

Observations for the Commission Expert Group meeting from the EGN working group on CEAS reforms, dated October 18, 2024

Introduction

This paper has been prepared by the European Guardianship Network (EGN) working group on the CEAS reforms to provide reflections on key issues concerning guardianship in advance of the 11th Meeting of the HOME Informal Expert Group on the Protection of Children in Migration Child-Related Aspects in the Pact: Issues of Legal Interpretation and Implementation Challenge.

Guardianship is one of the key safeguards provided for unaccompanied children under EU law. The CEAS reform contains provisions intended to strengthen guardianship which the EGN welcomes. Whilst the guardianship provisions are somewhat fragmented and not set out in a uniform way across the different instruments, these guardianship provisions should be read together to inform how guardianship should be organised and fulfilled. They should be interpreted and applied in line with fundamental rights, including the EU Charter of Fundamental Rights and international human rights obligations, in particular the UN Convention on the Rights of the Child.

This briefing paper sets out some preliminary observations on the guardianship provision relating to the issues addressed by the Commission's Expert Group meeting (screening, border procedures and reception). It provides some recommendations and reflections on their practical implementation, as well as raising some questions on the regional practical measures that can best support Member States to strengthen guardianship.

EGN Standards

The EGN's work is guided by our seven standards on guardianship:

1. **Non-discrimination:** Children benefit from equal guardianship services within the state's territory, irrespective of the place of residence, their age or their immigration status
2. **Responsibility & Accountability:** Children can depend on guardianship systems which have a clear basis, a responsible authority and monitoring and accountability mechanisms in place
3. **Independence & Impartiality:** Children can depend on their guardian being independent and impartial when taking decisions in their best interests
4. **Child-centred Approach:** Children's rights are respected, protected and fulfilled
5. **Child Participation:** The child's right to be heard is respected, by informing them in a manner they understand about the scope of guardianship arrangements and available services and support, by enabling them to speak out, complain and influence, and by giving due weight to their viewpoint
6. **Quality:** Children are supported and assisted by qualified, continuously trained and well supported guardians who have sufficient time to respond effectively to their needs
7. **Collaboration and Sustainability:** Children can depend on guardianship systems being an integral part of the national child protection system, being allocated sufficient human and financial resources, being effectively monitored and acting as a link between the child and other agencies or individuals who are responsible for taking action in their regard

Terminology

The EGN uses the general term “guardian” to correspond with the term “representative” (under the Reception Conditions Directive, the Asylum and Migration Management Regulation, the Asylum Procedures Regulation, Screening Regulation and Eurodac Regulation) and guardian (under the Qualifications Regulate and the EU Anti - Trafficking Directive). This follows the use of the term in the Communication on the protection of children in migration, the FRA Handbook on Guardianship for children deprived of parental care and the UN Committee on the Rights of the Child General Comment No 6.

Reflection points on guardianship in screening and reception procedures

1. All unaccompanied children are entitled to guardianship, not only those that apply for international protection.

The CEAS provisions provide for guardianship for unaccompanied children seeking international provision. The reform also provides for representation for unaccompanied children who are not seeking international protection under the Eurodac and Screening Regulation. Unaccompanied children who are not seeking asylum but who have been identified as trafficking victims also benefit from a guardian under the EU Trafficking Directive. The EU Return Directive requires independent assistance and support for unaccompanied children under the EU Return Directive, with guidance recommending that this include guardianship.¹

These obligations will need to be reflected in how guardianship is organised, so as to ensure appointment at first encounter of all unaccompanied children, regardless of the status determination procedure into which they fall. This is in line with the EGN Standards, which EGN activities support its Members to fulfil, including through exchange of good practice and contributions to regional discussions.

2. Strengthening guardianship must occur through ensuring swifter appointments of guardians, proportionate caseload, supervision, resources/expertise/training, complaints mechanisms and monitoring

Appointment of guardians: Member States must commit resources and case management system to ensure that unaccompanied children receive guardians as early as possible, and ideally in a manner that ensures continuity and stability of guardianship for a child through all procedures.

Caseload: the RCD provides that guardians should be in charge of a proportionate and limited number of unaccompanied minors and, under normal circumstances, of no more than 30 unaccompanied minors at the same time. We emphasise that what is a proportionate number of children per guardian depends on how guardianship is organised, how individual guardians are resourced, the complexity of individual cases, and what roles guardians play in different procedures. Consequently, States should carefully design a caseload provision, in line with their national guardianship systems, which ensures that the guardian does not have an

¹ See [guidance](#) on respective children’s rights in return policies and practices published by UNICEF, the UN Human Rights Office (OHCHR), the International Organization for Migration (IOM), Save the Children, the Platform for International Cooperation on Undocumented Migrants (PICUM), the European Council for Refugees and Exiles (ECRE) and Child Circle

excessive caseload. It should be noted that a caseload of 30 children per guardian will represent a disproportionate number in some systems.

Supervisory authority: the CEAS provides that the role of a supervisory authority includes vetting the criminal records of a guardian and ensuring a complaints mechanism is in place. We recommend that a supervisory authority also ensure proper case management systems are in place and that guardians receive adequate support services to undertake their roles effectively. The supervisory authority might take the form of an independent guardianship service that can ensure appointment of appropriate, suitable and individual guardians and support guardians in their work.

Resources, competence and continuous training: the new EU asylum and migration provisions are more complex and therefore need more knowledge and competence on the part of guardians and more collaboration with other agencies). What national processes are envisaged to ensure that regional resources made available to Member States will be adapted to national contexts?

Complaints mechanisms for children: Might an exchange of practice assist States in establishing appropriate mechanisms? Within the EGN CEAS group, EGN members will begin the process of exchanging on new and emerging procedures in relation to complaints.

New monitoring obligations will need to include indicators that address how guardianship is functioning not only from a quantitative perspective (deadlines met/caseloads met) but also a qualitative perspective, and ideally with input from children (for example, fulfillment of obligations to inform, involvement in procedures, support to children in accessing procedures, responses to complaints)

New contingency planning obligations will need to consider how to upscale guardianship in emergencies. How will contingency plans be triggered in instances of where there are high arrivals only of unaccompanied children and not adults? Should contingency plans operate to seek to ensure that the number of available guardians are increased first under the triggering of a contingency plan, rather than extending the caseload of guardians as is permitted in exceptional circumstances?

3. In the event of the appointment of temporary guardians, the quality, available resources and independence of such representation cannot be compromised.

The CEAS provides for the possible appointment of a provisional or temporary representative to carry out the role as a representative at an initial stage before appointment of a permanent guardian. Their general role is essentially the same as the permanent representative, so that means that they need to be focused on the best interests of the child and providing them with information, support and assistance. They are at the side of the child at sensitive time as they are often involved in a very delicate stage of the child's situation (capture of biometric data, screening, first reception, age assessment). They may in particular be focused on particular issues which arise at an initial stage:

- Informing the child of their rights and procedures in which they are involved
- Assisting the child in identification issues
- Supporting child in age assessment issues

- Ensuring that the child's immediate needs (for example medical intervention, food and immediate protection) are met
- Being involved in screening procedures, such as vulnerability assessments, including identifying risk of trafficking
- In cases of separated children, the provisional guardian may also be involved in the assessment on the suitability of the person (adult relative, etc.) accompanying the minor, to act as a day-to-day caregiver.
- Getting the child access to legal assistance and representation
- Assisting the child to access reception
- Assisting the child in family tracing and helping restore family links where this is in the best interests of the child
- Assisting the child in navigating questions in the case of transfer to another country (e.g. under relocation)

What does this mean for how temporary guardianship is organised?

- MS should design an appropriate *system* for provisional representatives that can be appointed/nominated quickly and are readily available to act, rather than allowing provisional guardianship to be assigned on an ad hoc basis.
- Should temporary guardians be part of the guardianship service, or can they be part of another organisation or agency? If so, how is their independence and quality ensured? A temporary guardian's first responsibility should be to ensure the best interests of the child, and inform and support them. Any other responsibility they bear should not be capable of producing a conflict of interests.
- Temporary guardians should be accountable, supervised and subject to complaint mechanisms, in the same way as permanent guardians.
- Should there be a 24/7 infodesk on guardianship to support appointments? Should there be a guardianship service presence in particular areas: border entry spots? Should States consider deploying a mobile team of guardians in the territory, where children are first encountered away from the borders?
- Given the need for immediate availability, should a system of provisional guardians anticipate professional temporary guardians as opposed to volunteers?
- On what issues do they need to be sufficiently expert and trained? How is this the same, and how is this different, to other guardians within each national system, given that they are provisional appointments?
- How can they be properly equipped for their task/caseload? How to ensure that they have sufficient resources (eg access to child friendly information on the procedures)?
- Should they be organised to able to take on a different case load than other guardians, in particular if they can specialise on the initial procedural steps only? In all situations, their caseload should be adjusted to prevent excessive burden, while allowing for some flexibility.
- How can a smooth handover be ensured when guardianship is transferred to permanent representative /guardian? Should they be supported by a central case management system? How to ensure proper liaison with guardianship service and guardians?

4. Guardian's involvement in screening:

Identifying a person as an unaccompanied child: we recommend the development of protocols on identifying a child who is in the company of an adult who does not have responsibility for them as an unaccompanied child. The role of guardians in informing and supporting children in these situations may be crucial.

Where age is in doubt: The new CEAS provisions provide new rules on the benefit of the doubt, age assessment procedures and methodologies. In the absence of explicit provisions on this question in the Screening Regulation, we recommend clarifying that, in the cases of doubt during the screening procedure, the individual should be referred to services within the territory for the age assessment process as set out in the APR, whether or not they are applying for international protection. This should be carried out in the first instance by the child protection agency and can be confirmed by the determining authority in the case of children seeking international protection. The age assessment process should not commence before a guardian/representative has been appointed. In the absence of explicit provisions on appeal of age assessment decisions, we recommend that the age assessment provision should be something that can be appealed immediately, as is currently the case in several Member States. Without provision for an immediate appeal, a child who has been wrongly assessed to be an adult, will not benefit from the necessary safeguards in the international protection procedure, may not be eligible for relocation or family tracing and may not benefit from special provisions in reception. This would entail a violation of the right to an effective remedy under the EU Fundamental Rights Charter and international law obligations.

Safeguarding provisions should be in place in relation to the reception of persons in relation to whom authorities have a doubt as to their age. How best to ensure child safeguarding in reception in relation to those who are ultimately found to be adults? Might this be done through a separate reception centre only for young persons whose age is doubted? Once assessed to be a child, they are transferred to reception for UACs?

Security screening: The Screening and Eurodac Regulations must be applied with the utmost care towards children, including when it comes to flagging children and young people as a security risk. This is important for all unaccompanied children, who find themselves in precarious situations and sometimes may find themselves in the company of adults who would wish to exploit or traffick them. Guardians should play a role in ensuring that any assessment of whether a child poses a public security risk should be done with the utmost of care, with proper assistance and support for the child, pursuant to proper information to the child, and conducted by trained professionals, in a child friendly setting. What is foreseen by MS to ensure respect for these conditions? Can the EU agencies be tasked to provide guidance or protocols on how this should be done, working with child protection agencies and relevant stakeholders? What mechanisms will guardians and unaccompanied children have to ensure a proper assessment of the security risk and to appeal against flawed security assessments?

Border procedures: Where a child is deemed to be a security risk, they should immediately be referred into the national child protection system for an assessment of their vulnerability and any potential harm or exploitation that they may have suffered.

5. Role of the guardian across all procedures: An unaccompanied child has a right to the support and assistance of a guardian throughout the process, who will safeguard their best interests. Guardians play a role in ensuring all obligations to children are fulfilled, including those made more explicit under the new CEAS instruments (including the right to information, legal counselling and assistance). There is an increased emphasis on best interests throughout the EU asylum and migration, which demands a robust best interests procedure is put in place, in which guardians should be involved.

Workflow: the CEAS reform explicitly provides that guardians should be involved in a wide range of procedures covered by the EU instruments, from screening to age assessment, family tracing, to access to reception, and to access to and support in procedures. Will the Commission provide guidance addressing the workflow and procedures concerning unaccompanied children, across all of the instruments and taking account of the need to ensure a multidisciplinary, inter-agency approach to addressing the situation of children?

Fulfilling the obligations to children: Guidance from the Commission could helpfully include an overview of resources being developed both by the agencies and other regional stakeholders in relation to children under the Pact. It will also be important to ensure that national systems foresee a process and resources to *adapt* the regional tools in line with the specificities of their national systems, for example, as regards child friendly information and training.

Best Interests Procedure: The Commission Communicational operational checklist notes that Member States should review/develop processes/procedures/SOPs to carry out the assessment of the best interests of the child and ensure it is prioritised in all procedures and reception. The EUAA is preparing to update guidance² on best interests procedure. We recommend that any updated guidance should address best interests procedures *comprehensively*, from identification, to screening, reception, international protection procedures, trafficking procedures, to comprehensive sustainable solutions when implementing the Return Directive, including through the application of national law.

6. Multi-agency collaboration: The guardian is one of a number of actors involved in the responses to the circumstances of the child and needs to be in a position to liaise with others and participate in case management processes.

A guardian is the absolute starting point for support and assistance to unaccompanied children, and should represent the continuous red thread through the life of an unaccompanied child. The role of other actors will connect with that of the guardian. As underlined in the Commission Recommendations on strengthening integrated child protection systems³, States need to put in place a child-centred approach, with actors working together. What practical measures of support are envisaged to help achieve this? In concrete terms, can the EU support inspiration for improved practices by reference to practices in the general child protection and child friendly justice sector?

² [Practical guide on the best interests of the child | European Union Agency for Asylum \(europa.eu\)](#)

³ [Recommendation on developing and strengthening integrated child protection systems in the best interests of the child | European Commission \(europa.eu\)](#)

7. Other procedures

Given the cross-cutting nature of guardianship and its importance as a safeguard, EGN encourages the Commission to ensure that it is properly considered in relevant contact committee discussions on specific instruments. For example, the EU asylum and migration instruments also provides for the close involvement of guardians in cross border procedures, such as relocation and Dublin transfers. This will require careful implementation so as to ensure that this can occur in an effective way, including through facilitating contact between guardians in different countries.

General Recommendations

- Whilst recognising that guardianship is organised differently in different Member States, EGN encourages States to ensure that national ministries responsible for justice, child protection and guardianship provision should be closely involved in the implementation plans. EGN also welcomes the fact that the EU Network on Children's Rights can assist in forging the necessary links between asylum and migration authorities and child protection agencies.
- We recommend that the Commission organize a dedicated meeting to help support States in the plans they identify to strengthen guardianship, early in 2025.
- Tools & training: we welcome the fact that the EUAA and FRA have been tasked to provide additional tools, including and very importantly through the update of the FRA Handbook on Guardianship. We urge EU to ensure these processes are resourced in a way that allows it to be underpinned by appropriate expert consultations with key stakeholders including guardianship organisations, and which will ensure any necessary adaptation of tools to national contexts throughout the implementation period.
- Exchange of good practice & regional projects to develop new practices: The exchange of good practices on implementation of provisions on guardianship within the EGN, alongside regional projects to develop new practices, should be further encouraged and supported by the EU. This includes, for example, practices as regards strengthening cross border cooperation between guardians, and strengthening support and supervisory processes, monitoring and complaints procedures, as well as strengthening processes for scaling up guardianship in emergencies (ensuring both immediate triage of cases of acutely vulnerable children, proper referrals to child protection services and longer term follow up).

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