Ad hoc Committee for the Rights of the Child (CAHENF)

Drafting Group of Experts on Children’s Rights and Safeguards in the context of Migration (CAHENF- Safeguards)

**Working title:** Recommendation CM/REC(2018)x of the Committee of Ministers to Member States on guiding principles and guidelines for an effective guardianship for unaccompanied and separated children in migration (third working version, 5 February 2018)

For discussion at the fourth meeting of the CAHENF (Strasbourg, 21-23 March 2018)

Agenda item 6.1

**Venue:**
Council of Europe, Strasbourg (France)
Agora Building, Room G.01, from 9:30 to 18:00

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Objective

This paper includes a revised draft text which reflects the outcome of CAHENF-Safeguards experts’ discussions as a result of their last meeting in January 2018. The CAHENF-Safeguards is expected to conclude its work on this draft text in June, so that a finalised text can be submitted for a last round of comments to the CAHENF, and in view of its possible approval in October 2018.

The objective for the CAHENF at this plenary meeting is to hold an in-depth discussion on the revised draft text, in order to provide clear instructions and orientations to the CAHENF-Safeguards. The text also includes text in brackets for which a clear orientation by CAHENF members is being sought.

Key issues

a. Can CAHENF experts provide any further orientations on:
   - the preamble;
   - the proposed five recommendations;
   - the proposed structure;
   - the substantive aspects and measures covered by the Guidelines under each of the proposed principles, and list of definitions proposed;
   - additional possible missing aspects or issues which should be addressed differently;
   - text in brackets and notes on aspects and issues for which a clear orientation should be expressed by CAHENF members (see Notes 8, 18, 20)

b. Do CAHENF experts agree to keep the current working title of the draft recommendation, as well as the current structure of the text?

c. Do CAHENF experts agree on the process and timelines as set out in the updated roadmap for the finalisation of the draft text and explanatory memorandum?

It is proposed that written comments and additional text suggestions should be provided by CAHENF experts by 13 April 2018, in order to facilitate the preparation of a revised draft for discussion at the June meeting of the CAHENF-Safeguards.

Background

1. This paper includes a revised draft text which reflects the outcome of CAHENF-Safeguards experts’ discussions (Strasbourg, 19-20 September 2017 and 2-3 February 2018). The discussions

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1 CAHENF-Safeguards(2017)REV4 as proposed.
2 For an overview of all issues discussed, please see the CAHENF-Safeguards(2018)PV1.
took into account the numerous comments received\(^3\), which are available for consultation on the restricted website.

2. The structure of the text attempts to address delegations’ preference for short recommendations which take account of specific issues raised, and the variety of national situations. Such an approach would allow for the elaboration of a set of principles and guidelines aimed at ensuring that guardianship measures with appropriate features can be established across different national contexts and that the on-going development and strengthening of national guardianship systems would be encouraged and supported. The text recognises that guardianship should be periodically reviewed and adapted in each Member State, in line with the actual situation, in terms of children arriving in each country and the manner in which the country is organised for their reception. The text includes text in brackets for which a clear orientation by CAHENF members is being sought.

3. In addition, the Group identified during its work a number of elements which could be included in an explanatory memorandum, which could provide further guidance on how best to implement the principles and guidelines in practice. The memorandum should include explicit references for each principle to relevant international standards from which they stem, international case law, as well as a range of different illustrative practices and resources, selected on the basis of clear criteria. The draft memorandum will be prepared by the Secretariat with the support of a consultant.

4. It is anticipated that the first draft of the explanatory memorandum should be available for comments before the next meeting of the CAHENF Safeguards (June 2018). Following a first review by the CAHENF-Safeguards and the CAHENF, the text of the explanatory memorandum could be examined and possibly adopted by the CAHENF at the same time as when it examines and approves the draft recommendation, for it to be communicated to the Committee of Ministers for adoption (proposed timing: October 2018).

\(^3\) See the compilation of comments (CAHENF-Safeguards(2017)8_ADD1).

Preamble

The Committee of Ministers, under the terms of article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, inter alia, by promoting common standards and co-operation in the field of human rights;

Reaffirming the principle of equal dignity of all human beings and the principle of full and equal enjoyment of human rights and fundamental freedoms by a child within a State's jurisdiction, regardless of his or her nationality, migration, residence or other status;


Taking into account the rights and obligations set out in relevant European legal instruments, such as the European Convention on Human Rights (ETS No. 5) and the Protocols thereto, the European Social Charter (ETS No. 35 and its revised version, ETS No. 163), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the European Convention on the Exercise of Children’s Rights (ETS No. 160), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197); the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS no. 210), and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS no.210);

Recalling the relevant case law of the European Court of Human Rights and the relevant recommendations of monitoring bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), the Group of Experts on Action against Trafficking in Human Beings (GRETA), the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;

Deeplly concerned that unaccompanied and separated children are among the most vulnerable group in the migration context, and as such are at increased risk of violation of their fundamental rights and freedoms, in particular the right to life, survival and development, the right to non-discrimination, the right to acquire a nationality, the right to health and medical care, the right to education, the right to housing, access to justice and the right to freedom from all forms of violence; Aware that children are forced to flee their homes and/or migrate, whether accompanied or unaccompanied, due to different reasons, such as family reunification, conflicts or other forms of
abuse and persecution, violence, changes in the environment that affect their life and living conditions, or the search of better economic, social or cultural conditions;

Recognising that unaccompanied and separated children in migration are right holders and that all children should be guaranteed equal standards of protection, reception and care, regardless of their migration status, as well as the full exercise, respect, protection and promotion of their human rights;

Conscious that in the absence of comprehensive measures to ensure their protection and assistance, unaccompanied and separated children in migration disappear from accommodation facilities or can be subjected to neglect, trafficking for the purpose of sexual exploitation, removal of organs, drug trafficking, unlawful or arbitrary deprivation of liberty, torture, inhuman or degrading treatment; child and forced marriage and other harmful practices or other forms of violence;

Aware of the need for additional protection and assistance measures in circumstances where unaccompanied and separated children are in a situation of additional vulnerability, including when at risk of violence, re-trafficking or re-victimization;

Taking into account that the best interests of the child must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies and should be implemented in all spheres relating to their life, regardless of their circumstances;

Taking into account that States should realise a child’s right to express their views freely in all matters affecting them and have their views be given due weight in accordance with their age and maturity, and that States have an obligation to assure this right;

Convinced that an effective guardianship system constitutes an essential safeguard for the protection of the rights of unaccompanied and separated children in migration and that guardians play a key role in the safeguard or children's best interests and the exercise by these children of their rights;

Recommends that the governments of member states

1. adopt the attached Recommendation and guiding principles and guidelines aimed at setting out a comprehensive and consistent framework of measures with respect to guardianship for unaccompanied and separated children in migration, which takes account of the manner in which States’ responsibilities are organised nationally,

2. take measures to review domestic legislation, policies, practices and allocate resources to ensure the necessary reforms to implement this Recommendation and appendix;

3. ensure that this recommendation, including its appendix, is disseminated as widely as possible amongst all competent national authorities, relevant professionals and stakeholders, including those working for and with unaccompanied and separated children in migration (e.g. judges, prosecutors, lawyers, police and other law enforcement authorities, child protection professionals, asylum migration officials, guardians, social workers, health professionals, staff of welfare institutions and care accommodation, regional and local authorities) as well as non-governmental actors;
4. establish a mechanism or forum at paneuropean level to promote the implementation of the principles and implementing guidelines by States, acting also as a platform for exchanges of experiences and good practice with respect to guardianship;

5. examine within the Committee of Ministers through the appropriate intergovernmental committee the implementation of this recommendation and its appendix three years after its adoption.

Appendix I. Guardianship for unaccompanied and separated children in migration: Guiding principles for an effective guardianship system and implementing guidelines

I. Purpose and scope

1. The present Guiding Principles and Implementing Guidelines are intended to support States in ensuring that unaccompanied or separated children within their jurisdiction are effectively provided with guardianship (alongside legal assistance) and representation, promptly after identification as an unaccompanied child, so that their rights and best interests are adequately safeguarded and implemented in all processes and decisions concerning them, in line with international and European standards.

2. Taking into account the international and European legal instruments, relevant guidance and experience in this area, these principles and guidelines seek in particular to:

   a) assist States to effectively implement their responsibilities and obligations towards unaccompanied and separated children in migration, while guiding policies, decisions and activities of competent actors concerned with social protection and child welfare;

   b) provide guidance on the development and implementation of standards, including by developing a common framework, in order to safeguard the rights of unaccompanied and separated children and ensure respect for their best interests;

   c) promote a rights-based approach in migration policies applied to unaccompanied and separated children, while taking into account the different ways in which state responsibilities are organised nationally;

   d) encourage States to facilitate and promote the exchange of sustainable and promising practices with respect to guardianship measures to ensure the protection of the rights of unaccompanied and separated children.

3. The Principles and Implementing Guidelines apply to guardianship measures for unaccompanied and separated children in migration under the age of 18 years, the latter being referred to throughout the text by the term "child".

4. The principles and measures may also be applicable, as appropriate, to young persons who need continuing care and support through guardianship for a transitional period after reaching 18 years or in specific situations, as set out under the applicable law of the receiving State.

II. Guiding principles for an effective guardianship system

**Principle 1 - Protection of the rights of the unaccompanied and separated children through guardianship.** States should take measures to have an effective system of guardianship which takes
into account the specific needs and circumstances of unaccompanied and separated children in migration in order to protect and promote their rights and secure their best interests.

**Principle 2 – Guardianship frameworks and measures.** States should have in place adequate legal, policy, regulatory or administrative frameworks to ensure guardianship for unaccompanied and separated children in migration.

**Principle 3 – Appointment of guardians.** States should ensure that a unaccompanied or separated child has a guardian appointed without delay to support the child until the age of majority or for a transitional period after reaching 18 as may be deemed appropriate in specific situations.

**Principle 4 – Legal responsibilities and tasks of guardians.** States should take measures to empower guardians to inform, assist and support unaccompanied and separated children in processes affecting them, to safeguard their rights and best interests and act as a link between the child and the agencies and individuals with responsibilities for them. States shall ensure that guardians enjoy the independence and impartiality appropriate to their role.

**Principle 5 – Information, access to justice and remedies, including child friendly complaint mechanisms.** States shall ensure that children are provided with relevant information and advice, and have access to an independent complaint mechanism and remedies to effectively exercise their rights or act upon violations of their rights.

**Principle 6 – Institutional measures.** States should designate a competent authority or agency or legal entity with responsibility for the management of guardianship for unaccompanied and separated children in migration, including case management.

**Principle 7 – Resources, recruitment, qualifications and training.** States should allocate adequate resources to ensure effective guardianship for unaccompanied and separated children in migration, including ensuring guardians are adequately qualified and supported.

**Principle 8 – Co-operation and coordination at national level.** States should, in accordance with their domestic systems, establish mechanisms and take measures to ensure an effective co-operation and coordination between actors exercising responsibilities towards unaccompanied and separated children in migration, and the guardian and/or guardianship authority or agency.

**Principle 9 – International co-operation.** States shall rapidly, constructively and effectively provide the widest range of international co-operation in relation to unaccompanied and separated children in migration, and involve in appropriate ways their guardianship authority or agency and/or guardians [including with a view to restoring family links and assessing family circumstances, establishing durable solutions, and transfer of care and custodial responsibilities, where it is in the best interests of the child and tracing missing children]
III. Implementing Guidelines for an effective guardianship system

Principle 1 - States should take measures to have an effective system of guardianship which takes into account the specific needs and circumstances of unaccompanied and separated children in migration in order to protect and promote their rights and secure their best interests.

1.1 International human rights obligations with respect to children shall be fully respected when establishing and implementing a guardianship system.

1.2 Every child is entitled to special protection and assistance provided by the State and to receive the support and protection of a guardian.

1.3 States shall ensure that guardianship measures take into account children's best interests and specific circumstances, including circumstances of particular vulnerability in which they find themselves when outside their countries of origin, as well as any vulnerability factors requiring additional protection and assistance.

1.4 States shall ensure that effective mechanisms are in place in guardianship to mitigate the aggravated risk for unaccompanied or separated children of exposure to discrimination, neglect, sexual exploitation, forced labour, drug trafficking, child abduction, child marriage and other forms of violence.

Principle 2 - States should have in place adequate legal, policy, regulatory or administrative frameworks to ensure guardianship for unaccompanied and separated children in migration.

2.1 States should put in place an effective guardianship system, taking into account the evolving nature of needs and the manner in which different State responsibilities concerning children are organised, in particular, as regards defining how guardians operate, coordinate and cooperate with other services and stakeholders to fulfil the rights of the child.

2.2 States should have in place and implement a comprehensive legislative and policy framework for guardianship, operating within the child welfare and protection system.

At a minimum, the framework should include provisions on:

- Professional requirements, qualifications, screening, vetting, recruitment and appointment procedures of guardians;
- Duties, rights and responsibilities of guardians, as well as support measures;
- Training requirements;
- Monitoring, supervision of guardians and oversight procedures;
- Procedures for ensuring that children's views are expressed, taken into consideration and given due weight at [appropriate] [all] stages of relevant procedures;
- Individual complaint mechanisms available for children and related procedures;
- Interagency and multidisciplinary co-operation and coordination mechanisms and processes at national and international level;
- Confidentiality and data protection requirements;
- Independent monitoring of the guardianship arrangements for children, including investigating complaints by children and young people.

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4 In particular the UN Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR), the European (revised) Social Charter, the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197); the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and relevant European standards established by case law.

5 UNCRC (Article 20)

6 UN Guidelines for the Alternative Care of Children (Article 19).
2.3 The circumstances and procedures related to the appointment of and change of guardianship, as well as the termination of guardianship should be prescribed by law, taking into account the child’s right to be heard, the best interests of the child, the need for stability and continuity, and where appropriate be subject to judicial review.

2.4 States should ensure at regular intervals monitoring of the guardianship system, including through private consultation with children.

Principle 3 - States should ensure that an unaccompanied or separated child has a guardian appointed without delay to support the child until the age of majority or for a transitional period after reaching 18 as may be deemed appropriate in specific situations.

3.1 Every child should have a guardian\(^7\), regardless of their immigration status.\(^8\)

3.2 States should ensure that a guardian is appointed or allocated following appointment by another competent body (such as a court) [without delay]/[promptly]\(^9\) following the identification by a State authority or agency of a person as an unaccompanied or separated child, including pending an age assessment process when there is uncertainty as to whether a person is a child.

3.3 Every child shall be informed and have their views taken into consideration prior to the appointment of a guardian and should be able to apply for a change in guardian.

3.4 A guardian’s assignment should last until guardianship is transferred, parental responsibility is in place or until the child reaches the age of majority.

3.5 In specific situations, as set out under the applicable law of the receiving State, consideration should be made of extending protection measures to young persons after reaching 18 years\(^10\).

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\(^7\) Note: Explanatory memorandum on BIA assessment: Where the guardian appointed in a member state is a family relative [or close person] of the child, a BIA assessment of the responsible person should be carried out. Provide indications on role of a guardian/guardianship authority in that context. Clarify that day to day care by a family member does not preclude the appointment of a guardian.

\(^8\) Note: Elements from the first working version (notably the principle of non-discrimination) to be included in a separate document (ie. Implementation Guide, handbook, etc)

\(^9\) Note: CAHENF members to indicate to CAHENF-Safeguards their preference with respect to the timeline of appointment (i.e. “without delay”, “promptly”).

\(^10\) Note: Care and support for transitional periods after reaching 18 can also be ensured by other means than guardianship (reflecting in the Explanatory memorandum Germany’s position regarding the provisions of the Youth Welfare Code allowing offers for Advise and Support for Young people after they turn 18)
Principle 4 - States should take measures to empower guardians to inform, assist and support unaccompanied and separated children in processes affecting them, to safeguard their rights and best interests and act as a link between the child and the agencies and individuals with responsibilities for them. States shall ensure that guardians enjoy the independence and impartiality appropriate to their role.

4.1 Measures in place should authorise and empower guardians to inform, assist and support the child in processes and decisions affecting them. More particularly, the role of the guardian should include:

a. To ensure that children are informed of and understand their rights;

b. To inform the competent child protection system in cases where children are subject to violence, abuse, neglect or exploitation and request and or facilitate that children receive the appropriate protection and care;

c. To safeguard children’s wellbeing and development, inter alia through supporting their access and enjoyment of adequate care, accommodation, health care, education and professional training, as well as any other relevant professional support services;

d. To guide children in their transition to adulthood, including through individualised life projects;\(^1\)

e. To prepare children/ ensure children have access to, and have the opportunity to participate in, procedures and decision-making processes concerning their status and the realisation of their rights, including processes concerning their identity, age and durable solutions; and are provided with support in participating in processes affecting them;\(^\text{13}\)

f. To complement children’s limited legal capacity;

g. To support children in accessing legal assistance and representation in administrative and judicial proceedings.\(^\text{14}\)

h. To report and monitor cases of missing children;

i. To assist competent authorities in family tracing;

j. To manage assets and goods on behalf of the child.

k. To assess whether there are any grounds for additional protection measures to be provided to the child, including the extension of the duration of such measures, and advise the guardianship authority or agency service in this respect.

4.2 The guardian should be authorized to take actions aimed at safeguarding the best interests of the child, in particular to:

a) assess the child’s best interests in all actions in their regard;

b) to initiate the process for the appointment of a lawyer/legal representative for the child, for the purpose of representing the child in relevant legal proceedings, if this is not within the duties of another authority;

c) challenge authorities for failures to safeguard the child’s best interests, in line with clear processes set out in law for this purpose.

4.3 The guardian shall have a duty to the child and measures in place should create an enabling environment for the guardian to develop a relationship of trust with the child. Policies and procedures in place should cover the regularity of personal contacts and visits, and confidentiality rules applicable to communications between them for the duration of their mandate and after. Any disclosures should be set out in legislation and should involve getting

\(^\text{11}\) Note: CAHENF-Safeguards discussed at length the role and duties of the guardian and revised the Guideline 4.1. Experts indicated that they would revisit this principle and the list of duties, in order to ensure that the Guidelines would enable this section to be as clear and operational as possible.

\(^\text{12}\) Recommendation CM/Rec(2007) 9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors.

\(^\text{13}\) UNCRC (Article 12)

\(^\text{14}\) UNCRC (Article 12)
the prior consent of the child, unless the disclosure is necessary in the best interests of the child.

4.4 The guardian shall act as a link between the child and relevant agencies and individuals. Measures in place should authorise the guardian to co-operate and coordinate with other actors as appropriate on issues concerning the child, in particular with carers, the child’s legal representative(s), education professionals, social workers and services, health professionals, reception centre directors, police, law enforcement and judicial authorities, migration authorities, victim support services and community services. Equally, measures in place should require relevant actors to inform the guardian and the child about relevant procedures and decisions, as well as to co-operate and coordinate with the guardian as appropriate on issues concerning the child.

4.5 The guardian shall be involved, in particular, in the identification and implementation of measures regarding: individual child’s vulnerabilities identification and assessment, including a continuous assessment of protection risks and needs, best interests assessments, age assessment, guardianship procedures, family tracing procedures, tracing of missing children immigration or asylum procedures, and administrative or judicial proceedings.

4.6 States should ensure that each guardian enjoys the independence and impartiality appropriate to their role, to ensure freedom from undue influence or interference. In particular guardians should not exercise any other responsibility which might lead to any actual or potential conflict of interest in their support, assistance and representation of the child.

Principle 5 – States shall ensure that children are provided with relevant information and advice, and have access to an independent complaint mechanism and remedies to effectively exercise their rights or act upon violations of their rights

5.1 States shall ensure that children are provided with relevant information and advice on their rights and procedures, including on the issues that are relevant for the understanding of his/her situation, on the scope of guardianship arrangements, the role and duties of a guardian as well as of the guardianship authority or service, on the complaint processes and mechanisms, the opportunity to have recourse to either court proceedings or alternatives outside court settings, on decisions or judgments affecting them.

5.2 Such information and advice should be provided to each child in a language that they understand or are reasonably meant to understand, in a manner which is adapted to their age and maturity, which is gender and cultural sensitive, and that authorities verify the understanding by the child of the information provided. Provision of the information to the guardian should not be an alternative to communicating the information to the child.

5.3 States should ensure that effective mechanisms are in place, which allow children to access an independent and effective complaint mechanism in relation to his/her guardian, guardianship arrangements, and/or guardianship authority or agency service. Such mechanisms should be easily accessible, child-friendly and transparent, and accompanied by appropriate safeguards to ensure the protection of confidentiality of the information.

**Note:** Such as with respect to police, migration, social welfare or any services of public authorities providing accommodation, or day to day care, or authorities deciding on the residential status of the child, removal or placement in alternative care. This clarification should be included in a separate document (i.e. Implementation Guide, handbook, etc).

**Note:** Explanatory memorandum to include an explanation of procedures, including migration procedures.
Triggering a complaint should not lead to a disadvantage for the child.  

5.4 States should encourage the use of alternative dispute resolution mechanisms, such as [child protection] mediation, wherever they may best serve the child’s best interests, although these should not be used as an obstacle to the child’s access to justice.  

5.5 States should ensure that every child shall have access to an effective remedy before a competent authority or body against the decision of the complaints mechanism. The competent authority should be impartial and independent, in accordance with the standards and safeguards set forth under the European Convention on Human Rights and the Committee of Ministers’ Guidelines on Child-friendly justice. An effective remedy implies that the child should have access to legal assistance and representation by a qualified lawyer, and interpretation whenever required, proceedings should be child sensitive, accessible, the urgency principle should be applied to provide in a timely manner and be free of charge. The decision should be explained in a child friendly manner, which is adapted to the child’s age and maturity.

Principle 6 - States should designate a competent authority or agency or legal entity with responsibility for the management of guardianship for unaccompanied and separated children in migration, including case management.

6.1 States should designate, on the basis of clear eligibility criteria which prevent any conflict of interest with those of the child, the competent authority or agency with responsibility for the management of guardianship, that is for the recruitment, vetting and training of guardians, for ensuring that adequate child safeguarding policies are embedded into the guardianship system, and for supervision of and responsibility for the guardian for each child.

6.2 The competent authority or agency shall be responsible for setting out relevant procedures and support measures or services for guardians and children, which include providing:
   a) administrative support, advice and assistance measures or services, as well as training and development to enable guardians to meet and maintain the required professional standards and enhance their knowledge and skills in relation to their duties;
   b) standards for conduct of guardians;
   c) harmonised procedures and processes for guardians to report cases of violence, abuse, trafficking or exploitation;
   d) child friendly information materials for unaccompanied and separated children, covering inter alia: information on functions, rights and duties of guardians, accessibility of the guardian, confidentiality of communication principles, individual complaint mechanisms available to the child, on the rights of the child, available assistance and protection measures and service providers, role and duties of other actors, as well as any relevant criminal, administrative and civil proceedings.

6.3 States shall take measures to ensure that guardians are responsible for a reasonable amount of cases, allowing the performance of their duties, taking into account their complexity and the need for the child to have a regular access to the guardian and adequate support.

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17 Note: Include a wide approach to such mechanisms to include court, complaints system, ombudspersons. Text should include examples of grounds for disputes in the explanatory memorandum –i.e. complaints on visits, disagreements on decisions, management of goods.

18 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (17 November 2010).

19 Note: the explanatory memorandum should include a reference to the need to reflect what would constitute a reasonable number.
6.4 States should ensure that monitoring and oversight on a regular basis of the guardians’ exercise of its duties and functions is being undertaken, as well as of the competent authority, agency’s or legal entity discharge of functions.

6.5 Measures in place shall ensure that the competent authority or agency has the necessary operational independence from the management of other responsibilities for the child.\(^\text{20}\)

6.6 The competent authority or agency service shall be responsible for maintaining an individual case file on every child under its care. This file [can] [should] include comprehensively and up to date information on the situation of the child throughout the guardianship period, from the moment of referral until the end of the guardianship period.

6.7 States should ensure that there are record-keeping requirements and measures in place enable to provide where necessary, evidence for any relevant proceedings and complaint processes, and that the confidentiality of these records is in line with international data protection standards.

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**Principle 7 - States should allocate adequate resources to ensure effective guardianship for unaccompanied and separated children in migration, including ensuring guardians are adequately qualified and supported.**

7.1 States should undertake systematic collection of data, with a view to identifying the numbers, needs and provision made in relation to guardianship of unaccompanied and separated children in migration, and provide for a periodic review of guardianship measures to ensure that it responds to changing needs.\(^\text{21}\)

7.2 States should ensure that the competent guardianship authority or agency is provided with adequate financial, human and technical resources.

7.3 States should have in place processes to ensure that the staff of the competent guardianship authority or agency responsible maintain high professional standards, including standards regarding confidentiality, and should be of high integrity and be appropriately skilled.

7.4 States should take measures to ensure that guardians have the necessary qualifications and expertise in child development, the child protection system and services available, as well as competencies [and sensitivity] in cultural and gender issues. Guardians appointed should have sufficient knowledge of the relevant legal framework and specific issues that may arise, such as with respect to migration and asylum procedures, individual risk assessment, restoring family links, identification of durable solutions and other procedures affecting the child.

7.5 States should take measures to ensure that guardians and the guardianship authority or agency, are provided with adequate support to carry out their functions effectively, which may include initial and continuing education and training.

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**Principle 8 - States should, in accordance with their domestic systems, establish mechanisms and take measures to ensure an effective co-operation and coordination between actors exercising responsibilities towards unaccompanied and separated children in migration, and the guardian and/or guardianship authority or agency.**

8.1 States should define the roles and responsibilities of the guardian and of the guardianship authority in relation to other competent authorities and actors with respect to

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\(^{20}\) Note: Explanatory memorandum should clarify the need to dissociate the functions re guardianship from migration functions.

\(^{21}\) Note: the Group raised the question whether emergency situations should be envisaged by the Guidelines under Principle 7
unaccompanied and separated children in migration, in particular of other national and local authorities, welfare services, youth services and organisations, to ensure accountability and transparency.

8.2 States should establish a coordination mechanism, which includes the guardianship authority, so that policies in place ensure that the on-going wellbeing of the child, their best interests and the search and implementation of durable solutions [life projects] remain primary considerations in all matters relating to them and that relevant professionals cooperate and coordinate their actions.

8.3 States should develop protocols, agreements and referral mechanisms to enhance cooperation and coordination on a regular basis between guardians, the guardianship authority and other relevant actors to protect unaccompanied children from the moment of identification until a durable solution is implemented, including in individual case management.

8.4 States should ensure that referral mechanisms address the role of the guardian and of the guardianship authority in cases of disappearance of an unaccompanied or separated child, situations where the child is a victim or is at risk to become a victim of violence, abuse, trafficking or exploitation.

8.5 Processes and channels for co-operation and coordination should be established to ensure that confidentiality is respected, including with respect to information sharing with the child and between the child, the guardian and other actors, having the best interests of the child as primary consideration and taking into account international data protection standards.  

8.6 States should facilitate effective co-operation and coordination between guardians and other actors by providing multi-agency training and tools.

8.7 States should ensure continuous monitoring and evaluation of co-operation and coordination, with the participation of relevant actors.

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22 **Note:** Explanatory memorandum to provide guidance on information that can be shared and how. No obstacles in confidentiality rules to cooperate? Limits of information sharing, not to misuse information, retention of information
Principle 9 - States shall rapidly, constructively and effectively provide the widest range of international co-operation in relation to unaccompanied and separated children in migration, and involve in appropriate ways their guardianship authority or agency and/or guardians [including with a view to restoring family links and assessing family circumstances, establishing durable solutions, and transfer of care and custodial responsibilities, where it is in the best interests of the child and tracing missing children]

9.1 States should take measures to define, as appropriate, the role and responsibilities of the guardian and the guardianship authority or agency service in the context of international co-operation, inter alia for the purpose of family tracing and assessing family circumstances, the transfer of care and custodial responsibilities, establishing a durable solution, prevention of child trafficking, preventing disappearances of children and tracing missing children.

9.2 States should have a legal basis for providing rapidly, constructively and effectively the widest range of international co-operation in relation to unaccompanied and separated children in migration, both spontaneously and upon request, including by taking steps to become party to and implement fully relevant international conventions and instruments.23

9.3 States should have clear channels or mechanisms for transmission and execution of requests for information or other types of assistance with respect to unaccompanied and separated children, clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information sent and received in line with privacy and data protection obligations, which fully take into account the best interests of the child, and involve, as necessary, the guardian, and/or the court and/or guardianship authority.

9.4 To ensure the rights of the child, and the wellbeing and best interests of children where their situation is of concern to several states, or where the child moves to another state while needing a continuation of guardianship arrangements, States should cooperate through the most effective means, including where necessary by negotiating or entering into specific arrangements or agreements, and enable timely co-operation between guardians and guardianship institutions with foreign counterparts.

9.5 States should co-operate and promote the regular sharing of knowledge, experience and good practices with respect to guardianship of unaccompanied and separated children in migration.

Appendix II - Definitions

For the purpose of this Recommendation:

a) a "child" refers to any human being below the age of eighteen years.

b) The term “Unaccompanied children” refers to children 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.

c) The term "Separated children" refers to children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from

23 such as : the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (19 October 1996), other to complete.
other relatives. These may, therefore, include children accompanied by other adult family members.

d) The term “Guardian” refers to a person who is appointed to support and assist unaccompanied and separated children in processes concerning them. The guardian acts independently to complement the limited legal capacity of the child and to ensure that the child’s rights, best interests and well-being are upheld. The guardian acts as a link between the child and the agencies and individuals with responsibilities for them. This operational definition takes into account that the term used, as well as the function and manner of appointment of a guardian, vary from jurisdiction to jurisdiction. Where an institution or organisation is appointed or designated to support, assist and legally represent a child, it shall designate a natural person to carry out the duties of a guardian as set out in these guidelines.

e) The term “Guardianship authority” refers to an authority or agency exercising its responsibility for the management of guardianship for unaccompanied and separated children in migration including case administration and support. This definition takes into account that there are different ways in which the State defines “guardianship” and organises the discharge of guardianship.

f) The term “Durable solution” refers to a sustainable solution which ensures that the child is able to develop into adulthood, in an environment which will meet his or her needs, and safeguards his or her rights as defined by the UNCRC and will not put the child at risk of discrimination, violence, persecution or any other serious harm. Such a solution involves a thorough best interests determination be carried out and that the child's views are taken into account in the development and implementation of the durable solution.

g) “Life Projects”: are an integrated policy tool, available to member states in order to meet the needs of unaccompanied and separated children, in migration and the challenges arising out of their migration, as set out in Recommendation CM/Rec(2007) 9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors. Life projects are based on a joint undertaking between the child and the competent authorities for a limited duration. Depending on its particular objectives, they may be implemented either in the host country, or alternatively in the host country and in the country of origin, or in the country of origin.

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24 Note: Explanatory memorandum to indicate that the proper discharge of guardianship relies on safeguards which secure the ability of guardians and the guardianship authority or agency to fulfil their role and act in the best interests of the child in an independent and impartial way.