to create a safe space. The bodies responsible for the recruitment of host families should have a well-elaborated methodology and clearly defined recruitment procedure. Furthermore, it calls for the

27. Nidos (2019), "Reception families for unaccompanied children seeking asylum".

28. UNHCR, "Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families", 2015, at 13.

29. Lumos Foundation (2020), op. cit., at 67.

30. European Migration Network (2015), "Policies, practices and data on unaccompanied minors in the EU Member States and Norway. Synthesis Report: May 2015", at 36.

recruitment process of host families to include comprehensive screening procedures and training to support migrant children, about the asylum process or any other legal procedure and in keeping links to their families of origin. Foster families should be provided with support when needed and all placements should be regularly monitored based on specially defined criteria (analysis of treatment, quality of accommodation, protection of unaccompanied and separated migrant and refugee children by foster carers, etc.). Here, it is worth referring to a similar guide on foster care for unaccompanied and separated migrant, asylum-seeking and refugee children that was developed in Mexico, jointly between the federal government and the Latin-American Foster Care Network.³¹

41. For some – mainly older – children, the availability of **semi-autonomous or supported independent living arrangements** may also offer a suitable care option, as these promote their progressive autonomy, while supporting them with access to other necessary services (education, vocational training, access to health care, legal proceedings, etc.). For example, in Germany, [SOS Children's Village Düsseldorf](#) developed a comprehensive care network for unaccompanied and separated migrant and refugee children over the age of 16, who live together in shared apartments and receive 24/7 support of socio-pedagogical experts. In Spain, the [Spanish Red Cross](#) offers residential care to unaccompanied and separated migrant and refugee children and young people through its network of supervised apartments, whilst also offering socio-educational projects in open environments to those, who find it difficult to remain in these facilities. Also in Spain, [Fundació Eveho](#) runs similar “autonomy apartments” for adolescents between the ages of 16 and 18 years old, including unaccompanied and separated young people. In Austria, unaccompanied and separated migrant children, who have some level of independence and maturity may move to a shared apartment, where they are supervised by workers of the local child protection authority.³² Similarly, in France, “a number of departmental councils provide supported independent living arrangements for older children, including unaccompanied and separated migrant children, asylum-seeking and refugee children. This service is often provided in collaboration with non-governmental organisations” and in Greece, in line with the country's new law on guardianship, “apartments hosting a maximum of four children each are provided for children who are over the age of 16. Until early 2020, when the Special Secretariat for the Protection of Unaccompanied Minors was created in Greece and took full responsibility of the housing of unaccompanied and separated migrant and refugee children, there used to be joint action between the Ministry of Labour, UNHCR, UNICEF and IOM”.³³ Since September 2021, the responsibility of the guardianship of unaccompanied minors has also been transferred to the Special Secretariat.³⁴ At the moment there are 90 such apartments in Greece with a capacity of 364 minors in total. Alternative forms of care in the country are not seen only as a protection measure, but also as a means of integration for the unaccompanied and separated migrant and refugee teenagers during their transition into adulthood; children residing in semi-autonomous or supported independent living arrangements are assigned a mentor, namely an adult with similar lived experiences with them who has managed to integrate in the local society, to support them in that transition.

42. Finally, in terms of **residential care**, whilst these should be options of last resort, some practices are worth mentioning as they intend to strengthen the care offered in such facilities. Indeed, in some cases, a suitable option for unaccompanied and separated migrant and refugee children may be their placement in **small-group homes**. For example, in Bulgaria, “nine children with international protection status were placed in small group homes in 2018, and 14 children were placed in these facilities in 2017. These homes have a capacity to care for up to 12 children and provide a mix of social services with a focus on individualised provision of care and education, with links to community-based services to encourage integration in the community”. This option is available to “children who do not apply for international protection [as they] fall under the responsibility of the Agency for Social Assistance (ASA), rather than the State Agency for Refugees, and therefore can be placed in a small group home or other form of care under the Child Protection Act”.³⁵ In Ireland, according to the [Child and Family Agency \(Tusla\)](#), “all separated children under 12 years will immediately be placed with a foster care family. Those over 12 years may be placed in one of the five short-to-medium term residential intake units that are registered children's homes”. In parallel to care in small-group homes, the Irish Government has made additional efforts seeking to recruit more foster families for separated children.³⁶ In Greece, for a few years since 2016, [SOS Children's Villages](#) provided care and accommodation to over 300 unaccompanied and separated migrant and refugee children through a psycho-pedagogical approach, creating five group homes in Athens, Thessaloniki and Serres. There are currently

31. RELAF (2021), “Guía para los Programas de Acogimiento familiar para Niños, Niñas y Adolescentes Migrantes, Refugiados y Solicitantes de Protección Internacional Separados y no Acompañados en México”.

32. UNHCR, op. cit., at 14.

33. Lumos Foundation (2020), op. cit., p. 61.

34. Article 2 of Presidential Decree 70/2021, 9 September 2021.

35. Lumos Foundation (2020), op. cit., p. 55.

36. Baker, N., “[Tusla wants foster carers for refugee children seeking protection](#)”, *Irish Examiner*, 6 September 2021.

1 956 places in accommodation centres for unaccompanied and separated migrant and refugee children all over Greece, as well as 180 places in Emergency Hospitality Structures; accommodation centres are often hosted in detached houses offering a more family-type care. Likewise, in Finland, [SOS Children's Villages](#) has also established group homes, whose running costs are covered by the State. In [the Netherlands](#), a similar form of care is also offered: unaccompanied and separated migrant and refugee children aged 15 and over, and those under 15 who cannot be placed with foster families, are given accommodation by the Central Agency for the Reception of Asylum Seekers. They are housed in small-scale reception centres with 24-hour supervision.

43. It is important to mention that some countries have resorted to informal accommodation arrangements for unaccompanied and separated migrant children, such as hotels and camps, when capacity in formal facilities was suddenly exceeded due to unexpected influx.³⁷ These “emergency” facilities do not have the capacity, specialist staff or suitable environment for quality care for these children. It is also important to mention that, whilst a variety of care options should be able to respond to the range of needs and circumstances of unaccompanied and separated migrant and refugee children in Europe, the particular needs of **girls and children and young people with disabilities** must also be given due attention, in order to ensure that their particular needs are fully met.

5.3. Access to other services

44. In general, beyond the need to provide quality care to these children, the availability and access to other relevant services must be ensured. Amongst these, it is worth mentioning Missing Children Europe's app [Miniila](#), which provides information on the support available, rights and international protection and reunification procedures for children on the move in Europe. The app is specifically tailored to the needs of unaccompanied children on the move, with a focus on facilitating access to and understandable information about dedicated services such as shelter, food banks, and health services in the area they are in. The app also connects them easily to the missing children hotline and the child helpline. In the same vein, the German Federal Office for Migration and Refugees in collaboration with the Federal Employment Agency, the Goethe Institute and Bavarian Broadcasting developed the [Ankommen](#) app. The app provides information on the asylum procedure, vocational training, work and living in Germany. In addition, the app provides German lessons and is intended to promote integration.³⁸ In this regard, [Recommendation CM/Rec\(2011\)12 on children's rights and social services friendly to children and families](#) (Section IV.A.) is a useful reference.

5.4. Leaving care for unaccompanied and separated migrant and refugee children

45. Special attention should also be drawn to unaccompanied and separated migrant children's **transition to adulthood, autonomy and leaving care**. As called for in the Steering Committee for Human Rights' Guide,³⁹ unaccompanied and separated migrant and refugee children should be supported in drawing up a transition plan and a long-term plan. This process should ideally be managed through the development and implementation of a “leaving care plan”, including information about all the topics to consider regardless of whether the young person is staying or leaving the country. This, for example, could include support during the period of asylum procedure; support in the integration, when they received international protection; support in the case of return to the country of origin. This process also needs well-developed guidelines based on the best practices in the assistance in transition of unaccompanied and separated migrant and refugee children to adulthood. The guide also calls for the implementation of policies aimed at ensuring sustainable solutions and the effective integration of children affected by migration more generally. As guardianship often ends when a child reaches majority, there is a true need to focus on and to plan this transition together with the guardian, in order to ensure that the child has been fully prepared. It is welcome that some States provide for support beyond the age of adulthood, including financial support, accommodation, sponsorship/mentoring, support network, etc, which should be adapted to the needs and circumstances of each unaccompanied or separated child.⁴⁰

46. In the United Kingdom, “the majority of separated young people will be entitled to leaving care services under the Children (Leaving Care) Act 2000. This Act seeks to improve support to care leavers in a number of ways, including ensuring that young people do not leave care until they are ready and that they receive more effective support once they have left”.⁴¹ This usually includes a personal adviser, a pathway plan, financial

37. Lumos Foundation (2020), op. cit., pp. 69-70.

38. Frontex, EASO, EU Member States, UN High Commissioner for Refugees, FRA (2016), “[Refugee Protection and Mixed Migration: The 10-Point Plan in Action – Chapter 5: Mechanisms for Screening and Referral](#)”, p. 127.

39. Steering Committee for Human Rights, op. cit.

40. European Union Agency for Fundamental Rights, op. cit., p. 5.6.

assistance with employment, education or training, accommodation, monitoring of the care leaver's situation. In Austria, the organisation Don Bosco runs the [Moses project](#), which provides counselling and support services for former unaccompanied and separated migrant children, who have had to move out of residential communities on turning 18, as well as affordable housing, counselling and support for independent living, especially in dealing with authorities. Furthermore, it supports with finding appropriate training and counselling centres, tutoring and learning support and overall assistance in finding a job. In The Netherlands, the above-mentioned body Nidos, together with the Dutch Association of Municipalities, have developed a manual on how to transfer unaccompanied and separated migrant and refugee children from the care of Nidos to an independent living home under the responsibility of the municipality on turning 18, with a focus on case management.⁴² This is the case, for example, in Utrecht, where the city financially supports the local ex-unaccompanied and separated migrant children's team of the Dutch Council for Refugees.⁴³ In Belgium, unaccompanied and separated migrant and refugee children who age out with irregular migration status and who live in some reception centres can enrol in the My Future programme, designed to help them explore their options and to follow some vocational training and several of the exercises are meant to increase resilience and empower them. However, because the programme is only available in specific centres, they can no longer access it once they turn 18 and are transferred to another reception centre. Furthermore, the organisation Minor-Ndako supports about 200 unaccompanied and separated migrant and refugee children per year, all living in small, supported housing, which are considered specialised youth care, meaning that support can be extended up until the young person's 25th birthday and a "growth plan" is developed as soon as they are 16.⁴⁴

6. Specific considerations relating to unaccompanied and separated migrant and refugee children from Ukraine arriving in Council of Europe member States

47. Today, we are faced with the consequences of the Russian Federation's aggression against Ukraine. One of the direct consequences is a flux of children, who are fleeing the conflict unaccompanied and separated, but also children, who were already in alternative care in Ukraine (estimated at 100 000)⁴⁵ and have fled the country accompanied by their temporary caregivers, including many with disabilities. These children are facing a heightened risk of violence, abuse, exploitation and trafficking. Thus, the ongoing Russian Federation's aggression against Ukraine is again a tragic example of challenges posed by massive arrivals where children are affected and there is a risk of inappropriate care conditions. The Minister of Social Policy of Ukraine, Maryna Lazebna, said that as of 19 March 2022, 4 894 children from 179 institutions of institutional care had been evacuated. Of these, 2 522 children were relocated within Ukraine, and 2 372 children from 116 institutions were relocated abroad.⁴⁶ These numbers have undoubtedly been growing further: the Regional Refugee Response Plan estimates that 36% of the overall over five million refugees having entered European countries by 23 April 2022 were children.⁴⁷ Thus, an emergency plan, based on the Regional Refugee Response Plan, is needed to address this situation, particularly amongst Council of Europe member States, situated at the borders and beyond. For example, according to the Child Protection Sub-Working Group, efforts have been undertaken to establish "referral pathways" on child protection, and gender-based violence for identification and referral to services in the Republic of Moldova, including the deployment of guardianship authorities to the border. This approach has also been called for by the European Parliament Intergroup on Children's Rights⁴⁸ and Child Circle and KIND's Note on Unaccompanied Children Fleeing From Ukraine⁴⁹ intends to support this approach of a common framework of measures, in particular among the European Union countries.

41. Coram Children's Legal Centre (2018), "[Leaving care support for migrant children and young people](#)".

42. Vereniging van Nederlandse Gemeenten and Nidos (2017), "[Handreiking. Overdracht van amv's die 18 jaar worden](#)".

43. PICUM (2022), "[Turning 18 and undocumented: Supporting children in their transition into adulthood](#)", p. 32.

44. Fedasil, "[Niet-begeleide minderjarige vreemdelingen and Minor-Ndako](#)". In PICUM (2022), [Turning 18 and undocumented: Supporting children in their transition into adulthood](#)", p. 28.

45. UNICEF, "[Guidance for protecting displaced and refugee children in and outside of Ukraine](#)", n.d. See also: CARE, "[Fears for the plight of around 100,000 children living in institutions across Ukraine, unable to escape the conflict](#)", 11 March 2022.

46. Ministry of Social Policy of Ukraine, "[About 5,000 children from vulnerable categories being brought up in institutional care facilities were evacuated](#)", 19 March 2022.

47. UNHCR, "[Ukraine Situation: Regional Refugee Response Plan – March-December 2022](#)".

48. Child Rights Intergroup, "[Urgent need for an EU coordinated approach to protect Ukrainian children at the border](#)", 23 March 2022.

49. KIND and Child Circle (March 2022), "[Note on Unaccompanied Children Fleeing From Ukraine](#)".

48. As recommended by UNICEF, “the current emergency also necessitates rapidly expanding the capacity of emergency care arrangements with screened caregivers, as well as other critical services for the protection of children, including against gender-based violence, as well as family tracing and reunification mechanisms. This is crucial for unaccompanied and separated migrant children, who need temporary care while reunification efforts are underway. Per UNICEF guidelines, family-based and community-based care should be promoted in these circumstances, with institutional care being used only as a last resort and for the shortest duration possible”. It calls on neighbouring and impacted countries to: establish and strengthen screening processes to identify unaccompanied and separated migrant and refugee children at the borders; establish and strengthen safe spaces for children at border crossings and other strategic sites; link safe spaces with national child protection systems, and rapidly expand the capacity of emergency alternative, family-based care arrangements and other critical child protection and gender-based violence services.⁵⁰

49. As highlighted by Child Circle and KIND, “the Ukrainian authorities are trying to ensure that the children travel with sufficient information about their identities and needs but it is unclear whether they are being transferred into the care of child protection agencies in their States of arrival or transit”.⁵¹ This raises a number of concerns beyond and prior to their effective alternative care. Indeed, the initial reception and assessment of these children’s situation is key to providing the most suitable temporary care. Thus, priority must be given to “a centralised, cross-country information management system to keep track of the whereabouts, safety and well-being” of these children and “this must strengthen identification and tracking systems and decision-making mechanisms to account for children in/relocated from institutions alongside unaccompanied and separated migrant children”.⁵² In this regard, UNICEF and UNHCR have been developing “Blue Dots” into their operation along the borders and main migration routes from Ukraine.⁵³ These are “locations where professional, trained case workers, mental health and psychosocial support and legal aid providers are available to support identification of urgent social service and protection needs and ensure that those needs are addressed”. They act as first contact points and offer an example of co-ordination and co-operation with other partners in child protection. This also intends to ensure that “moving children to safety must not hinder their prospect for family reunification in the future. Under no circumstances should families be separated as a result of relocation or evacuation movements”.⁵⁴ Changing The Way We Care has also issued guidance to address the movement of children during a humanitarian crisis, including key actions when preparing to and moving children and when receiving individual or groups of children in a new location, including across borders.⁵⁵ In February, the [Government of Ukraine](#) itself issued during the first weeks of the conflict an updated procedure for border crossing for orphans and children without parental care, including who and how many adults should be with them, with a particular focus also on children with disabilities. In this regard, the European Parliament Intergroup on Children’s Rights, which included a number of government representatives and non-governmental experts, led a visit to a number of facilities on the border, including a “temporary accommodation and registration centre for orphans and children with disabilities of Poland in the municipality of Stalowa Wola”.⁵⁶ Likewise, the [European Network on Statelessness](#) and its [partners](#) have also been collecting information on what is happening, as well as [updating specific information for those stateless or at risk of statelessness](#) who need advice and assistance both in Ukraine and Western bordering countries.

50. To date, Ukraine’s neighbouring countries have made efforts, through their governments and non-governmental organisations, to provide some adequate form of care to these children. It is worth mentioning, for example, the initiative taken by SOS Children’s Villages to relocate children from its villages as well as children in foster care, kinship care, boarding schools and residential institutions in Ukraine to its villages in other European countries. Indeed, “some 80 children and their foster parents supported by SOS Children’s Villages in Ukraine have been relocated to SOS Children’s Villages in Poland”; in addition, by beginning of April, it also already had 697 displaced Ukrainian children in its care in Austria, Belgium, Czech Republic, Hungary, Italy, Lithuania, Latvia, Romania, Estonia and Bulgaria.⁵⁷ In fact, in Poland, “ensuring children have

50. UNICEF, op. cit. See also: United Nations, [“Protect unaccompanied children fleeing Ukraine: UN agency chiefs”](#), 7 March 2022.

51. KIND and Child Circle (March 2022), op. cit.

52. Various organisations, [“Key recommendations to uphold the rights of Ukrainian children deprived of family care”](#), March 2022.

53. UNICEF, [“3 things to know about Blue Dots”](#), 21 March 2022.

54. UNICEF, op. cit.

55. Changing the Way We Care, [“Critical Considerations for Movement of Children During a Humanitarian Crisis”](#), 4 March 2022.

56. Child Rights Intergroup, op. cit.

57. SOS Children’s Villages International, [“War in Ukraine”](#), n.d.; SOS Children’s Villages International, [“Ukrainian foster families flee warzone for Poland”](#), 28 February 2022; Harbage, C., Kakissis, J. and Kellman, R., [“Ukrainian children and families are being taken in by Polish families”](#), NPR, 7 March 2022.

temporary guardians for support is covered by a new law, the Act on Assistance for Ukrainian Citizens”, but its implementation in practice remains a challenge according to the Polish Foster Care Association. The Slovak Republic and Bulgaria are also facing difficulties in ensuring the capacity of their own national foster care systems, and rather resorting to residential care, sometimes placing children with the guardian they arrived with.⁵⁸ According to UNICEF, “since 24 February, around 1 900 unaccompanied children arrived in Romania, out of which 255 are now in the State protection system”, and UNICEF has been working for their protection with the Ministry of Family, Youth and Equal Opportunities through the National Authority for the Protection of Children’s Rights and Adoption.⁵⁹ In the Republic of Moldova, in early April 2022, it was estimated that “at least 2% of children would be separated or unaccompanied, which would mean at least 780 [unaccompanied and separated migrant children] and over 1 000 children at risk currently in the Republic of Moldova” and that “the authorities ha[d] identified 11 unaccompanied children and placed them in emergency care”. Around the same time, it was stated that “the Ministry of Labour and Social Protection has established a guardianship system for unaccompanied and separated migrant children, an emergency care centre for unaccompanied children has been identified, and the foster care system is available to accommodate unaccompanied children as needed” and “the Guardianship authorities, AVE Copiii, UNICEF and UNHCR have assessed and assisted families hosting refugee children (the later as part of the flight transfer programme of families to various European countries)”.⁶⁰ In Switzerland, the organisation [Tipiti, together with SOS Children’s Villages and public authorities](#), has also organised the placement of Ukrainian children and their foster families in the country and more are expected to be placed. The [Swiss Government](#) had already, prior to the conflict in Ukraine, issued clear guidelines on intercountry child placement.

51. Finally, it is worth recalling that intercountry adoption procedures should not take place in humanitarian or emergency situations, as it is complex to fully ascertain children’s family, social and legal status. In this regard, the Hague Conference on Private International Law has issued a note of recommendations. Indeed, it recalls that “in case of an armed conflict, the focus should be on child protection measures other than adoption” as the children “cannot be assumed to be orphans and/or in need of adoption”. Indeed, “efforts to reunite a displaced child with their parents or family members in situations brought about by armed conflict must take priority” and “the conflict should not be used as a justification for expediting intercountry adoptions, or for circumventing or disregarding international standards and essential safeguards for safe adoption; and adoption procedures should be prohibited from taking place”.⁶¹

58. Eurochild, [“All children have the right to be protected. Eurochild letter to the Heads of EU Institutions”](#), 1 April 2022.

59. UNICEF, [“UNICEF support in Romania for refugee children, women and families coming from Ukraine”](#), 18 April 2022.

60. 8 April 2022. UNHCR, [“Moldova Refugee Inter-Agency Child Protection Update #01”](#), March 2022; UNHCR, [“Moldova Refugee Response, Inter-Agency Update \(2nd – 5th of April 2022\)”](#), 8 April 2022.

61. Permanent Bureau of The Hague Conference on Private International Law, [“Children deprived of their family environment due to the armed conflict in Ukraine: Cross-border protection and intercountry adoption. Information Note from the Permanent Bureau of the HCCH”](#), 16 March 2022.