

HANDBOOK



Children deprived of parental care found in an EU Member State other than their own

A guide to enhance child protection
focusing on victims of trafficking



A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website at fra.europa.eu.

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Luxembourg: Publications Office of the European Union, 2019

Print	ISBN 978-92-9474-603-0	doi:10.2811/165665	TK-03-19-201-EN-C
PDF	ISBN 978-92-9474-604-7	doi:10.2811/759876	TK-03-19-201-EN-N

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Foreword

One in four registered victims of trafficking in human beings in the European Union (EU) is a child. Girls and boys are trafficked for sexual exploitation, including the production of Child Sexual Abuse Material; for forced begging and criminal activities; and more. They are trafficked into and within the EU, and often within their own Member State. Girls are overwhelmingly targeted. Registered EU child victims are twice the number of non-EU child victims.

The EU and its Member States must respect, protect and promote the right of the child “to such protection and care as is necessary for their well-being” as required by Article 24 of the EU Charter of Fundamental Rights. Children remain at the core of the EU’s agenda to address trafficking. EU law establishes special protection for child victims of trafficking regardless of their nationality or status, including a tailored approach to support services, and heightened protection in criminal proceedings. This child-sensitive approach has been developed in a number of policy programmes aiming to better protect and rehabilitate children.

In its 2017 Communication *Stepping up EU action against trafficking in human beings*, the European Commission commits to supporting practitioners and authorities in EU Member States in their crucial joint efforts. Close cooperation at all levels – nationally and transnationally – is key to protecting children’s rights and ensuring assistance and support appropriate to their age and gender, including regarding care, health and education.

Ensuring that all victims are identified and can access appropriate assistance and protection is a priority for the EU, as recognised in the 2017 Communication. But the ultimate goal, of course, is to prevent the crime from happening at all. This requires seeing, acknowledging and speaking about what is often left unspoken. This guidance supports doing so.

Children are particularly vulnerable. However, vulnerabilities alone do not result in trafficking. Trafficking in human beings is fuelled by the high profits it generates and by the demand for the services exacted from the victims. In the EU today, many are using girls and boys like commodities – often in plain sight. A variety of actors profit, both in legal and illegal sectors. Changing this appalling reality must therefore include countering the culture of impunity by bringing perpetrators, exploiters and users/abusers to justice.

The EU Agency for Fundamental Rights developed this guidance in close cooperation with the European Commission, in the framework of the EU Anti-trafficking Coordinator's mandate. The guidance aims to contribute to the vital objectives set out in the 2017 Communication on *Stepping up EU action against trafficking in human beings*, in line with the commitments of the *2018 EU Agencies' Joint Statement of commitment to address trafficking in human beings*, signed by ten EU agencies. Working together to eradicate this crime and ensure the realisation of victims' rights remain our key responsibilities. We owe this to the victims.

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for Fundamental Rights

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How to use this guide

The European Union Agency for Fundamental Rights (FRA) developed this guide in cooperation with the European Commission's Office of the EU Anti-trafficking Coordinator. It implements an action set forth in the December 2017 Communication on stepping up EU action against trafficking in human beings and building on the Joint Statement to address trafficking in human beings, signed by ten EU agencies in 2018.

FRA mapped EU Member State practices and discussed the results with a group of experts. These discussions led to the identification of key areas that would benefit from a more structured set of guidelines. Based on the recommendations suggested by the experts, FRA then developed the main elements of the guide below. A second experts' meeting in November 2018 hosted by Eurojust in The Hague, assessed its quality. The experts included judges, prosecutors and representatives of Central Authorities under the Brussels IIa Regulation, as well as stakeholders from civil society, international organisations, Eurojust, Europol and the European Commission. Further contributions were taken into account throughout the process, including in the context of a targeted request to the EU Civil Society Platform and ePlatform against trafficking in human beings, and from stakeholders working in the field of the rights of the child.

The guide targets professionals who may come into direct contact with children who are deprived of parental care and found in need of protection in a European Union (EU) Member State other than their own, including child victims of trafficking. Typically, these children have EU Member State nationality and therefore enjoy the right to free movement within the European Union.

Professionals who may benefit from this guide include law-enforcement authorities, social workers, health professionals, child protection officers, guardians, judges, lawyers, civil society organisations working on child protection, consular staff or staff of the Central Authorities appointed under the Brussels IIa Regulation (Council Regulation (EC) No 2201/2003), as well as others who may come into contact with child victims of trafficking. This guide will also support relevant actors working on laws, procedures and protocols and/or developing cooperation frameworks within a Member State, or between different EU Member States.

This guide takes into account tasks and responsibilities of a whole range of actors. It suggests how to enhance cooperation within an EU Member State as well as across different EU Member States. It also identifies support that relevant EU agencies can provide.

This guide is divided into two parts. The introduction explains the scope and purpose of the guide.

- **Part 1** sets out the relevant legal framework that governs the protection of children who are deprived of parental care and/or are found in need of protection in an EU Member State other than their own, including child victims of trafficking. It lists the four core child protection principles flowing from the United Nations Convention on the Rights of the Child. It underlines that measures taken to protect children covered by this guide must be an integral part of the national child protection system. Part 1 provides general guidance that frames the actions listed in Part 2.
- **Part 2** contains the core substance of this guide. The 10 actions in Part 2 offer practical suggestions to respond to the protection needs of such children from the moment they are identified to the implementation and monitoring of a durable solution.

The guide provides a number of text boxes with the following:

-  **Quotes:** includes quotes from legal or policy documents.
-  **If you want to know more:** includes materials or research for further reading.
-  **Practical tools:** includes practical resources such as handbooks, checklists or similar.

You can find further resources in the annexes, including references, literature, contacts lists and an overview of responsibilities of different bodies and individuals at Member-State level.

Key terminology

Child: a child is ‘any person below 18 years of age’.

Source: Article 2(6) of the [EU Anti-Trafficking Directive \(2011/36/EU\)](#); see also Article 1 of the [United Nations Convention on the Rights of the Child](#).

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

Source: Article 13(2) of the [EU Anti-Trafficking Directive \(2011/36/EU\)](#).

Victim of trafficking: a ‘victim of trafficking’ is a person who has been subject to trafficking in human beings as defined in Article 2 of the [EU Anti-Trafficking Directive \(2011/36/EU\)](#).

Trafficking: the [EU Anti-Trafficking Directive \(2011/36/EU\)](#) defines ‘trafficking’ as ‘the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’.

Exploitation: ‘Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs’.

When such conduct ‘involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used’.

Source: Article 2 of the [EU Anti-Trafficking Directive \(2011/36/EU\)](#).

Registered victims of trafficking in human beings: includes identified victims as well as presumed victims of trafficking in human beings.

‘Identified victims’ means persons who have been formally identified as a victim of trafficking in human beings by the relevant formal authority in a Member State.

‘Presumed’ or ‘potential’ victims of trafficking in human beings means persons that meet the criteria of Directive 2011/36/EU but who have not been formally identified by the relevant formal authority as victims of trafficking in human beings or who have declined to be formally or legally identified as trafficked.

Source: [European Commission, Data collection on trafficking in human beings in the EU, 2018, page 13](#).

Child in need of protection: ‘a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.’

Source: Article 20(1) of the [Convention on the Rights of the Child](#).

Child deprived of parental care: a child not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.

Source: [UN Guidelines for the Alternative Care of Children](#), paragraph 29.

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

Source: [UN Committee on the Rights of the Child, General Comment No 6](#), paragraph 33.

Durable solution: A comprehensive, secure and sustainable solution is one that, to the greatest extent possible, caters to the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should aim to ensure that the child is able to develop into adulthood, in an environment that will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child.

Source: [UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families](#) and [UN Committee on the Rights of the Child, Joint General Comment No 3 \(2017\) and No 22 \(2017\) on the General Principles Regarding the Human Rights of Children in the context of International Migration](#), paragraph 32(j).

Central authorities: bodies designated by each EU Member State to support coordination in implementing the Brussels IIa Regulation.

Source: [Brussels IIa Regulation \(EC\) No 2201/2003](#), Articles 53 to 55.

The European Commission’s Office of the EU Anti-trafficking Coordinator has developed a user-friendly compilation of terms in relation to trafficking in human beings. For more information, see ‘[Key terms in a nutshell](#)’.

Scope of the guide

There is no uniform approach across the EU to address cases of children deprived of parental care and found in need of protection in an EU Member State other than their own, including child victims of trafficking. The practical guide aims to help professionals to:

- detect children deprived of parental care who are in need of protection;
- design the necessary protection and support measures;
- assess the best interests of the child;
- implement a durable solution.

The reader needs to consider the specific needs of children deriving from, among other aspects, their age, gender and background when taking decisions on their protection and care. It addresses child trafficking using a gender-specific and child-sensitive approach, taking into account the consequences of the specific form of exploitation victims have been subjected to.

Children covered

The guide concerns children who fulfil **all of the three conditions** listed in Figure 1.

Figure 1: Which children does the guide cover?



Notes: EU = European Union; EEA = European Economic Area; CH = Switzerland.

Source: FRA, 2019

Children in an EU Member State other than their own

The guide relates to children who are in **an EU Member State other than their own**. In most cases, such children would hold the nationality of one of the EU Member States. Sometimes, they may hold a regular residence permit in one of the EU Member States.

Children may be trafficked within an EU Member State without crossing any border and many of the principles and actions in this guide are also relevant to these children.

Children in need of protection, including child victims of trafficking

The guide concerns children who are **in need of protection**. This guide intends to support actions to address and prevent child trafficking. To address child trafficking it is necessary to look at the wider context. This guide therefore applies not only to children who have been identified as victims or presumed **victims of trafficking** in human beings. It also applies to those children who are in another EU Member State and who may have been trafficked but have not been identified as such or who are at heightened risk of being trafficked. This guide refers to them as children who 'are in need of protection'.

Children found in an EU Member State other than their own 'are in need of protection' if they lack the conditions for a standard of living adequate for the child's physical, mental, spiritual, moral and social development, as the [Convention on the Rights of the Child](#) requires (Article 27). Children may lack access to health services, be working under inadequate conditions, be missing school, be sexually exploited, forced into begging or into committing petty crime. They may also be homeless or living on the streets.

Children deprived of parental care

The guide focuses on **children deprived of parental care**. There are in principle two different scenarios in which a child may be deprived of his or her family environment: (1) the child is lacking parents, i.e. is an orphan, is abandoned by the parents, is unaccompanied or separated from his or her parents and/or legal guardians in the country where the child is identified; (2) his or her parents are precluded from exercising parental responsibilities as a result of abuse or neglect, for instance if they are involved in the exploitation of the child or in child trafficking.

When children are accompanied by their parents, only parts of this guide are relevant. For example, authorities will need to take measures to identify a child victim, establish the child's identity, hear the child and assess their best interests. Authorities will also need to determine a durable solution, taking into account the role that the parents played in the trafficking, the whereabouts of the parents and any court decision that modifies the custody of the child or limits parental rights.

What this guide is not about

Under Article 2 of the [Convention on the Rights of the Child](#), EU Member States have an obligation to protect children irrespective of their status. [General Comment No 6](#) recalls that '[t]he obligation of states to protect children within their jurisdiction is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children — including asylum-seeking, refugee and migrant children — irrespective of their nationality, immigration status or statelessness'. Although some of the actions and suggestions made in this publication could be used for various categories of children in need of protection, the guide as a whole is not intended for the following categories of children.

Children in conflict with the law

Children who have committed a crime must be treated in accordance with the regular juvenile justice system in that Member State, which will have to respect the safeguards established by the [Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#) (2016/800/EU).

Children who seek asylum or who are in return procedures and who are not nationals of an EU Member State, the European Economic Area or Swiss nationals.

The EU asylum and return *acquis* regulates the protection of unaccompanied children who seek or have been granted international protection, or who are in return procedures. It contains a set of rules and safeguards for the provision of immediate protection and care. When asylum applicants move from one EU Member State to another, the [Dublin Regulation](#) (Regulation (EU) No 604/2013) determines which EU Member State is responsible for assessing their claim and thus, provides them with the necessary protection and care. The protective measures that EU asylum and migration law establish do not normally operate for EU nationals.

IF YOU WANT TO KNOW MORE

Handbook on European law

Together with the European Court of Human Rights (ECtHR), FRA published a handbook on European law relating to asylum, migration and borders. The handbook is for professionals in EU Member States. It presents EU legislation and case-law of the ECtHR and the Court of Justice of the European Union, in an accessible way. One of the handbook's chapters is dedicated to persons with specific needs, which includes unaccompanied children. The handbook is available in 25 languages and there is a special version adapted to Swiss law.

For more information, see the [Handbook on European law relating to asylum, borders and immigration](#), 2014.

Why there is a need for a guide for children who come from within the EU

EU law to protect victims of crime and to prevent and combat trafficking in human beings applies to everyone, regardless of their nationality. There is no uniform approach to address cases of children deprived of parental care and found in need of protection in an EU Member State other than their own, including child victims of trafficking.

The [Communication on reporting on the followup to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions](#) (December 2017) has tasked the European Commission and FRA with the development of 'practical guidance to enhance inter-agency and transnational cooperation aiming to prevent child trafficking of EU children, ensure protection of child victims, find durable solutions and safeguard their rights under EU and international law.'

However, many other EU law measures, which protect children, apply only to persons who are not EU nationals, nationals of a state which forms the European Economic Area or Swiss nationals. There is therefore a gap. The reasons for creating a specific guide on children who come from within the EU are threefold.

1. EU nationals and many holders of resident permits can move freely within the EU

EU nationals enjoy the right to free movement within the EU, pursuant to Article 3(2) of the Treaty on European Union (TEU), Articles 20(2)(a) and 21 and Title IV of the Treaty on the Functioning of the European Union (TFEU), and Article 45 of the Charter of Fundamental Rights of the European Union. EU nationals have a right to move and reside freely within EU Member States, although this is subject to some limitations and conditions laid down in EU law. The geographical area of free movement extends to

Iceland, Liechtenstein, Norway and Switzerland, pursuant to the agreements with the European Economic Area and Switzerland. Under the [Freedom of Movement Directive](#) (2004/38/EC), if EU nationals stay for less than three months in an EU Member State other than their own, they are not subject to any registration requirements. Under Article 21 of the [Convention Implementing the Schengen Agreement](#) (CISA), holders of residence permits issued by one of the EU Member States can also move freely for up to 3 months within the territories of the other EU Member States, which include all EU Member States and Schengen Associated Countries, except Ireland and the United Kingdom. The absence of border controls within the Schengen area and the relaxed registration obligations make it less likely that EU nationals and holders of resident permits issued by an EU Member State will get in contact with authorities. That limits their chances of being identified as victims of trafficking in human beings. Moreover, transferring them to their EU Member State of origin could be swift, in comparison with the procedural safeguards that a return procedure for non-EU nationals entails.

2. Protective measures have mainly been developed under the EU asylum and migration acquis

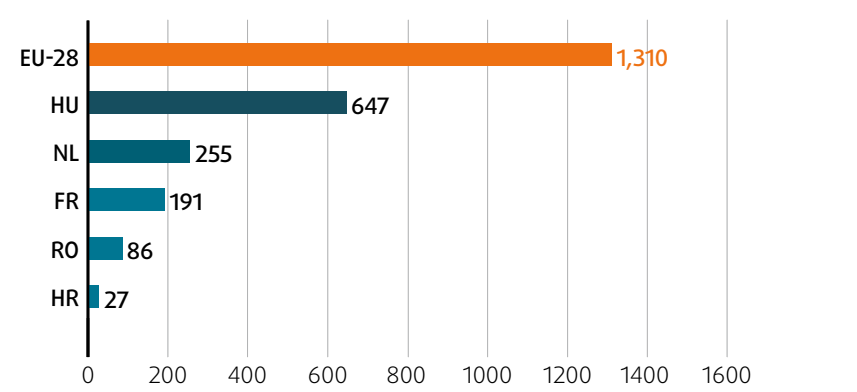
The protective measures established by the EU asylum and migration *acquis* do not normally apply to EU nationals. Under Protocol No 24 to the [Treaty on European Union](#) and the [Treaty on the Functioning of the European Union](#) on asylum for nationals of Member States of the European Union, EU Member States must be regarded as safe countries of origin, meaning that if an EU national submits an application for international protection it must (with some exceptions) be declared inadmissible. The protective measures in Article 10 of the [Return Directive](#) (Directive 2008/115/EC) concerning the return and removal of unaccompanied children apply only to persons who are not nationals of an EU Member State, the European Economic Area or Switzerland; as does the facilitation of complaints under Articles 9 and 13 of the [Employers' Sanctions Directive](#) (Directive 2009/52/EC) for children who have been illegally employed. Several tools developed in the context of children in migration were designed for children who come from outside the EU and are not — or are only to a limited degree — applicable to children who come from within the European Union.

3. Many child victims are trafficked within the EU

Girls and boys continue to be trafficked within the EU. They are trafficked for sexual exploitation including for the production of child sexual abuse material (particularly girls), forced begging, forced criminal activities and for other purposes.

According to the European Commission’s [Second report on the progress made in the fight against trafficking in human beings](#) (2018) and the 2018 [Data collection on trafficking in human beings in the EU](#) (Table 3.8.8), of all victims registered in the EU in the years 2015-2016, 23 % were children. Out of 2 206 registered child victims, 1 310 were EU nationals – over 84 % of them, girls. The top five EU nationalities of child registered victims were Hungary (647), the Netherlands (255), France (191), Romania (86) and Croatia (27) ([Figure 2](#)). These data concern those in contact with authorities and other organisations. There are reasons to believe that many victims remain undetected.

Figure 2: Number of registered child victims of human trafficking in 2015-2016, top five EU Member States



Source: [European Commission, 2018 \[Data collection on trafficking in human beings in the EU, Table 3.8.8\]](#)

While the Commission has no available statistical data on victims of trafficking based on ethnic background, reports from EU Member States highlighted the heightened vulnerability of people from Roma communities, especially women and children with traffickers exploiting kinship. As reported by Europol, the European Union Law Enforcement Agency, in its situation report on [Criminal networks involved in the trafficking and exploitation of under-age victims in the EU](#) (2018), children from Roma communities are particularly vulnerable. The [European Commission’s study on high-risk groups for trafficking](#) in human beings mentions an increased prevalence of child marriages, while victims and perpetrators are predominantly from some groups within the Roma community. The [Group of Experts on Action Against Trafficking in Human Beings](#) (GRETA) which monitors the implementation of the Council of Europe

Convention on Action against Trafficking in Human beings also reports cases of trafficking of Roma girls for forced marriage.

Risks of quick transfers to the child's country of habitual residence

EU Member States tend to follow one of the following three approaches when they encounter children who are presumed to come from within the EU, are without their parents and are considered to be in need of protection:

1. A majority of EU Member States implement *ad hoc* solutions for each individual case, mainly resulting in a quick and routine transfer of the child back to the EU Member State of nationality or habitual residence, after initial contact with the consular offices.
2. Some EU Member States implement more structural solutions based on the cooperation framework of the [Brussels IIa Regulation](#) (Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility) with a more in-depth assessment of the situation. EU Member States however, consider this mechanism to be too slow.
3. Some EU Member States have used bilateral agreements between two EU Member States to ensure cooperation in the transfer of the child.

The practice of most EU Member States – to quickly transfer the child to the EU Member State of habitual residence – is based on the consideration that, in principle, all EU Member States are safe. This practice is also generally anchored in the right of the child to live with the parents, unless this would be contrary to the best interests of the child, according to Article 9 of the [Convention on the Rights of the Child](#).

Notwithstanding the importance of the right of a child to live with their parents, authorities first have to make sure that it is safe for the child to return to the family environment. To ensure measures are sustainable, and aiming to find durable solutions, all actions must be undertaken following an individual assessment of the specific circumstances of the child, including the circumstances that resulted in the child being found deprived of parental care and in need of protection. An assessment of the family is also needed to evaluate if return would at all be appropriate in cases where the family may have been responsible for the situation, for example, having 'offered' the child to the trafficker, having physically, psychologically or sexually abused the child, or having thrown the child out of the family home.

In cases of intra-EU trafficking, Europol underlines that often the family plays an active role in the exploitation of their children. Whereas in some cases the children are trafficked alone, in other cases the parents are together with them, either as victims of trafficking or as perpetrators.



Child trafficking within the EU: involvement of the parents

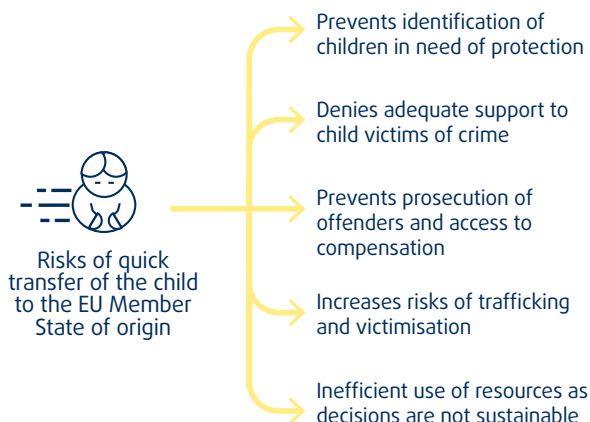
‘One of the most serious aspects of this phenomenon is the role of the family. Europol receives regular intelligence contributions which detail children who are sold to criminal networks by their parents, as criminals take advantage of families’ poverty. In other cases parents themselves are engaged in trafficking and exploiting their own children.’

Europol situation report: Criminal networks involved in the trafficking and exploitation of under-age victims in the European Union, 2018, p. 8.

An automatic and quick transfer without an adequate assessment of the situation results in other risks, as shown in [Figure 3](#). For example, children could be placed where they were abused or trafficked from, with the risk of becoming victims again. A quick transfer could also undermine the collection of evidence of a trafficking crime, thus preventing the prosecution of the offender(s), or deprive the child of the appropriate assistance and protection.

To ensure measures are sustainable, and aiming to find durable solutions, all actions must be undertaken following an individual assessment of the specific circumstances of the child, including the circumstances which resulted in the child being found deprived of parental care and/or in need of protection.

Figure 3: Possible risks of routine transfer of children to the EU Member State of origin



Source: FRA, 2019

Authorities should prevent situations in which children who were returned to their home EU Member State fall victim to trafficking again — (either by being trafficked back to the EU Member State they were found in or to a different EU Member State), thereby finding themselves in need of protection once more. Sustainable measures also ensure EU Member States' efficient use of public human and financial resources.

This guide focuses on assessing the best interests of the child at an early stage and is intended to support action that is more appropriate for the child and more sustainable.

→ *Annex 2 provides a non-exhaustive list of reports with information on children who are victims of trafficking in human beings or who are otherwise exploited by criminal groups.*

Part 1: Legal and child protection framework

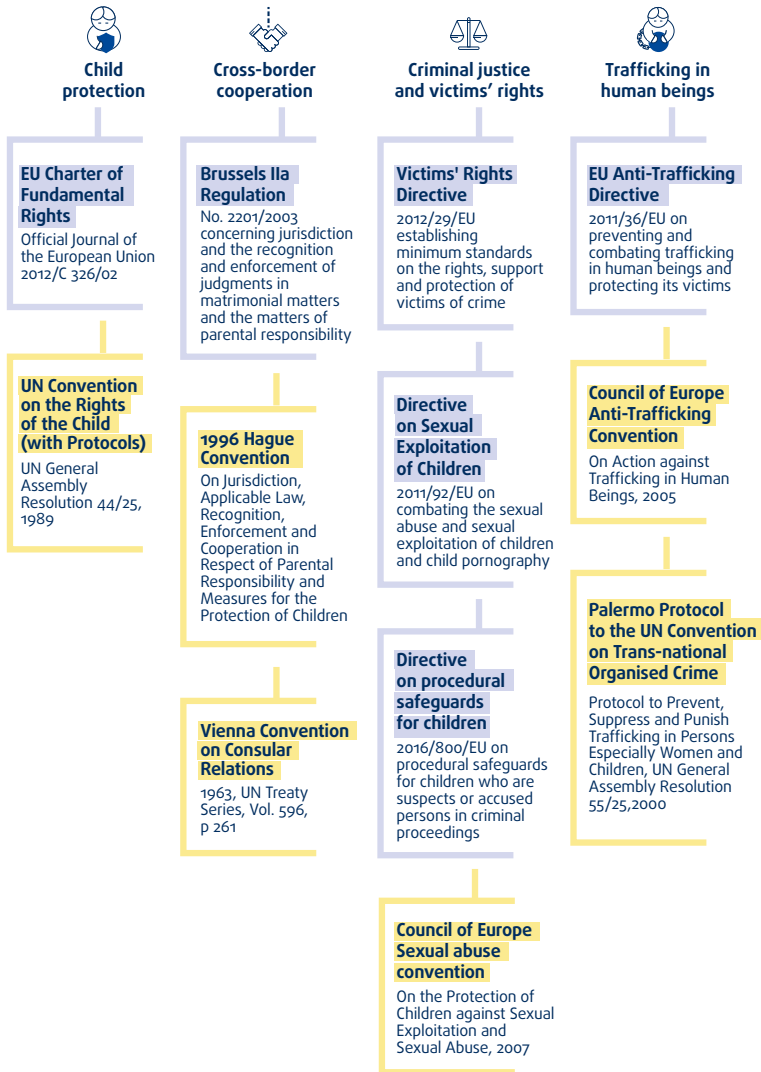


Part 1 sets out the relevant legal framework and the child protection principles on which this guide is based. Several international and European instruments deal with the protection of children who are deprived of parental care and found in need of protection in an EU Member State other than their own. The four child protection principles enshrined in the United Nations [Convention on the Rights of the Child](#) should guide the reader when implementing the actions suggested in Part 2. Actions taken to support a child must be part of a national integrated child protection system.

1.1. Legal framework

This section briefly presents the most important legal instruments that frame the advice given in this guide. In addition to general child protection provisions, different areas of law apply to the protection of children in cross-border cases. These can be grouped into three categories: instruments to promote cross-border cooperation; instruments for the protection of victims of crime; and anti-trafficking instruments. These are illustrated in [Figure 4](#).

Figure 4: Relevant instruments



Notes: EU law instruments in blue. The Brussels IIa Regulation is under revision with a new text possibly expected in 2019.

Source: FRA, 2019

→ For a complete list of relevant binding and non-binding instruments see [Annex 1: Legal references](#).

1. General child protection instruments

The two over-arching documents that contain general child protection rules are the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of the Child.

- The [EU Charter of Fundamental Rights](#) states in Article 24 the right of children to such protection and care as is necessary for their well-being, and the right to express their views freely. Such views should be taken into consideration in accordance with their age and maturity (Article 24(1)); the right to have their best interests taken as a primary consideration in all actions relating to them (Article 24(2)); and the right to maintain on a regular basis a personal relationship and direct contact with both parents (Article 24(3)). Article 5(3) prohibits trafficking in human beings.
- The [Convention on the Rights of the Child](#), which all EU Member States ratified, guarantees a wide range of civil, cultural, economic, political and social rights specific to children. The convention establishes the obligation of EU Member States to protect children from violence, abuse, neglect, maltreatment or exploitation, including sexual abuse (Article 19). Article 20 warrants special protection and assistance for children temporarily or permanently deprived of their family environment. The convention also provides for protection from exploitation, including sexual exploitation (Articles 34 to 36) and for the obligation to promote the physical and psychological recovery and social reintegration of a child victim of exploitation, abuse or neglect (Article 39). These rights apply to each child in the jurisdiction of contracting states. The [Optional Protocol on the sale of children, child prostitution and child pornography](#) provides further definitions and protection measures.

IF YOU WANT TO KNOW MORE

UN guidance on unaccompanied children

The United Nations Committee on the Rights of the Child, the supervisory body established by the Convention on the Rights of the Child, has guidance on the treatment of unaccompanied children in General Comment No 6. It addresses their specific needs, such as initial assessment, appointment of guardian, family reunification, durable solutions and measures to prevent re-trafficking. Although not legally binding, the committee's general comments provide guidance on interpreting the provisions of the convention.

For more information, see [General Comment No 6 on the treatment of unaccompanied and separated children outside their country of origin, 2005](#).

2. Instruments to promote cross-border cooperation

The [Brussels IIa Regulation](#) (Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility) establishes a common judicial area within the EU. The regulation applies to all ‘civil matters concerning the attribution, exercise, delegation, restriction or termination of parental responsibility’ (Article 1(b)). According to Recital 5, the regulation covers all decisions on parental responsibility, including measures for the protection of the child. The regulation thus covers issues such as rights of custody, guardianship, protection of a child in relation to property, placement and foster care. The Court of Justice of the European Union (CJEU) interpreted ‘civil matters’ as including measures which, from the point of view of the law of a Member State, fall under public law, such as a decision to place a child into care outside their original home (C-435/06, paragraph 27). The regulation is not limited to decisions issued by courts, but applies to any decision pronounced by an authority having jurisdiction in matters falling under the regulation, such as social and child protection authorities.

Pursuant to Article 2(3), the regulation applies to all EU Member States except Denmark. It requires that all decisions issued by competent authorities within the EU be recognised and enforced under a common set of rules. This regulation therefore plays a core role in the protection of children within the EU when there is an element that involves more than one Member State.

According to Article 1(3)(g) and Recital 10, the [Brussels IIa Regulation](#) does not apply to measures taken as a result of criminal offences committed by children. The CJEU underlined that the regulation does not apply to ‘measures of detention of a child imposed as punishment for the commission of a criminal offence’ but does apply to a cross-border placement of a child in a centre where the child is deprived of liberty for a therapeutic or educational purpose (see CJEU, C-92/12 PPU, paragraphs 65-66).

All EU Member States are parties to the [1996 Hague Convention](#) on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (1996 Hague Convention).

In the EU, the [Brussels IIa Regulation](#) takes precedence over the [1996 Hague Convention](#) if the child concerned is habitually resident in the territory of an EU Member State and the case concerns a matter covered by the regulation. Conversely, if it cannot be established that a child has his or her habitual residence in an EU Member State but is present in the territory of an EU Member State, it follows that

the 1996 Hague Convention is applicable. The regulation always takes precedence regarding the recognition and enforcement of judgments from other EU Member States (Article 61 of the regulation).

The main difference between the [Brussels IIa Regulation](#) and the [1996 Hague Convention](#) is that Brussels IIa does not include rules on applicable law, while the 1996 Hague Convention does. Thus, when there are doubts about which law applies the convention will apply (Articles 15 to 22).

A review process of the [Brussels IIa Regulation](#) was initiated in 2016 and will be completed by summer 2019. The updated text will strengthen some of the provisions referred to in this practical guide.

Finally, the [Vienna Convention on Consular Relations](#) requires States' Parties to provide support through their consular posts to children from that State who are located in another State. For example, it obliges them to provide legal and other assistance to a child who is detained for committing an offence (Article 36(c)) or to safeguard the interests of the child, particularly regarding guardianship (Article 5).

3. Instruments in the field of criminal justice and victims' protection

When criminal proceedings start, a number of protection mechanisms apply to all victims of crime, including children, thanks to the [Victims' Rights Directive](#) (Directive 2012/29/EU). In addition, Articles 22 and 24 contain specific guarantees for children during criminal proceedings.

The [Sexual Exploitation of Children Directive](#) (Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography) establishes a number of safeguards and protection measures for child victims of sexual abuse or sexual exploitation. In addition, the directive provides definitions of different types of sexual offences and establishes punishments, aggravating circumstances and preventative measures.

All EU Member States except Ireland have ratified the [Council of Europe Convention for the protection of children against sexual exploitation and sexual abuse](#) (Lanzarote Convention).



Online child sexual exploitation as the most disturbing aspect of cybercrime

‘Online child sexual exploitation (CSE) continues to be the most disturbing aspect of cybercrime. Whereas child sexual abuse existed before the advent of the internet, the online dimension of this crime has enabled offenders to interact with each other online and obtain Child Sexual Exploitation Material (CSEM) in volumes that were unimaginable ten years ago. The growing number of increasingly younger children with access to internet-enabled devices and social media enables offenders to reach out to children in ways that are simply impossible in an offline environment. This trend has considerable implications for the *modi operandi* in the online sexual exploitation of children.’

Europol (2018), Internet Organised Crime Threat Assessment (IOCTA), Chapter 5.

In addition, the [Directive on procedural safeguards for children](#) provides a number of procedural safeguards for children who are suspects or accused persons in criminal proceedings. It aims to ensure that they are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration. The EU Member States must incorporate the directive into national law by June 2019.

4. Instruments protecting victims of trafficking in human beings

The [EU Anti-Trafficking Directive](#) (Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims) is the main EU law instrument that protects victims of trafficking in human beings.

Victims of trafficking in human beings are holders of rights. They have rights before, during and after criminal proceedings and their right to assistance and support is not subordinate to their participation in them. Victims are entitled to information, accommodation, material assistance, medical and psychological support, legal aid and protection during criminal proceedings. Some victims may have special protection needs, in view of specific circumstances, including pregnancy, health, a disability, a mental or psychological disorder or a serious form of psychological, physical or sexual violence a victim may have suffered. Article 11(7) of the [EU Anti-Trafficking Directive](#) and Article 22 of the Victims’ Directive require Member States to consider them on the basis of an individual assessment.

The EU legal and policy framework to address trafficking in human beings is gender specific and child-sensitive, acknowledging that is crucial to ensure that the age,

gender and particular needs of child victims are taken into consideration, including regarding care, health and education for child victims of trafficking.

Articles 13-16 of the [EU Anti-Trafficking Directive](#) establishes additional protection measures for child victims of trafficking, including the presumption of childhood, guardianship for unaccompanied children, a tailored approach to support services and a heightened protection in criminal proceedings. In applying the directive, the child's best interests must be a primary consideration, in accordance with the [Charter of Fundamental Rights of the EU](#) and the [Convention on the Rights of the Child](#).

Specific rules on residence permits for victims of trafficking in human beings who cooperate with the authorities are laid down in [Council Directive 2004/81/EC](#).



Child trafficking: remaining gaps in transposing EU law

"This overview shows that substantial efforts have been taken by the Member States to transpose [the EU Anti-Trafficking Directive]. Nevertheless, there still remains significant room for improvement in particular as regards: specific child protection measures, presumption of childhood and child age assessment, the protection before and during criminal proceedings, access to unconditional assistance, compensation, non-punishment, assistance and support to the family member of a child victim as well as prevention."

European Commission (2016), Report assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23(1), p. 17.

Further instruments at international and regional levels are also relevant: the [UN Convention against Transnational Organised Crime](#) and its [Palermo Protocol](#) to 'Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children', and the [Council of Europe Convention on Action against Trafficking in Human Beings](#). All EU Member States have ratified both instruments.



An easy-to-read guide on the rights of victims of trafficking

The European Commission has published 'The EU rights of victims of trafficking' in all official EU languages, which provides a practical and comprehensive overview of the rights of victims of trafficking, based on the Charter of Fundamental Rights of the European Union, EU legislation and case-law of the European Court of Human Rights.

For more information, see European Commission (2013), 'The EU rights of victims of trafficking'.

1.2. Child rights principles

The [Convention on the Rights of the Child](#) establishes four core principles to guide States’ Parties in implementing and interpreting the rights enshrined in the convention. These include:

- the duty to safeguard the child’s best interests as a primary consideration in all decisions and actions concerning the child;
- the obligation to give due weight to the child’s views based on their age, maturity and developing capacities;
- the rights of the child to life, survival and development; and
- non-discrimination.

Table 1 shows how these principles are reflected in the relevant international and EU instruments.

Table 1: Child rights principles in international and EU instruments

Instrument	Principle			
	Best interests	Right to be heard	Right to life and development	Non-discrimination
International instruments				
Convention on the Rights of the Child	Article 3	Article 12	Article 6	Article 2
Council of Europe Anti-Trafficking Convention	Article 10, 14, 16, 28	—	—	Article 3
Council of Europe– Lanzarote Convention	Preamble, Article 14(3), 30(1), 31(1)	Article 9(1), 31(1)(c), Article 35(1), Article 36(2)	—	Article 2
Hague Convention on child protection	Preamble, Article 8, 9	Article 23(2)(b)	—	—
EU instruments				
EU Charter of Fundamental Rights	Article 24(2)	Article 24(1)	Article 2	Article 21

EU Anti-Trafficking Directive	Recital 8, Article 13	Article 14	—	—
Victims' Rights Directive	Recital 14, Article 1(2)	Recitals 41, 42, Article 10	Recital 66	Recitals 9, 66
Sexual exploitation of children Directive	Recitals 2, 6, 30; Article 18	-	—	—
Brussels IIa Regulation	Recital 12, Articles 12, 15, 23	Recital 19, Articles 11(2), 23(b)(d), 41(2)(c), 42(2)(a)	—	Article 59

Note: — = not applicable.

Source: FRA, 2019

These four principles must guide the reader in implementing the 10 actions set out in Part 2. Actions 3 and 5 of Part 2 explain how the best interests principle and the duty to give due weight to the child's views should be applied. The right to life and development requires the States' Parties to ensure — to the maximum extent possible — the survival and development of the child. Here, 'development' is understood to include the child's physical, mental, spiritual, moral, psychological and social development. The principle of non-discrimination obliges States to respect the rights set forth in the [Convention on the Rights of the Child](#) and ensure these rights to each child within their jurisdiction, with no discrimination of any kind. Protection services should be provided irrespective of any status of the child or of the parents/legal guardians, including their national, ethnic or social origin.

1.3. Integrated child protection systems

Article 19(1) of the [Convention on the Rights of the Child](#) obliges States' Parties to protect children from all forms of violence, abuse or exploitation, including sexual abuse, through legislative, administrative, social and educational measures.

The convention also establishes in Article 19(2) that such protective measures should include social programmes to provide support to children, as well as for other forms of prevention, and for identification, reporting, referral, investigation, treatment and judicial involvement. A holistic child protection system requires the provision of comprehensive and integrated measures across all those identified in Article 19(2), according to the Committee on the Rights of the Child, [General Comment No 13](#).

An integrated child protection system places the child at the centre. It ensures that all essential individuals, organisations and systems — education, health, welfare, justice, civil society, community, family — work in concert to protect the child.

The European Commission has defined [10 principles for integrated child protection systems](#) to guide the reform of child protection systems in the EU Member States. The 10 principles are the following:

1. Every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection.
2. No child is discriminated against.
3. Child protection systems include prevention measures.
4. Families are supported in their role as primary caregiver.
5. Societies are aware and supportive of the child's right to freedom from all forms of violence.
6. Child protection systems ensure adequate care, as per international standards: [UN Guidelines for the alternative care of children](#).
7. Child protection systems have transnational and cross-border mechanisms in place.
8. The child has support and protection.
9. Training on identification of risks.
10. There are safe, well-publicised, confidential and accessible reporting mechanisms in place.

Principle 3 concerns prevention. It is extremely important to identify and address the underlying causes that put children and young people at risk. Vulnerability factors may be individual, economic, societal or cultural. Vulnerability may thus depend on the personal circumstances of the child, the family context, the economic situation and the demand for a certain type of exploitation. Child protection authorities should address all of these risk factors in prevention measure; as should other national and local authorities responsible for education, health, integration, employment, etc.

Children are a particularly vulnerable group to trafficking in human beings, although it is not such vulnerability alone that puts children at risk. Trafficking in human beings is a highly profitable form of organised crime, driven by the demand that fosters exploitation. Traffickers take advantages of opportunities, including legislative loopholes and of all vulnerabilities — both structural and contextual — targeting women and children, the Roma community and people with disabilities, among others.

IF YOU WANT TO KNOW MORE

The Group of Experts on Action Against Trafficking in Human Beings (GRETA) reported that Roma are highly vulnerable to trafficking due to structural forms of ethnic and gender discrimination, poverty and social exclusion, which result in low educational achievement, high levels of unemployment, domestic violence and difficult living conditions that affect predominantly women and children. Unregistered children being at higher risk of being trafficked.

For more information see GRETA (2018), 'Trafficking in children' Thematic chapter from the 6th general report, on the [Council of Europe's website](#).

Strengthening the family who is struggling to take care of their children is a mode of prevention. This is especially important when the family itself could be involved in the trafficking or exploitation of their children, when the family asks the child to leave and help with money, or when children leave the family home to escape from violence. Children coming out of each of these contexts could be targeted by traffickers and are vulnerable to their promises. A comprehensive set of measures to prevent abuse or exploitation could entail, for example, general social work interventions, parenting classes, in-home support, social benefits, employment schemes for adults and young people as well as education for families regarding the extend of trafficking risks children face when separated from their families or seeking work/education opportunities abroad.

Where measures targeting specific issues or specific groups of children are not part of the overall protection framework, the child protection system becomes fragmented. Children often have several child protection problems, and fragmentation means that they will not receive comprehensive assistance or a comprehensive solution.

IF YOU WANT TO KNOW MORE

Mapping child protection systems

FRA conducted research to map national child protection systems in the 28 EU Member States. The information covers five areas: legislative framework; responsible national authorities; human and financial resources; identification and reporting procedures and procedures for placing children in alternative care; and monitoring systems. The mapping shows that the fragmentation of national legislative frameworks prevents certain groups of children, who face particular challenges from accessing some rights and receiving appropriate and good-quality services: children with disabilities; children belonging to ethnic minorities; children in juvenile justice systems; migrants in an irregular situation; and unaccompanied and separated children. The mapping also showed that only 13 EU Member States have a specific national policy or strategy on child protection.

For more information see FRA, 'Mapping child protection systems in the EU' and 'National policy framework (action plan or strategy)' on [FRA's website](#).

Several EU Member States have established standard operating procedures and protocols to deal with cases of suspected child victims of trafficking. These procedures or protocols help ensure smooth cooperation and a clear distribution of roles and responsibilities within each Member State. At the same time, the specific procedures developed for child victims of trafficking need to be part of the overall national child protection system and not run parallel to it.

Addressing trafficking in human beings should be part of mainstream child protection services. An integrated child protection system still needs issue-based expertise and responses, but they should be placed in the context of the overall system. Such an integrated approach can respond to a variety of situations an individual child can encounter. It responds to the needs of children, including victims of trafficking in human beings, within their country of nationality as well as across borders.



Actions of the European Commission as a follow-up to the EU strategy towards the eradication of trafficking

"The Commission will support the Member States in making comprehensive and accessible protection and help the integration of victims of trafficking, taking account of the specific needs of each gender. It will also monitor and advise on implementing child-sensitive services at national level — including care, health and education for victims of trafficking — taking into consideration the gender, age and particular needs of individual children. Finally, it will promote the implementation of the '[10 EU Principles for Integrated Child Protection Systems](#)'."

European Commission (2017), [Communication on reporting on the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions](#), p. 5.

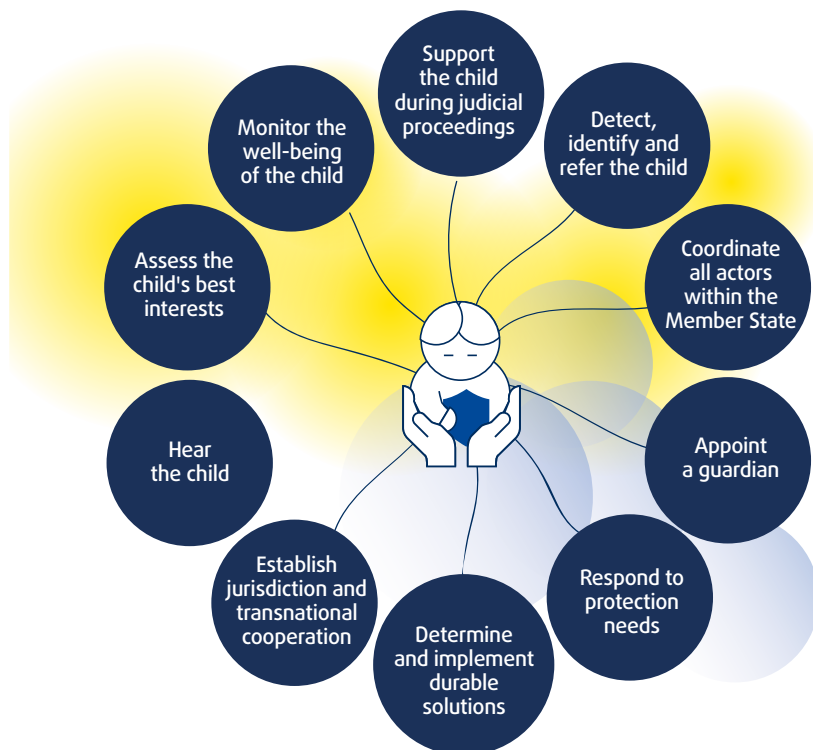
Part 2: 10 necessary actions for protection



Part 2 of this guide describes 10 actions to protect children who are deprived of parental care and who are found in need of protection in an EU Member State other than their own.

Figure 5 shows what actions need to be considered from the moment of identification of a child until a durable solution is found and implemented. There is no strict chronological order for the 10 actions. Some of them are relevant throughout, such as 'hear the child'. Depending on the specific case, the national referral mechanism and different bodies involved at the national or local level, some of the actions may happen in parallel or in a different order.

Figure 5: 10 actions to support children deprived of parental care and in need of protection, including victims of trafficking who are in an EU Member State other than their own



Source: FRA, 2019

To apply the 10 actions, the reader should consider the following four crosscutting requirements.



Prevention: all persons who have contact with children should prevent all forms of violence. Prevention measures are part of the protection measures that Article 19 of the Convention on the Rights of the Child requires State parties to take. Prevention could include actions to reduce risks associated with victim vulnerabilities and the factors that foster them. Prevention of trafficking is multifaceted and must target many organisations and individuals in the trafficking chain. People should be especially attentive to certain groups of vulnerable boys and girls, remaining vigilant as their circumstances develop so as to be able to intervene early. Structural

forms of gender and ethnic discrimination impact particularly on girls and children from the Roma community. Some of these children have suffered abuse, live on the street or live in residential care and institutions. Prevention measures are not only about intervening early enough in individual cases, but also about developing family support mechanisms, social work interventions, employment schemes, alternatives to institutional care and broader policy measures.



Child protection safeguards and vetting: organisations working directly with children need to have a system to prevent any violation of the rights of children by their own staff. These should include measures such as a policy on how to respond to allegations of child abuse, a child-friendly complaint mechanism and checking criminal records for past child abuse convictions before assigning staff to work with children. The [Sexual Exploitation of Children Directive](#) establishes in Article 10 the obligation of EU Member States to take the necessary measures to ensure that a person convicted of sexual offences may be prevented from engaging in professional activities with children. It also provides for Member States to inform each other about criminal convictions or disqualifications to work with children, in accordance with [Council Framework Decision 2009/315/JHA](#). Such checks should not only occur at recruitment; regular reviews should take place. The European Criminal Record Information System (ECRIS) provides the possibility of checking the criminal records of any EU citizen.



IF YOU WANT TO KNOW MORE

Standards for child protection policies in organisations

FRA collected information on child protection systems in the EU-28, including how professionals are certified and accredited and whether or not staff are vetted.

Not all EU Member States have accreditation and licensing procedures for professionals in child protection. When they exist, they do not always include vetting procedures. Most often vetting happens at appointment. Accreditation and licensing procedures do not always involve mandatory training (initial or ongoing) for professionals working with children, including administrative personnel and staff involved in the daily care of children in institutions.

For more information, see FRA (2015), 'Certification and accreditation procedures for professionals'.



Qualification of staff: staff working with children must be qualified and adhere to high professional standards. Staff should receive sufficient and regular training to ensure delivery of high-quality services. Training should cover issues such

as: trafficking in human beings, including its gender specificities; children's rights, with a focus on child participation; the relevant legal and administrative framework; communicating with children; gender and cultural considerations; security concerns; the national referral mechanisms for child trafficking; the role of Central Authorities established under the [Brussels IIa Regulation](#); and how to assess the best interests of the child to determine a durable solution. Some people, such as staff of the Central Authorities, need to liaise with counterparts in another Member State; language training is also useful for them. Joint training events with different professional groups are particularly effective and should therefore be facilitated.



Timeliness: Children need to be supported swiftly. Emergency measures need to be taken without delay. Ensuring the best interests of the child in determining a durable solution will, however, require an adequate individual assessment of the special circumstances of each particular child victim, which should not be rushed. The right balance between timeliness and adequate protection needs to be found. The experiences of each particular child need to be considered, and assistance needs to be adapted to each individual case, taking into account the child's age and gender and the consequences of the specific form of exploitation the child has been subjected to. A child victim of trafficking or a traumatised child who has no adequate family network, may need more time to recover from the traumatic experience and be able to think about his or her future.

Action 1: Detect, identify and refer the child

Detecting the child

The starting point is to have effective mechanisms to detect children who are deprived of parental care and in need of protection, including child victims of trafficking. Detecting children in need of protection efficiently and at an early stage is the first step towards making sure they are treated as rights holders and receive appropriate assistance and protection.

Under Article 19 of the Convention on the Rights of the Child, State parties must take measures to protect children from any form of violence or exploitation, including measures for the identification of instances of child maltreatment. This requires effective mechanisms to detect children who have been subjected to any form of neglect, exploitation or abuse. If not detected at an early stage, child victims will not be able to exercise their rights meaningfully.

Detecting if a child is in need of protection may be challenging. Each child may react differently to the abuse or exploitation: some may show physical signs of abuse; others may suffer behavioural difficulties, experience depression, feel guilty or not show any emotional signs at all. Children often do not realise they are being abused, as they have developed feelings of attachment and do not consider themselves victims. Exploiters or other adults may have told them how to behave to avoid the attention of adults or state officials. Children who are in need of protection, for example as runaways, may not want to get in contact with any authority for fear of being sent home.

Children are one of the most vulnerable groups targeted for trafficking in human beings. Trafficking networks specifically target economically deprived families. Often, trafficked children do not consider themselves exploited, but rather perceive their situation as loyalty to their family.

For victims of trafficking in human beings, Article 11 of the [EU Anti-Trafficking Directive](#) requires Member States to take the necessary measures to establish appropriate mechanisms aimed at the early identification of victims of trafficking in human beings. Article 18 of the directive obliges Member States to promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including frontline police officers.

IF YOU WANT TO KNOW MORE

Research on the identification of victims of trafficking in human beings

According to the European Commission's study on high-risk groups for trafficking in human beings, a major impediment to the identification of child-trafficking cases is that the children have no control over their situation and may be unaware of the extent of that lack of control. In some cases, especially for sexual exploitation, organised crime networks ensure that children are moved frequently within and across countries. The aims are to prevent them from establishing relationships that may lead them to reveal their situation; to maximise profit; and to avoid detection.

See *European Commission (2015), Study on high-risk groups for trafficking in human beings*.

Reports from EU Member States indicated that traffickers shifted to less visible forms of coercion, allowing for a certain degree of possibility for movement, using less evident forms of intimidation, threats. There is a shift towards psychological violence and abuse of victims' dependencies. Member States consider that progress was made in

the identification of victims, not least due to the increased cooperation among different authorities and sectors involved in country but also at a cross-border level.

See European Commission (2018), Staff working document of the Second report on the progress made in the fight against trafficking in human beings.

According to Europol, there are reports of family clans exploiting children in forced criminality and begging. Europol has received information on international investigations concerning family clans of EU nationality who exploit their own children, children of relatives or children given away by their original families. The children were trafficked to commit several types of property crimes and/or forced to beg and sometimes to ask for donations for bogus charities.

See Europol (2018), Child trafficking for exploitation in forced criminal activities and forced begging.

Any person has the responsibility to report any suspicion of abuse of a child to the competent authorities. A wide range of people are likely to come into contact with children deprived of parental care and in need of protection. They should remain vigilant and proactive to detect children in need of protection. These could be, for example, police, judges, lawyers, social workers, NGO staff, doctors, teachers or staff working at border crossing points.

Children in need of protection may be found in many locations: in the street, at a hospital or at border crossings. Professionals should be aware of the key risks.

Professionals getting in touch with children must avoid making assumptions and be alert to possible prejudices on the basis of perceived cultural, religious, national or ethnic background, gender or other characteristics of the children or the accompanying adults.



FRA's guide on unlawful profiling

FRA produced in 2010 – and updated in 2018 – a practical guide for law enforcement officers and border guards providing evidence, based on case studies, of situations where profiling may be useful and where it may be unlawful and/or counterproductive.

For more information, see FRA (2018), Preventing unlawful profiling today and in the future: a guide.

Action 1 looks at detection in two broader settings. The first part covers the more frequent situation when exploited, abused or neglected children are detected within the territory of the Member State. The second part covers detection at internal borders when the child is on the way to another EU Member State. Identification, however,

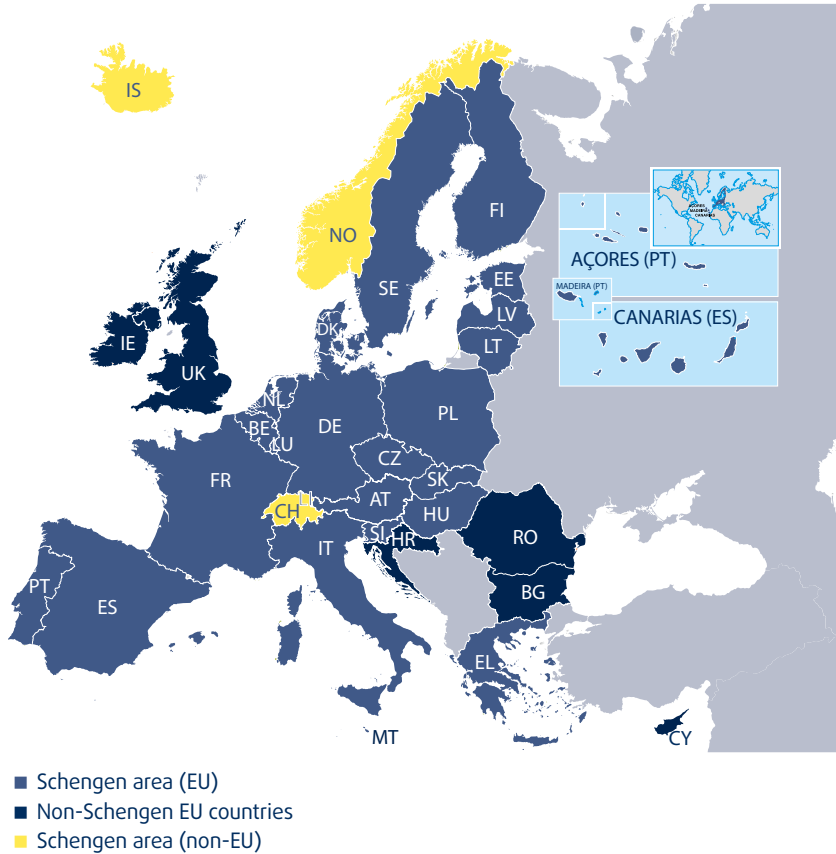
is not a one-step process. Victims often do not come forward at first contact with assistance providers or law enforcement authorities. Identification efforts should not only focus on entry points to the country but also target high-risk sectors.

Detection within the territory of the EU Member State

According to the [Free Movement Directive \(2004/38/EC\)](#), EU citizens have the right to reside in another Member State for up to 3 months. Similarly, holders of residence permits issued by one of the EU Member States can also move freely for up to 3 months within the territories of the other Contracting Parties to the Schengen Agreement, which include all EU Member States and Schengen Associated Countries except for Ireland and the United Kingdom.

The [Schengen area](#) includes all EU Member States except Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom. It also includes Iceland, Liechtenstein, Norway and Switzerland, as shown in [Figure 6](#). Some Member States have established temporary border checks for serious threats. The European Commission regularly publishes an updated list of [Notifications of the Temporary Reintroduction of Border Control](#).

Figure 6: Schengen area, as of March 2019



Source: European Commission, 2019

After 3 months, the host EU Member State may establish certain conditions for residence, related to proof of income (or enrolment in education) and sickness insurance, or being a family member of a person entitled to a residence permit (Article 7 of the [Free Movement Directive](#)). After a stay of 3 months, EU nationals may need to register with national authorities (Article 8). However, in practice, children who are in need of protection, including child victims of trafficking, will most likely remain in the EU Member State without registration.

Once the child is in a Member State other than their own, different professionals and organisations within the state, such as police, social workers, teachers, healthcare workers or civil society need to be proactive to detect if a child is in need of protection.

There are countless situations, individual stories and circumstances. However, existing research points to some overarching examples:

- a child, most often a girl, is sexually exploited on the streets, in brothels, massage parlours or private accommodation;
- a child of compulsory school age lives as a domestic worker in inappropriate working conditions with a non-related family while often not attending school;
- a child shoplifts items such as cosmetics, telephones, USB sticks, GPS systems and other electronic devices, or steals the handbags of customers;
- a child begs for hours on the street, regardless of weather conditions and survives by eating leftover food from restaurants;
- a child grows or sells cannabis or other illegal substances;
- a child lives on the streets, possibly coping with mental health issues or consuming drugs;
- a child loiters in the streets and does not attend school.

Depending on the situation the child is in, some people are more likely than others to notice the child. The sensitivity of those individuals able to identify vulnerable children is key to facilitating early detection and referral of children in need of support.

Detection at the border on entry or exit

In the absence of border controls within the Schengen area, children in need of protection will seldom be detected at borders. Where border controls within the EU still take place – either because the person is travelling from or to a non-Schengen State or because a Schengen State has temporarily reintroduced internal border controls – border checks offer an opportunity to detect children who may be in need of protection.

The [Schengen Information System \(SIS\)](#) Regulation (EU) 2018/1862, provides a valuable tool to identify missing children and to prevent those who are at risk of abduction by a parent, family member or guardian from travelling further. An alert entered in SIS that a child is at risk may support the identification of children at risk of becoming

victims of trafficking, forced marriage, female genital mutilation or other forms of gender-based violence. It also helps protect children from becoming victims of or involved in terrorist offences, including being conscripted or enlisted into armed groups or forced to participate actively in hostilities. For more accurate identification of persons on whom alerts have been inserted in SIS, it is possible to use both alphanumeric and biometric checks increasing the quality of the protection of vulnerable persons. When using the SIS, the best interests of the child must be a primary consideration.

IF YOU WANT TO KNOW MORE

The European Union Agency for the Operational Management of Large-Scale Information Technology Systems (eu-LISA)

eu-LISA, the European Union Agency for the Operational Management of Large-Scale Information Technology Systems in the Area of Freedom, Security and Justice, is the responsible body for the operational management of the largest centralised EU information systems in the area of Justice and Home Affairs. This includes the Schengen Information System as well as several other databases, mainly storing data of non-EU nationals. The information technology systems operated at central level by eu-LISA are a valuable tool for national competent authorities by providing them, in real time, the most accurate information, enhancing the fight against child trafficking. Depending on the purpose, the systems can be used by border guards, law enforcement, visa, migration and asylum authorities, as well as judicial and customs authorities.



For more information, visit [eu-LISA's website](https://eu-lisa.europa.eu).

A wide range of actors may come into contact with children deprived of parental care and in need of protection, including child victims of trafficking, such as airline employees and airport staff, as well as border guards. They should:

- ✓ be familiar with the national administrative requirements for children to leave and enter the country (e.g. parental permission or affidavit);
- ✓ be familiar with up-to-date risk analysis information on trafficking in human beings, including with respect to the gender specificity of the crime, patterns and trends;
- ✓ observe any unusual behaviour, physical or emotional signs in the child or in the accompanying adult(s);
- ✓ pay special attention when an adult who is not the parent accompanies not only one child but a group of children or accompanies different children on different occasions;

- ✓ closely inspect the documents of accompanying adults when they are not the parents or representatives of the child;
- ✓ consult the Schengen Information System (SIS II) to check if the child is reported as missing;
- ✓ redirect the people in question to a second-line check if there are any doubts. This allows for consultations with authorities in the place of origin concerning the accompanying adult and the child. The purpose and tasks of the second-line check should reflect guidance from the [Frontex VEGA Handbook](#);
- ✓ be aware of the international cooperation opportunities, transnational communication tools and channels available to them, including information cross-matching and analysis via Europol;
- ✓ refer to child protection services if nothing is established, but there are still doubts about the well-being of the child. Information about the case should be shared with child protection services in the place of destination to ensure a visit and follow-up. There is, however, a risk that the child will go missing prior to a follow-up or cannot be located by social services. This can for example happen when the individuals in question change address or provide inaccurate contact details.

Under Article 23 of the [Schengen Borders Code](#) (Regulation (EU) 2016/399), EU Member States are entitled to carry out checks within the territory provided these do not amount to border checks. Such random police checks could also facilitate detection of children at risk. Many of the points listed above – such as being familiar with risk analysis information on child trafficking – can also support identification of children at risk during such police checks.



European Commission guidelines for identification

The European Commission has developed guidelines for the identification of victims of trafficking in human beings, especially targeted at consular services and border guards.

For more information, see European Commission (2013), 'Guidelines for the identification of victims of trafficking in human beings'.



Frontex handbook for children in airports (VEGA)

Frontex, the European Border and Coast Guard Agency, has developed a handbook with guidelines for border guards for the protection of children at airports. The VEGA handbook contains practical tips, such as what to pay attention to at border crossings, possible questions to use with children, checks at first and second lines, and referral. The Agency is developing a similar handbook for land and sea borders.

For more information, see European Border and Coast Guard Agency (2015), [Vega handbook: Children at airports](#), [Children at risk on the move](#), guidelines for border guards.



European Commission study on high-risk groups for trafficking in human beings

The European Commission's report includes a section on 'Groups of children most at risk of THB: a typology based on risk profiles'.

For more information, see European Commission (2015), 'Study on high-risk groups for trafficking in human beings'.

A child travelling alone or with an adult who is not the child's parent or legal guardian will need a valid passport or identity document card and some extra official document, as established by national legislation. This official document is signed by their parents or legal guardian, in some cases by a notary, and authorises the child to travel outside the EU Member State where the child resides. There are no common EU-wide rules on this matter and each EU Member State decides whether or not the child requires such documents and which ones. Some Member States require a proof of parents' consent for the child to leave the country alone or with another adult who is not a parent (affidavit). By itself, however, this is not enough to prevent child trafficking.



Standardised consent travel form

The Guide to Good Practice Part III on Preventive Measures of the Hague Conference on private international law invites States to consider the adoption of a standardised consent travel form that will prove that consent has been given, where necessary, prior to allowing a child to leave a jurisdiction (see under Section 1.2.2 of the Guide). The use of a model consent travel form can provide clarity and alleviate risks associated with the diversity of forms of consent required by EU Member States. States that wish to develop a domestic model form are invited to consider the information provided under [The Hague Conference's website](#).

For more information, see the Hague Conference on Private International Law, [Guide to Good Practice](#) under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part III, Preventive Measures, 2005.

Establishing identity

Once the authorities consider that a child is in need of protection, their first contact with the child will focus on establishing the child's identity. The principle of the best interests of the child laid down in Article 3 of the [Convention on the Rights of the Child](#) and in the relevant EU law instruments (see [Table 1](#)) must guide all measures taken to identify and refer the child to the relevant authorities for further action.

This also implies that, during the first contact, authorities should avoid extensive interviews with the child about their circumstances, living conditions and background story. The first contact with the child should be short and limited to identifying the child, establishing basic information, such as the whereabouts of the parents, and collecting the basic information needed to ensure the immediate safety and well-being of the child. Further assessment should be carried out subsequently by child protection services.

During the identification phase, the child should be treated with respect, in an age-appropriate manner, and be provided with interpretation if they do not speak the local language. Authorities should provide child-friendly information on key issues, such as the possibility of asking support from the consular office, why authorities need to establish identity, why fingerprints are processed and what are the next steps to ensure the child's protection.

→ *For more on how to talk to, listen to and inform the child, see also [Action 3: Hear the child](#).*

The police will often be responsible for establishing the identity of the child. Depending on the circumstances, some or all of these actions may be required:

- check documents, if available, such as identity documents or passports, to establish the child's name, nationality, age, etc.;
- take fingerprints (in cases of older children, where allowed by national law) and a picture of the child;
- check national databases to see if the child has previously been in contact with the police, and for what reason;
- consult the Schengen Information System (SIS II), to see if the child is reported missing;
- consult Europol in cases of serious and organised crime, asking for database checks, operational analysis and support for investigations and operations;
- inform the consular office of the child's Member State or of the child's habitual residence.

In cases of trafficking, children may declare themselves to be adults to avoid being more closely monitored and because of the instructions children receive from the traffickers. The child may also be forced to travel on a false adult passport.

If the age remains uncertain, but there are reasons to believe that the person is a child, then according to the [EU Anti-Trafficking Directive](#) (Article 13(2)), the [Sexual Exploitation of Children Directive](#) (Article 18) and the [Directive on procedural safeguards for suspected or accused children](#) (Article 3) as well as the [Council of Europe Anti-Trafficking Convention](#) (Article 10) authorities should presume that the person is a child until the person's age is further assessed. Cases of older adolescents may be challenging.

When under national law a child has to be referred to an age assessment, methodologies should use the least intrusive methods and give the child the right to be heard and the support of a guardian. For an overview of the applicable legislation, necessary safeguards and existing methods for age assessments, see the European Asylum Support Office's (EASO) guide.



EASO guide on age assessment

The European Asylum Support Office (EASO) has developed practical guidance to assess the age of persons who lack documents to prove their age. The guide provides an overview of existing methods, their pros and cons and safeguards that need to be in place. Although the EASO publication was drafted in the context of international protection procedures, the guidance is also relevant for children coming from within the EU.

For more information, see European Asylum Support Office (2018), 'EASO Practical Guide on age assessment'.

Referral

Children deprived of parental care and in need of protection in an EU Member State other than their own should be referred to relevant national authorities responsible for child protection. Together with other relevant authorities, they will have to take immediate measures to ensure safety, shelter and to cover the child's basic needs. The child protection authorities will further assess the case.

If there is certainty or suspicion that the child is a victim of trafficking in human beings, the police will also refer the case to the specialised police unit, the national referral mechanism or those responsible for anti-trafficking services, so that they can formally identify the child as a victim of trafficking.

Action 2: Appoint a guardian

International law and European law recognise the importance of appointing a guardian for children deprived of parental care to safeguard the child's best interests and promote the child's well-being. The numerous references to 'legal guardian' in the Convention on the Rights of the Child indicate that legal guardians are a key element of a protection system for children who are temporarily or permanently deprived of their family environment and cannot have their interests represented by their parents (see also UN Committee on the Rights of the Child, [General Comment No 6](#), paragraph 33).

For child victims of trafficking, EU law specifies the obligation to appoint a guardian or representative in Article 14(2) of the [EU Anti-Trafficking Directive](#) from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child. Article 16(3) extends this obligation to unaccompanied child victims of trafficking. Furthermore, when the child is involved in criminal investigations and proceedings, Article 15 requires the competent authorities to appoint a representative for the child where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.

Similarly, the [Sexual Exploitation of Children Directive](#) in Article 20 requires the competent authorities to appoint a special representative for the child victim where, under national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.

The appointment of a temporary guardian is an emergency measure as regulated by Article 20 of the [Brussels IIa Regulation](#). A decision on temporary guardianship can be taken by the EU Member State where the child is staying, even if jurisdiction lies with another Member State. The temporary guardian's responsibilities will cease when the court with jurisdiction takes over the case and appoints a new guardian or takes other long-term measures.

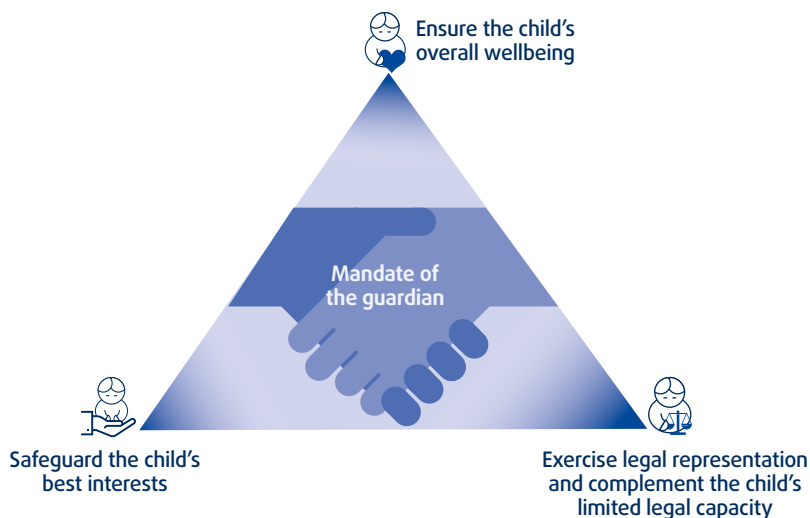
A transfer to the country of habitual residence before a temporary guardian is appointed ignores the importance of a thorough assessment of the child's situation, assessing the family environment and the conditions the child would find there. Quick transfer may result in the child being re-trafficked, or becoming a victim of abuse again. To guarantee the best interests of the child and to prevent future abuses,

authorities will need some time to assess all circumstances. During this period, the appointment of a guardian is of utmost importance. The guardian, as the person of trust, can facilitate a better assessment of the situation of the child and of the family and ensure that decisions taken are durable and in the best interests of the child.

As shown in [Figure 7](#), guardians are responsible for ensuring the child's overall well-being; safeguarding the child's best interests; and exercising legal representation and complementing the child's limited legal capacity. The guardian should be the person with the most comprehensive view of the child's needs. The guardian is in a unique position to connect the various authorities and the child. The guardian can act as link between the child and specialists who provide care and assistance to the child, such as lawyers, health services, school, accommodation facilities, child protection services, police and victim support services.

Guardians also have an important role to play in the cross-border actions of a case. For example, they may help the child re-establish family contact, liaise with the child's parents or extended family in another EU Member State, or accompany the child if they are transferred to another country.

Figure 7: The mandate of the guardian



Source: FRA and European Commission, 2014 [Guardianship for children deprived of parental care, p. 15]

A comprehensive overview of the roles and responsibilities of guardians and the functioning of guardianship systems is in the [guardianship handbook](#) by FRA and the European Commission. The reader is invited to consult the handbook for more details on the roles and responsibilities of the guardians, the management of guardianship systems or the specific tasks of the guardian.



Guardianship handbook for children deprived of parental care: specific needs of child victims of trafficking

FRA and the European Commission published a handbook to strengthen national guardianship systems and ensure that they are better equipped to deal with the specific needs of child victims of trafficking. The handbook provides guidance and recommendations to EU Member States, setting forth the core principles, the design and management of guardianship systems. The handbook is available in all EU languages.

For more information, see FRA (2015), [Guardianship for children deprived of parental care with a particular focus on their role in responding to child trafficking](#).

Action 3: Hear the child

One of the key principles of international and European child protection is the right of the child to express their views freely in all matters that affect them. The child's views must be taken into consideration in accordance with the child's age and maturity, as stipulated in Article 24 of the [Charter](#) and Article 12 of the [Convention on the Rights of the Child](#).

→ *For guidance on how to hear the child in criminal proceedings, see also [Action 8: Support the child during judicial proceedings](#).*

The views of children must be seriously considered in accordance with the maturity of each individual child, the specific situation and the options available in that context. For example, a child's view could have an impact on whether the guardian should be male or female, or on whether or not family reunification is the best option. Consulting and taking seriously the views of the child is not only a legal obligation, but it will also have a positive impact on the process of protecting the child. The child will more easily gain trust in the authorities and be more open to cooperation. This could also prevent cases of absconding and re-trafficking, ensuring that actions taken are sustainable and the use of public resources is effective.

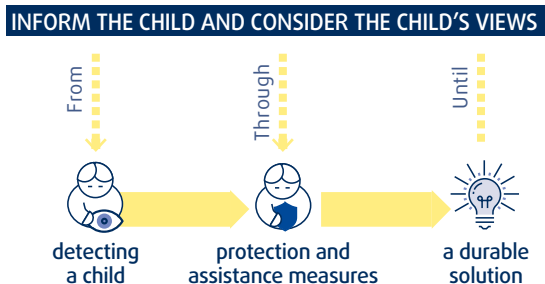
Empowering children through participation

As the experience of violence is inherently disempowering, sensitive measures are needed to ensure that child protection interventions do not further disempower children but rather contribute positively to their recovery and reintegration via carefully facilitated participation. The Committee notes that barriers to participation are faced by particularly marginalised and/or discriminated groups. Addressing these barriers is especially relevant for child protection, as such children are often among those most affected by violence.

See *UN Committee on the Rights of the Child (2011), General Comment No 13, para. 63.*

Informing, listening and considering the views of children is not a one-off exercise at first contact with the child. On the contrary, it must be an essential component of all actions presented in this practical guide, as shown in Figure 8, from the moment a child in need of protection is found until a durable solution has been implemented. Depending on the specific circumstances of the case, children may have a say in relation to safety, care solutions, family reunification, the appointment of the guardian, the best durable solution and many other decisions affecting them.

Figure 8: Informing and considering the views of the child throughout all 10 actions



Source: FRA, 2019

Adequate information

For the child to express their views, they need to receive comprehensive and understandable information on what is happening, the next steps and all available options. Children need to be consulted on their preferred options. The right to information and the right to be heard are very closely related and thus go hand in hand.

Providing appropriate and understandable information is an essential element of listening to a child and building trust. If a child does not have enough information or

understanding of a particular situation, then the child will be limited on how much they can express views, make decisions or even pose questions. Table 2 shows references to the right to information included in selected EU law instruments. It shows that the Victims' Rights Directive has the most detailed provisions.

Table 2: The right to information in relevant EU law

Aspects of the right to information expressly mentioned	Instrument		
	EU Anti-Trafficking Directive	Victims' Rights Directive	Sexual Exploitation of Children Directive
General reference to the right to information	Recitals 19 and 21; Article 11(5)	Article 1	Recital 50
Reimbursement of expenses	—	Recital 23; Article 14	—
Interpretation	Article 11	Recitals 34, 35, 36 and Article 7	—
Means and content of communication with the victim	Article 11(6)	Recitals 26, 27, 29, 31, 32, 33, 40; Articles 4, 6, 11(3)	—
Information to victims with special needs	Article 11	Recital 38; Article 9	—
Making use of simple and accessible language, also taking into consideration the victim's specific needs	—	Recital 21; Articles 3, 7	—

Note: — = not applicable.

Source: FRA, 2019

Children who are better informed are also better able to take part in judicial proceedings. This results in better cooperation with authorities and children having a sense of being respected and taken seriously. Providing sufficient information thus ensures benefits for all parties.

Interpreters

The child may not speak the local language or may have just a very basic knowledge of it. Whenever necessary, to ensure adequate communication, a qualified interpreter, also trained in communicating with children, should be engaged. Interpreters should be independent, known to the authorities and trusted. The interpreter should not be somebody who claims to be a friend or a family member of the child. Using telephone interpretation may be the child's preferred way of receiving interpretation when the

issues discussed are very sensitive. EASO has developed a [new training curriculum module on Interpreting in the asylum context](#) which may be accessed upon request. Although focused on the asylum context, some of the interpreting techniques could be relevant for interpreting interviews with children coming from within the EU.

Checklist for interpreters working with children

- ✓ Be professional, warm and friendly.
- ✓ Do not show emotions, such as disagreement or surprise, no matter how shocking what you hear is.
- ✓ Do not judge the child.
- ✓ Do not control or try to influence the child.
- ✓ Translate exactly what the child says, not adding and not summarising.
- ✓ Do not change what the child says, for example to improve grammar or to add detail.
- ✓ Do not use jargon or specialist terminology, assuming it is understood.
- ✓ Be neutral.
- ✓ Do not ask questions yourself.
- ✓ Keep confidentiality; do not disclose any information about the child or provide their contact details.

A gender perspective

Professionals need to be aware of the possible need to adapt communication in relation to whether the child is a girl or a boy. [Table 3](#) shows how these considerations are reflected in two of the three most relevant EU law instruments.

Table 3: Explicit references to gender in relevant EU law

Considerations	Instrument		
	EU Anti-Trafficking Directive	Victims’ Rights Directive	Sexual Exploitation of Children Directive
Gender	Recitals 3, 12, 25; Article 1	Recitals 9, 17, 56, 57, 61, 64; Articles 9(3)(b), 22(3), 23(2)(d), 26(2)	—

Note: — = not applicable.

Source: FRA, 2019

To adopt a gender perspective, the following considerations are important:

- **Gender of the professionals involved:** the child should be asked whether they prefer to engage with professionals of the same or the opposite gender. This may not always be possible, but serious consideration should be given to available options. Gender considerations are also relevant when hiring staff, so that sufficient male and female staff are available. As a minimum, this should be a major consideration when selecting the guardian — one of the key persons responsible for hearing and communicating with the child.
- **Stereotypes about boys and girls:** both the professionals and the children themselves could have a certain understanding and preconceived notion about the usual behaviour of boys and girls. Gender inequality and structural forms of ethnic and gender discrimination can affect, for example, children's self-perception and expectations, their self-confidence and their body image. All of this can have an impact on how they have handled their experience of exploitation or abuse as well as on how they chose to disclose what happened to them. Their experience could also have a significant impact on how they will recover.
- **Disclosing sexual abuse or exploitation:** girls could find it difficult to admit that they have been sexually abused, as this may be linked with feelings of guilt and shame. Boys may also not disclose sexual abuse, as they may link their abuse to being 'less of a man' or not 'strong enough'.
- **The gender dimension of trafficking in human beings:** women, girls, men and boys are largely trafficked for different forms of exploitation, with women and girls overwhelmingly trafficked for the purpose of sexual exploitation. The harms of this form of exploitation are severe, brutal and with long-term gender-specific physical, gynaecological and mental health impacts. Anti-trafficking measures addressing the specific situation of women and girls need to be aligned with broader strategies combating violence against women.

IF YOU WANT TO KNOW MORE

Gender-specific measures in anti-trafficking

Acknowledging that 95 % of registered victims of trafficking for sexual exploitation in the EU are women or girls, this report analyses the provisions of the EU Anti-Trafficking Directive and the Victims' Rights Directive from a gender perspective. The report provides guidance to Member States on gender-specific measures to better identify, help and support victims of trafficking in human beings.

For more information, see European Institute for Gender Equality (EIGE) (2018), [Gender-specific measures in anti-trafficking actions: report](#).

Child-friendly communication

From the moment a child is identified until a durable solution is found and the case is closed, different professionals will interact and communicate with the child in different capacities. There will be different types of communication and engagement with the child — for example, the daily interaction with the shelter's staff, the first contact with police after identification, a confidential conversation with the guardian, a detailed forensic interview or an in-depth assessment of the child's best interests to determine a durable solution.

Communicating with children, particularly those in need of protection, including child victims of trafficking, requires significant skills. Children may have suffered traumatic experiences, easily mistrust adults or be unwilling to speak at all. Staff working directly with children need to be skilled and regularly trained in how best to communicate with children of different ages, taking their gender and cultural background into account and avoiding any re-traumatisation. They need to understand the physical and psychological impact of stress and trauma on the child. Traumatic experiences can negatively affect a child's behaviour. For instance, a child may be unable to trust adults or authorities, while the way in which the child tells or even remembers their story may be impacted significantly by trauma. Some of these behavioural patterns could easily be misinterpreted as the child giving contradictory statements.

Therefore, staff in these positions must be sufficiently trained and have the necessary skills in order to have a genuine and effective conversation with children who are victims of trafficking, abuse or neglect. Professionals should be trained on: the impact of trauma; how to structure an interview; how to use open, specific and closed questions; how to deal with obstacles in communication; listening skills; and communicating with specific groups such as girls, boys, adolescents, children with disabilities, children from the Roma community or child victims of trafficking, taking into account the gender specificity of the crime and the specific consequences of the form of exploitation they have been subjected to.

When informing and communicating with a child, practitioners should pay attention to the following:

- **The child's views:** the obligation to hear children and consider their views according to age and maturity is not an empty obligation. Professionals need to give serious thought to the child's views. If those views can be taken into account only partly or not at all, then reasoned explanation should be given to the child and documented.

- **The child's agency:** professionals need to look at the child not only as a victim, but also as a person with resources. To move away from the traffickers or even relatives involved in the abuse or exploitation, the child must have the opportunity to be seen as an individual with their own skills and strengths. Services should identify the child's skills, strengths and interests and build upon them.
- **Privacy and confidentiality:** a child who has been exploited or abused may potentially need to raise very sensitive issues. Privacy must therefore be ensured with as few people as possible present. The child needs to understand how the information provided will be used, who will learn about it and what the limits to confidentiality are.
- **Accessibility to the child:** some of the professionals, such as the guardian, should be available and easily accessible to the child. This could be facilitated by providing a phone number or email address, offering meeting times adapted to the schedule of the child (for example outside school hours), and making it possible to contact them at any time if needed.
- **Cultural mediation:** when working with children from another culture or religion, professionals should be trained to gain culturally sensitive competencies, attitudes and skills so as to ensure cross-cultural and non-judgmental communication free of stereotypes. This should include knowledge of the impact of culture on beliefs and behaviour. Staff should also be aware of their own cultural attributes that may influence their own assumptions and conduct. When necessary, professionals could use cultural mediators, i.e. persons from the same cultural background as the child. This would help mutual understanding of cultural contexts and improve communication with the child. A Roma professional mediator would for example be useful when dealing with Roma children.
- **Timing and content of the information:** staff involved should also carefully consider when the best moment would be to provide a child with information. This also includes the ability to judge which issue should be shared when. For example, it may not be effective to explain all procedures at the very beginning, since the child may be overwhelmed and unable to cope with the amount of information. It is also important to keep in mind that information already given to a child at the beginning, may have to be re-explained several times throughout the process. Depending on the emotional state of a child, he or she may not have understood the information or may have forgotten it. Information should therefore also be provided later on in the procedure. A child should also be clearly informed when the case is considered closed.

- **Child-friendly language:** all information must be provided in clear and simple language. Professional jargon should be avoided. Staff should not assume that children will automatically understand specific terms, such as 'guardian', 'legal aid' or 'assessment'. All terms must be explained.
- **Adapting information to different groups:** information must be adapted to different age groups and levels of maturity. For example, the way in which information is presented to a 10-year old should be different from the way in which the same information is communicated to a 16-year old. Older children interviewed for [FRA's research](#) noted that sometimes they feel as if the police or justice officials treat them like small children. This makes them feel undermined or patronised. In addition, professionals should ensure information is adapted to different levels of understanding, since in some cases children may have a psychosocial disability. In such instances specialised staff may be required.
- **Checking understanding:** [FRA's research](#) has shown that authorities often feel that they have informed the children in their care well. However, in reality many children did not understand the information and felt too scared to ask for additional clarification. It is therefore important for staff to make sure that the child has understood all the information. Staff should therefore dedicate enough time to each child and allow as many follow-up questions as required.
- **Child-friendly materials:** written or audiovisual materials in different languages can be very effective when providing information to children.

More than 300 children interviewed for [FRA's research](#) defined professionals with child-friendly behaviour as those who:

- ✓ smile and are friendly, polite, cheerful, empathic and attentive;
- ✓ take children and their situation seriously;
- ✓ frame hearings as conversations between two persons of equal value;
- ✓ adjust their approach and language to the children's age, rather than treating them like adults;
- ✓ speak clearly enough that children can hear them properly;
- ✓ listen carefully;
- ✓ have an informal attitude and create a relaxed atmosphere;
- ✓ engage in small talk to make children feel at ease;
- ✓ are calm and patient and do not raise their voices at children or rush them;
- ✓ question children younger than 10 through play;

- ✓ offer breaks;
- ✓ make food, water and sweets available;
- ✓ avoid wearing uniforms or official wigs and robes;
- ✓ use child-friendly material;
- ✓ have experience and training in working with children;
- ✓ are genuinely interested, engage children and are available and can be contacted at any time during proceedings.



Unicef Let's talk

Unicef has developed a practical guide for effective communication with child victims of abuse and trafficking in human beings. It covers the process of an interview step by step, addressing the purpose, the preparation, the actual interview, the closing, bars to communication and other important aspects.

For more information, see Unicef (2004), 'Let's Talk'.



Listen up! Creating conditions for children to speak and be heard

The Council of the Baltic Sea States has published in 2019 guidance on how to create conditions for children at risk of exploitation and trafficking to speak and be heard by professionals. Children and young people who have had experiences of exploitation and trafficking were consulted during the preparation of the guide.

For more information, see Council of the Baltic Sea States (CBSS) (2019), [Creating conditions for children to speak and be heard](#).



Tools to collect the child's views on the guardian

An EU-funded project developed a number of practical tools. One of these tools is a handy evaluation sheet with which to collect the child's views on the guardian at the end of the guardianship.

For more information, see 'Connect Tools' on the [Connect website](#), 2014.

Action 4: Assess the child's best interests

Ensuring the best interests of the child is paramount in all dealings with children. The best interests of the child is a core child protection principle. It is set out in Article 24 of the Charter and in Article 3 of the [Convention on the Rights of the Child](#) as well as in relevant EU law instruments as shown in [Table 1](#). The best interests of the child need to be assessed on a regular basis. The purpose of a best interests assessment is

to find out the best option for a specific child at every step when decisions affecting the child are taken – for example, when deciding what assistance to give to the child. A best interests assessment is usually not a formal procedure.

Article 16(2) of the [EU Anti-Trafficking Directive](#) stipulates that ‘Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.’ Under Article 14(1), the individual assessment should take ‘due account of the child’s views, needs and concerns with a view to finding a durable solution for the child’. This is a more formal procedure, which must be documented, and is required when authorities need to decide on a durable solution. There is not one single solution which fits all situations. The most appropriate durable solution will depend on the child’s story, the circumstances of the case, the specific type of exploitation and the family context.

The best-interests assessment with a view to finding a durable solution referred to in the EU Anti-Trafficking Directive is also a useful protection measure for children who have not been identified as victims of trafficking in human beings. Implementing *ad hoc* solutions to ensure a quick transfer of children back to the EU Member State of habitual residence, without adequately assessing the personal circumstances of the child, poses a multitude of risks. For example, the authorities could transfer a child before establishing the evidence of a crime, which would deny adequate support for the child victim and prevent the prosecution of the offender(s); or a child could be transferred to the same family environment in which they were abused or trafficked, with the risk of becoming a victim again.

What a best interests determination to identify a durable solution entails

When EU instruments refer to the ‘best interests principle’, they generally do not elaborate further on what elements this should include. There is no single methodology to determine best interests when searching for a durable solution. Various approaches are used in different EU Member States and in different areas of child protection.

This practical guide provides several guiding principles related to the ‘who’, the ‘when’ and the ‘how’ when confronted with cases involving children moving within the EU who are in need of protection, including victims of trafficking in human beings. It closely follows the advice of the Committee on the Rights of the Child.



UN guidance on best interests

The United Nations Committee on the Rights of the Child has developed guidance on the best interests assessment, a useful guidance for national authorities.

For more information, see UN Committee on the Rights of the Child, [General Comment No 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration](#), 29 May 2013, CRC/C/GC/14, Section V, A.

Who?

Transnational cooperation will be essential in gathering all information necessary for determining the best interests of the child. Child protection authorities of two or more EU Member States will, in many cases, need to get involved in determining and deciding on the best interests of the child. These will usually be the authorities of the EU Member State where the child is located and the authorities of the EU Member State of the child's habitual residence (which has, in general, jurisdiction over the case). In some cases, another EU Member State may need to get involved. This would happen if for example the family has moved and the authorities in the new location need to evaluate the family context. Creating all the necessary contacts between authorities in different EU Member States can, in many cases, be done through the Central Authorities established by the [Brussels IIa Regulation](#).

→ See also [Action 7: Establish jurisdiction and transnational cooperation](#).

A best-interests assessment view to finding a durable solution should be generally undertaken by a multidisciplinary team, comprised of trained staff and expertly led by child protection professionals. Authorities need to consider the child as the centre of the process, with the child receiving all the necessary information. Authorities should take specific care of hearing and considering the child's views. Child protection staff should additionally consult with other authorities, such as health, education and law enforcement.

The guardian should play a key role in providing the authorities with his or her views on the case. The guardian is a person of trust, who provides information and facilitates communication with the child whenever necessary. The guardian should be present during all interviews – if the child so wishes.

When?

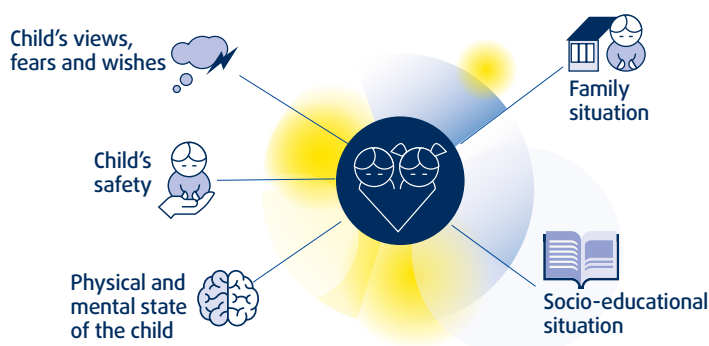
When working with children, it is important to take decisions swiftly and at the appropriate time. Children who are deprived of parental care and in need of protection, including child victims of trafficking may however require some time in order to trust the guardian and child protection authorities. Achieving some level of trust and confidence is key for an effective best interests determination.

On the other hand, there may be cases where the reunification of the child and the family must be the priority. A long process of recovery and building trust would thus not be beneficial. In such a scenario, it is up to the expert judgment of the professional to determine exactly when to initiate the reunification process in each particular case. This must however be done by necessity in close consultation with the child and the guardian.

How?

The process of assessing the best interests of the child, while hearing their views, should not have a traumatic impact on the child. Children do not appreciate repeated interviews on the same issues — especially when these interviews are conducted with different professionals each time. For this reason, the UN Committee on the Rights of the Child concluded in [General Comment No 12](#) that children must not be interviewed more often than is necessary. A professional will need to judge and find the right balance. The best-interests assessment view to finding a durable solution should look at the elements shown in [Figure 9](#).

Figure 9: Elements to consider in a best-interests assessment



Source: FRA, 2019

- **Child's views, fears and wishes:** considering the child's views will not only ensure their right to be heard is respected, but also regardless of which solution is ultimately found, that it is durable and sustainable. For instance, children who are victims of trafficking or in need of protection should be asked on whether or not they wish to return to their family, why they left home, what living options they want and which caregivers they prefer. One could also ask for the child's opinion on whether they are satisfied with their guardian.

→ See also [Action 3: Hear the child](#).

- **Family situation:** this includes determining the whereabouts of the parent(s) or close relatives and assessing their ability and willingness to take care of the child. The assessment should identify whether or not a child has a suitable caregiver (parent, guardian or other adult carer). Such a family assessment should also evaluate whether the family is unable or unwilling, due to financial or emotional reasons, to take care of the child (for example, in cases where the family was involved in exploiting the child), or whether transferring the child may result in rejection because of stigma or reintegration difficulties. When a transfer to the family is not possible, the assessment should also consider the possibility of care by extended family members or foster care. Alternatively, an appropriate government agency in the Member State of the child's habitual residence may be able to provide adequate care and protection for the child.
- **Physical and mental state of the child:** the assessment should look into the health situation of the child and evaluate the impact that the different durable solutions could have on the state and recovery of the child.
- **Socio-educational situation:** this includes living conditions in the EU Member State where the child is located and in the EU Member State of habitual residence. This should also cover, for example, any discrimination in cases of ethnic minorities. The assessment should include issues such as housing conditions, and access to school or occupational training. Depending on the length of stay, it could also include an assessment of the level of the child's integration in the host country.
- **Child's safety:** the assessment should cover security risks for the child and their relatives in the EU Member State(s) where the child and the family are located.



Safe and sound

UNHCR and Unicef have developed a guide to support Member States to ensure the best interests of unaccompanied and separated children in Europe. It provides a practical overview of how to put into practice the best interests principle, from identification to the monitoring of a durable solution. Although developed in the context of unaccompanied children from further afield, the considerations included are also relevant for children who move within the EU.

For more information, see Unicef/UNHCR (2014), 'Safe and sound'.

Action 5: Coordinate all actors within the Member State

Depending on the national context and on the specific case, several bodies will generally be involved in providing the child with the necessary support required to cover their immediate security and protection needs. The overview in [Annex 4](#) shows the most common actors.

Each EU Member State needs to ensure clarity about the role of each body and about the coordination mechanisms between them. Pre-agreed coordination mechanisms should also include clear guidance on coordinating with counterparts in other EU Member States, in particular the EU Member State where the child was previously residing.

→ See also [Action 7: Establish jurisdiction and transnational cooperation](#).

Professionals could consider these coordination tools:

- General coordinating mechanisms which could include, for example, strategies, standard, operating procedures and protocols.
- National referral mechanisms which may contain protocols defining the specific roles and duties of each person or organisation. These protocols should explain the management of the case and could include, for example, guidance on how to ensure information exchange without violating the right to privacy and protection of personal data; the referral steps for each type of case; and the contact point in each organisation, or how to reach them during emergencies or if a child is identified during the night.

- Regular sharing of information on trends, including ensuring the development of prevention measures that are more targeted.
- Joint capacity building and training of different organisations, for example joint training for police and victims' support organisations on identification of child victims.
- Joint tools, for example where different bodies use the same case management system or have regular case management meetings.
- Periodic evaluation of coordination where professionals meet to review, assess and improve current coordination mechanisms.



National referral mechanisms to assist victims of trafficking

The Organisation for Security and Cooperation in Europe (OSCE) has produced a handbook to provide guidance on how to design and implement sustainable mechanisms and structures to combat trafficking in human beings and support victims. It also provides information on different models to ensure cooperation between governmental and non-governmental bodies working in the field of combating trafficking in human beings.

For more information, see Organisation for Security and Cooperation in Europe (OSCE) (2004), [National referral mechanisms – joining efforts to protect the rights of trafficked persons: A practical handbook](#).

Addressing trafficking in human beings should be part of mainstream child protection services, including laws, legislation, policy and guidance. EU Member States should avoid letting trafficking cases run through parallel systems. It is thus important to refer the child to the national child protection system immediately after identification. The police, who are most likely to be the first authority in contact with a child, should make sure the case is referred to all appropriate authorities and agencies, including the child protection system, as early as possible. This would ensure a coordinated and holistic approach. To this end, law enforcement agencies should step up investigations and prosecutions of cases of trafficking in human beings as well as enhance transnational law enforcement and judicial cooperation within the EU and beyond. They should also exchange intelligence on risk profiles with other Member States.

IF YOU WANT TO KNOW MORE

Progress on national referral mechanisms

Many formalised or non-formalised national referral mechanisms have been set up in the Member States. Member States are making efforts to ensure the mechanisms function more smoothly and effectively. They have reported increasing transnational cooperation, including with non-EU countries, international organisations and civil society. Moreover, they acknowledge that cooperation and established networks have reduced the length of procedures, highlighting the support of EU funding.

For more information see, European Commission (2018), [Second progress report on the progress made in the fight against trafficking in human beings](#), p. 9.

A comprehensive approach to trafficking in human beings needs the close cooperation of a wide range of actors at all levels. It encompasses work on many fields, including law enforcement, border management, labour, gender, children's rights, data collection and EU external relations.

→ See information on national rapporteurs in the 28 EU Member States in the website: [EU site on national rapporteurs](#)

Under Article 19 of the [EU Anti-Trafficking Directive](#), Member States have appointed national rapporteurs or equivalent mechanisms. They are mandated with the following tasks: to assess trends in trafficking in human beings; to measure the results of anti-trafficking actions; and to gather statistics and reporting. At EU level, the EU Anti-trafficking Coordinator contributes to a coordinated and consolidated EU response against trafficking in human beings. This entails ensuring close cooperation at EU level, in the context of the [EU Network of national rapporteurs or equivalent mechanisms](#), the [EU Civil Society Platform](#) against trafficking in human beings, and the Coordination network of the EU agencies' contact points in the relevant EU agencies.

This section lists the authorities whose actions must typically be coordinated. It lists for each of these authorities the different tasks they are normally entrusted to fulfil. These tasks are not only limited to the immediate response, but also cover steps that are described in subsequent actions. The organisations, roles and responsibilities listed here are however not exhaustive. The list provides only general guidance which should be adapted to the specific national or local context.

National referral mechanisms should clarify which authority is entrusted with overall coordination, taking into account the role that child protection

authorities, together with the Central Authorities appointed under the [Brussels IIa Regulation](#), can play.

1. Law enforcement authorities

- Carry out an immediate initial assessment of whether or not the child could be in need of protection or even be a victim of trafficking in human beings; further assessment will generally be done by social or child protection services.
- Establish the identity of the child, including by checking relevant large-scale information technology systems they have access to.
- Gather intelligence about the child, the accompanying adults and other circumstances of the case, including from law enforcement agencies in other EU Member States and consider further operational cooperation. Europol provides expertise and support, centralised databases and a channel for communication.
- Conduct risk assessment and establish protection measures when necessary, in consultation with the guardian and child protection services.
- Inform a child who has committed an offence of their right to contact the consular authorities of their country of nationality as laid down in Article 36 of [the Vienna Convention on Consular Relations](#).
- Investigate the criminal offences fully, including identifying if there are potentially other children (or adults) at risk, with a view to preventing and detecting crime and initiating legal proceedings.
- Refer the child to child protection services and inform the specialised police unit for children and victims of trafficking or abuse.
- Initiate operations to locate possible victims. There might also be occasions where law enforcement authorities may have located only the trafficker, and there is evidence, for example through video material or pictures, of the existence of child victims. Law enforcement and judicial authorities will, often in coordination with Eurojust and authorities of other EU Member States, initiate further investigations to locate the victims.

2. Social services and child protection services

- Receive all cases as the first link in the referral chain.
- Open and maintain an individual and confidential case file for each child.

- Detect cases of children in need of protection when following up social cases referred by school or medical authorities, neighbours or others.
- Provide immediate assistance and protection directly or through subcontracted NGOs or other organisations.
- Appoint a temporary guardian or make sure a guardian is appointed.
- Assess the best interests of the child, to determine durable solutions together with the guardian and the court.
- Request a social report from social services in the country of habitual residence through the Central Authorities under the [Brussels IIa Regulation](#).
- Listen to the child and consider their views on a regular basis.
- Inform and consult the child's guardian on all actions and decisions related to the child.
- Refer the child to appropriate assistance and support, including to national referral mechanisms in case of child victims of trafficking.

The child protection services in the country of habitual residence should do the following:

- Trace the family and establish contact, if this is in the best interests of the child.
- Assess the family situation as well as the general situation of the child.
- Prepare a social report for social services where the child is located, which could be transmitted through the Central Authorities under the [Brussels IIa Regulation](#).
- Discuss the temporary measures and the recommended durable solution with the child protection services where the child is located.
- Monitor the well-being of the child if transferred back to the country of habitual residence and report to the central authority and other bodies as necessary.
- Refer to appropriate assistance and support, including national referral mechanisms (NRM) in case of child victims of trafficking.

3. Guardian

- Act as main contact person and link between the child and the different services or individuals around the child.
- Listen to the child and consider their views on a regular basis.
- Act as the child's main person of trust.
- Monitor the well-being of the child and ensure that the child receives appropriate services including free legal advice and legal representation.
- Act as legal representative or coordinate actions if a lawyer has been assigned.
- Support child protection services in assessing the best interests of the child and determining durable solutions.

→ See also [Action 2: Appoint a guardian](#).

4. Consular authorities

- Provide legal and other assistance to a child who is detained for having committed an offence, in line with Article 36(c) of the [Vienna Convention on Consular Relations](#).
- Safeguard the interests of the child, particularly in relation to guardianship, in line with Article 5 of the [Vienna Convention on Consular Relations](#), after they have been informed in accordance with Article 37(b) of that Convention.
- Act as liaison between authorities of both EU Member States, in full coordination with the Central Authorities under the [Brussels IIa Regulation](#).
- Provide contact details for different authorities in the country of (former) habitual residence.
- Check relevant large-scale information technology systems they are entitled to have access to.
- Support the child or the professionals and organisations involved with translation/interpretation or legal services.
- Help search for relatives.
- Obtain official documents and issue travel documents.

- Support the professionals or organisations involved with information on child protection laws in the country of (former) habitual residence.
- Make travel arrangements and advance or cover the costs.

5. Central authority established under the Brussels IIa Regulation

- Act as main central point to coordinate communication between the EU Member State where the child is located and the Member State of the child's habitual residence. In connection with requests made under the regulation, the central authority could coordinate the communication between social services, judges and other professionals across the EU Member States. General functions and tasks are described in Articles 53 to 55 of the [Brussels IIa Regulation](#).
- Transmit requests to social or child protection services for a social report regarding the general situation of the child.
- Act as liaison or facilitate contacts between courts.
- Provide information and assistance to the holders of parental responsibility free of charge, to the extent that this is in the child's best interests and does not place the child at risk of being re-trafficked or exploited.
- Communicate information on national laws and procedures.
- Liaise and coordinate with the guardian of the child as necessary in connection to requests made under the regulation.
- Support the coordination of national organisations involved in a case connected to requests made under the regulation.

6. Judicial authorities

- Inform the consular authorities of the state of the child's nationality if this has not yet happened. Article 37(b) of the [Vienna Convention on Consular Relations](#) requires authorities to inform the consular post of the intention to appoint a guardian to a child.
- Appoint a temporary guardian for the child.
- Establish contact with the court of the EU Member State of the child's habitual residence to decide on jurisdiction. This contact can be established through the Central Authorities under the [Brussels IIa Regulation](#) or through the European Judicial Network and the established Hague network of liaison judges.

- Decide on temporary measures in civil courts.
- Adjudicate on trafficking and other offences in criminal courts.
- Ensure the child has a legal representative and access to legal advice.
- Take evidence as necessary, including if the child has already been transferred to another Member State.

Finally, a number of other organisations could have important roles:

- The [International Organization for Migration \(IOM\)](#) provides various forms of assistance to child victims of trafficking in human beings, such as supporting the transfer of the child, reception at the airport, temporary accommodation in the destination country, medical and psychological counselling, social and legal counselling, and reintegration grants.
- The [International Social Service](#) may facilitate a range of contacts, prepare social reports on the child and family background requested by courts and child welfare authorities, or provide support in the transfer of the child.
- Other civil society organisations may offer foster care programmes or specialised accommodation for children in need of protection. This includes in particular those organisations which provide support to victims. EU law and policy values the important contribution of civil society to the fight against trafficking in human beings. The EU Anti-Trafficking Directive makes explicit reference to the important role played by civil society organisations and requires Member States to work with them.



EU Civil Society Platform against trafficking in human beings

The EU Civil Society Platform against trafficking in human beings was launched in 2013, and currently brings together over 100 NGOs from across the EU and beyond working in the field of trafficking in human beings. It is further complemented by an ePlatform, which includes additional organisations.

For more information, see the [European Commission's website](#).

Action 6: Respond to protection needs

As soon as a child is deprived of parental care and found in need of protection, after a first initial assessment by child protection services and the appointment of a guardian, the child will be entitled to a number of protection services. Such support should cover basic needs such as shelter, as well as more specialised needs such as psychosocial and psychiatric assistance or reproductive services. The support needed will depend on the specific circumstances and experiences of the child as well as the age and gender, while taking into account the consequences of the specific form of neglect or exploitation of abuse to which the child has been subjected.

Article 27 of the [Convention on the Rights of the Child](#) states that ‘States’ Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’. The convention obliges EU Member States to safeguard the child’s well-being and to provide adequate care and support to all children who are deprived of their family environment, including unaccompanied children and, in particular, to those who have suffered abuse (Articles 19 and 20).

More specifically, for victims of trafficking in human beings, Article 11(3) of the [EU Anti-Trafficking Directive](#) obliges EU Member State authorities to take the necessary measures to ensure that victims are provided with assistance and support. Article 11 of the [EU Anti-Trafficking Directive](#) requires EU Member States to respond to special needs of victims, some of which may only become apparent at a later stage. Special needs mentioned are pregnancy, health, disability, mental or psychological disorder and serious forms of psychological, physical or sexual violence suffered. Victims of crime, more generally, must have access to victim support services under Article 8 of the [Victims’ Rights Directive](#). The assistance and support measures envisaged should be offered regardless of the willingness of children to cooperate with the investigation or to lodge a formal complaint.

In some cases, the provision of assistance and support may require that the child be lawfully staying in the host country. Whereas under the [Free Movement Directive](#) EU nationals can move freely to and stay in another EU Member State, they have a duty to register with the authorities of that Member State if they stay for more than three months. To register, they may be required to fulfil certain conditions that Article 7 of the directive stipulates, which they may not be able to meet. For instance, they may not be enrolled in school or have health insurance. As long as a durable solution for the child is not defined and their registration is required to access relevant support services, the responsible authorities in EU Member States should favourably consider extending a child’s right to stay.

In all cases, the child should be informed about the support options and consulted on immediate needs and choices. The [EU Anti-Trafficking Directive](#) (Article 14) and the [Sexual Exploitation of Children Directive](#) (Article 19) set out the duty to take into account the child's views, when deciding on specific child support measures.

The protection of a child deprived of parental care and found in need of protection in an EU Member State other than their own will often entail decisions on emergency placement. This will require the application of the [Brussels IIa Regulation](#). Under Article 20 of the Brussels IIa Regulation, the Member State where the child is located may adopt emergency protective measures, available under its national law, whether or not another EU Member State has jurisdiction over the substance of the matter. Initial emergency measures to ensure immediate needs will require reassessment and adjustment on a regular basis, especially when no proper individual assessment was made initially because of the urgency of the case, or if circumstances have changed.

→ See also [Action 7: Establish jurisdiction and transnational cooperation](#).

Table 4 shows an overview of assistance children found in need of protection, including child victims of trafficking, are entitled to receive according to the [Convention on the Rights of the Child](#) and the EU law instruments in the field of victims and criminal justice.

Table 4: References in international, regional and EU instruments

Instrument	Accommodation	Education	Health-care	Psychological support	Family tracing	Safety	Individual assessment
International and regional Instruments							
Convention on the Rights of the Child	Article 27	Articles 19, 23(3) and (4), 24(2)(e) (f), 28, 29, 32, 33	Articles 17, 23, 24, 25, 39	Articles 23, 39	Article 22 (2)	Article 3, 19	—
Council of Europe Anti-Trafficking Convention	Article 12 (1)(a)	Article 12(1) (f),(4)	Article 12 (1)(b) and (2)		Article 10 (4) (c)	Article 12(2)	Article 12 (7)
Council of Europe Lanzarote Convention		Article 6	Article 14(4)	Article 14 (1, 4)		Articles 5, 14(3), 31(1)(b) (f)	Article 14(1)

Instrument	Accommodation	Education	Health-care	Psychological support	Family tracing	Safety	Individual assessment
EU instruments							
EU Anti-Trafficking Directive	Article 11 (5)	Recitals 6, 22, 25; Articles 14(1),	Recitals 12, 20, 25; Article 11 (7)	Recital 22; Article 11 (5)	—	Recital 18; Article 11 (5)	Recitals 18, 19, 20, 23; Articles 12 (3) and (4), 14, 16
Victims' Rights Directive	Recital 38; Article 9	Recital 62; Article 26(2)	Recitals 9, 56, 64	Recitals 38, 39; Articles 4(1) (a), 9 (1) (c)	—	Recitals 38, 52; Articles 9 (3), 12	Recitals 55, 56, 58, 59, 61; Articles 1, 2(2) (a), 21(1), 22, 23
Sexual Exploitation of Children Directive	—	Recital 34; Article 23	Recital 36	Recitals 31, 37	—	—	Article 19

Note: — = not applicable.

Source: FRA, 2019

Accommodation

Article 27 of the Convention on the Rights of the Child recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. This includes adequate housing.

More specifically, for victims of trafficking in human beings, Article 11(5) of the [EU Anti-Trafficking Directive](#) requires Member States to provide appropriate and safe accommodation. Accommodation should be suited to the child, considering their age and gender, the risks and the child's special needs (such as disability or trauma). Children deprived of parental care must not be accommodated with unrelated adults, even if their experiences may be similar (e.g. girls and women who are victims of sexual exploitation). Types of accommodation could include, for example, foster homes, residential homes or specialised safe shelters.

Safety is an important aspect to evaluate when looking for the most appropriate accommodation. The child may still be under the influence of the person who exploited or trafficked the child, or the perpetrator may want to establish contact with the child. Law enforcement authorities will need to assess the situation and the safety needs of the child. In some cases, a specialised shelter for child victims may be necessary. These shelters are generally situated in undisclosed locations to protect the children from the perpetrator and his network. Such shelters are closely monitored and access is restricted.

Given safety concerns as well as best interests considerations, the child may under exceptional circumstances be housed initially in accommodation that deprives a child of liberty. Protecting the child, or preventing the child from absconding, must however be balanced with other rights of the child, such as the right to liberty. Only in very exceptional cases is it lawful to deprive a child of liberty.

Education

Article 28 of the Convention on the Rights of the Child recognises the right of the child to education. Education should be provided as early as possible in order to facilitate the recovery of the victim and the normalisation of daily life.

For victims of trafficking in human beings, Article 14(3) of the [EU Anti-Trafficking Directive](#) establishes that ‘Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.’

The child, the guardian, child protection authorities and shelter staff should decide together if the child is ready to access certain education activities or the mainstream school system. This will depend on the psychological state of the child, their knowledge of the local language, their previous education and the expected length of stay. EU Member States should however facilitate access to schooling as soon as possible in order to promote recovery, improve the child’s sense of worth and help the child take control of their life and future.

In cases where it is clear that the child will be transferred to the EU Member State of habitual residence within a very short period (e.g. 1 or 2 months), efforts should concentrate on preparing the child’s educational integration in the EU Member State to which the child is being transferred. Such efforts include, for example, the child’s registration in school or vocational training, preparatory work with parents to

facilitate school integration, addressing other practical challenges related to school fees, transport, etc.

Service providers should also promote the child's access to leisure activities, including play and recreational activities appropriate to their age, maturity and interests. This is especially important for those children who are likely to soon be transferred to another Member State. Such activities should be offered within the accommodation facilities, or in the community when appropriate, and should aim to facilitate the child's communication and interactions with peers and the local community. Ensuring the maintenance of such a daily routine would support the recovery of the child.



UN Guidelines on alternative care

The UN General Assembly has adopted Guidelines for the alternative care of children. They provide international principles on prevention of family separation, family reintegration, alternative care models, monitoring and support for aftercare. The guidelines apply to all public and private entities and all persons involved in arrangements for a child needing care while in a country other than his or her country of habitual residence (paragraph 140).

For more information, see United Nations General Assembly, 'Guidelines for the alternative care of children', resolution adopted on 18 December 2009.

Healthcare

Article 24 of the Convention on the Rights of the Child enshrines the right of the child to the enjoyment of the highest attainable standard of health. Authorities should respond to the child's short- and long-term health needs, including physical recovery, psychological or psychiatric assistance in cases of post-traumatic stress disorder.

For victims of trafficking in human beings, Article 11(5) of the [EU Anti-Trafficking Directive](#) requires Member States to provide the necessary medical treatment, including psychological assistance. Article 11(7) also requires attention to victims' special needs, including those deriving from their health, a disability or a mental or psychological disorder.

Psychosocial care is vital for the recovery of children who have suffered any type of abuse. This may particularly be true for children whose parents have played a role in the exploitation or abuse. Other healthcare services, such as detoxification programmes for child drug users, may also be needed as immediate urgent measures

in the EU Member State where the child is found. More long-term measures may additionally be required once the child has settled down.

The psychological needs of children may only become apparent at a later stage, once specialist staff have gained the child's trust and the child is willing to share more information about their experience. Children who experience behavioural difficulties could harm themselves, or become aggressive towards professionals or other children. They could also resist discipline or reject any type of interaction with others. Professionals providing services to children should be trained and able to continue to provide protective assistance to children with these types of behavioural difficulties.

Girls and boys should have access to reproductive health services, as suggested by the Committee on the Rights of the Child in its [General Comment No 15 on the right of the child to the enjoyment of the highest attainable standard of health](#). This should apply especially to those children who are victims of sexual abuse or exploitation in order to prevent or deal with sexually transmitted diseases. For girls who are victims of sexual abuse, access to reproductive health services is essential, especially in cases of pregnancy. Children should be given the opportunity to choose the gender of the health personnel that will assist them.



Study on the gender dimension of trafficking in human beings

The study on the gender dimension of trafficking in human beings highlighted that “trafficking is a serious crime and violation of human rights with particularly horrific long-term implications for its victims. Victims of trafficking for purposes of sexual exploitation experience sexual brutality that causes serious damage to health and well-being. This sexual violence may cause vaginal injuries in women that lead to high rates of sexually transmitted infections and risk of contracting HIV, and high rates of post-traumatic stress disorder, anxiety and depression. Victims live in fear of repercussions to themselves and/or their families if they attempt to escape; moreover, rates of re-trafficking of those who do exit are high”. It further mentions that “The mental health harms caused by the grooming, coercion, threats, isolation, normalised daily violence, substance use and the trauma of being trafficked for the purposes of sexual exploitation are severe and enduring”.

European Commission (2015), Study on the gender dimension of trafficking in human beings.

Family tracing

The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children. The right of the child to family life must be fully protected. Preventing family separation and preserving family unity are important components of every child protection system. According to Article 9(3) of the [Convention on the Rights of the Child](#), in cases of separation, the child has the right to maintain direct contact and personal relations with their parents and family members, except when this is contrary to the child's best interests. The views of the child and of the guardian need to be considered during the process. Authorities should generally ask for the consent of the child to establish contact with the family, in accordance with the child's age and maturity.



Study on high-risk groups for trafficking in human beings

"While the removal of a child from his or her family is undoubtedly an action of last resort, in the cases where the family itself is a dysfunctional environment and is involved in the exploitation of the child, the focus should be on early detection and provision of alternative care solutions."

European Commission (2015), [Study on High Risk Groups for trafficking in human beings](#), p. 85.

The best interests of the child, child participation and timeliness are important principles for family tracing. Before efforts are made to restore contact, authorities should assess the parents' capacity to ensure that the parents will not put the child at risk and that there was no parental involvement in the initial trafficking or abuse of the child. When tracing the family, consideration needs to be given to how much information on the trafficking experience should be shared with the family. Certain information could put the family and the child under threat by the traffickers. Other information, such as on sexual exploitation, could stigmatise the child in the family and in the whole community. Risky situations where the family is under pressure because of a debt to the traffickers should also be carefully considered.

Family tracing is generally the responsibility of social or child protection services, in close cooperation with the guardian. Child protection authorities of different EU Member States will need to cooperate to assess the family situation in cases where the child and the family are in different EU Member States. In cases of children who move within the EU, the Central Authorities established under the [Brussels IIa Regulation](#) would be in a position to facilitate contact and to directly ask the child

protection services of the relevant EU Member State to carry out a report on the social situation of the child. In certain cases, Central Authorities could also be tasked with keeping parents informed of the child's situation, unless this would conflict with the best interests of the child. The child should likewise be kept informed on the efforts to trace their family.

Safety

Article 19 of the Convention on the Rights of the Child obliges States to take measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. Authorities are responsible for ensuring the safety of the child. This includes both creating an environment for recovery and preventing a situation of abuse or exploitation from being repeated.

For victims of trafficking in human beings, Article 11(5) of the [EU Anti-Trafficking Directive](#) and, for victims of crimes in general, Article 9(3) of the [Victims' Rights Directive](#) require authorities to provide safe accommodation. In the context of restorative justice services, Article 12 of the [Victims' Rights Directive](#) provides for measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation.

Law enforcement authorities, together with the guardian and child protection services, should carry out an initial security assessment. Others, such as health professionals and shelter staff, should also be consulted, if necessary. The security assessment should be repeated and updated regularly. Those who are establishing a durable solution will also need a specific risk assessment on the circumstances in the country of habitual residence.

→ See also [Action 9: Determine and implement durable solutions](#).

Checklist: key elements of the risk assessment

- ✓ Inform the child of the purpose of a risk assessment and check the child's understanding.
- ✓ Ensure that the child is heard and their views are given due weight in accordance with their age and maturity and the specific circumstances of the case.
- ✓ Ensure that gender-specific risks are identified, for example, regarding the type of exploitation or abuse suffered.
- ✓ Take additional measures to address the particular vulnerability of girls and boys who may have a disability.
- ✓ Consider additional needs in cases of children who are lesbian, gay, bisexual, transgender or inter-sex.
- ✓ Offer the child the option of expressing their preference about whether the official carrying out the risk assessment should be a man or a woman, especially in cases of sexual abuse or exploitation.
- ✓ Collect intelligence on perpetrators, their associates and the child's network, including accompanying adults, extended family members in the country where the child is located and other children the victim may have been interacting with.
- ✓ Assess the level of security threat and suggest preventative actions accordingly (e.g. in terms of accommodation, access to the child, contact with family members, etc.).
- ✓ Regularly assess the risk of the child absconding and take preventative measures. Establishing a relation of trust and ensuring high-quality care is the best way to prevent children from going missing.
- ✓ Report immediately to the police and other relevant authorities if a child goes missing.
- ✓ Update the security assessment and document any changes or new information that becomes available.



Manual for criminal justice practitioners

The United Nations Office on Drugs and Crime (UNODC) has developed a practical manual to support criminal justice practitioners in the prevention of trafficking in human beings, the protection of its victims, the prosecution of offenders and the international cooperation needed to achieve these goals. The manual contains 14 modules. Module 5 of the manual focuses on the risk assessment and the key questions to be considered when conducting risk assessments.

For more information see UNODC (2009), 'Anti-human trafficking manual for criminal justice practitioners'.

Action 7: Establish jurisdiction and transnational cooperation

States have an obligation to protect all children under their jurisdiction. This requires clarifying which state has jurisdiction to take what kind of measures and when. For this, EU Member States need to cooperate with each other.

Establishing jurisdiction is only one of the purposes which require effective cooperation mechanisms between EU Member States. Police and judicial authorities must cooperate, if transnational crime is to be tackled effectively. Without cooperation between the EU Member State where the child is found and the EU Member State of habitual residence of the child, it will in most cases be difficult to assess the best interests of the child and decide on the most appropriate durable solution.



Child protection systems need transnational cooperation mechanisms

"In view of the increasing prevalence of children in cross-border situations in need of child protection measures, efforts are stepped up by: clarifying roles and responsibilities, keeping abreast of country of origin information, ensuring a national focal point for child protection matters, adopting procedures/guidance/protocols/processes, for example, for the transfer of responsibility within the context of asylum procedures (Dublin Regulation), or when considering out of country care placements, or family tracing and protection in cases of child trafficking."

European Commission (2015), Reflection paper on integrated child protection systems, principle 7.

Professionals can use a number of mechanisms for cooperation between EU Member States, which have been established by law or practice. They are divided into civil and criminal law mechanisms.

Civil law issues, including child protection

According to Article 2 of the [Convention on the Rights of the Child](#), States' parties must respect the rights enshrined therein and ensure them to each child within their jurisdiction without discrimination, irrespective of the child's status.



Children's enjoyment of their rights

"State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory. Therefore, the enjoyment of rights is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children — including asylum-seeking, refugee and migrant children — irrespective of their nationality, immigration status or statelessness."

UN Committee on the Rights of the Child (2005), General Comment No 6 on the treatment of unaccompanied children, para. 12.

This means that every child is entitled to certain immediate protection measures in the EU Member State where they are located, such as shelter, food or medical assistance, until the situation of that child is further assessed and a durable solution is found.

EU law in the field of civil justice — more specifically the [Brussels IIa Regulation](#) — and private international law determine whether the courts of an EU Member State have jurisdiction to take child protection measures in transnational situations involving more than one Member State. The regulation reflects the principles of the [1996 Hague Convention](#), which also provides for rules to determine whether the authorities of a Contracting Party have jurisdiction to take such measures in situations with a cross-border element. The EU Member States must apply the Regulation and not the Convention where the child concerned is habitually resident in an EU Member State.

Rules to establish jurisdiction

Article 8 in the [Brussels IIa Regulation](#) establishes that the courts in the EU Member State where the child is 'habitually resident', have as a general rule jurisdiction to take measures to protect the child. This provision mirrors Article 5 of the [1996 Hague Convention](#) further to which the authorities of the contracting State of the habitual

residence of the child have jurisdiction to take measures of protection in respect of that child. Where the habitual residence of the child cannot be established or the child is a refugee or internationally displaced, the authorities in the Member State where the child is present have jurisdiction to take measures to protect the child (Article 13 of the [Brussels IIa Regulation](#)). A similar ground of jurisdiction, based on the presence of the child on the territory of a contracting State, is found in Article 6 of the [1996 Hague Convention](#). As a result, where the habitual residence of a child cannot be established within the territory of an EU Member State, the [1996 Hague Convention](#) would apply. See [Figure 10](#) on the rules to establish jurisdiction.

Concerning unaccompanied child victims of trafficking in human beings, Article 16(2) of the [EU Anti-Trafficking Directive](#) provides that the Member State which identifies a victim must take the necessary measures with a view to finding a durable solution.

The [Brussels IIa Regulation](#) refers to the jurisdiction of a ‘court’, but this covers any authority having jurisdiction in matters falling under the regulation, such as social and child protection authorities (see Article 2(1) of the [Regulation](#) and the [Practice guide](#) for the application of the [Brussels IIa Regulation](#)).

Figure 10: Rules to establish jurisdiction in child protection cases



Source: FRA, 2019

Exceptionally, Article 15 of the [Brussels IIa Regulation](#) also allows the transfer of jurisdiction to a court better placed to hear the case.

For the transfer to be lawful, the child should have a particular connection with the Member State and the transfer should be in the best interests of the child. A particular connection to an EU Member State exists if:

- the child has acquired habitual residence there after the court of origin was seized; or
- the other Member State is the former habitual residence of the child; or
- it is the place of the child’s nationality; or

- it is the habitual residence of a holder of parental responsibility; or
- the child owns property in the other Member State and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.



Promoting transnational cooperation among judges

“Article 15 states that the courts shall cooperate, either directly or through the Central Authorities, for the purpose of the transfer. It may be particularly useful for the judges concerned to communicate to assess whether in the specific case the requirements for a transfer are fulfilled, in particular if it would be in the best interests of the child. If the two judges speak and/or understand a common language, they should not hesitate to contact each other directly by telephone or email. Other forms of modern technology may be useful, such as conference calls. If there are language problems, the judges may rely, so far as resources allow, on interpreters. The Central Authorities will also be able to assist the judges.”

European Commission (2016), [Practice guide for the application of the Brussels IIa Regulation](#), p. 36.

In some cases, court proceedings are initiated about the same child in different EU Member States. Here, Article 19(2) of the [Brussels IIa Regulation](#) stipulates that, if both proceedings are about the same subject matter, in principle the court first seized deals with the case. The court second seized has to stay its proceedings and wait for the other court to decide if it has jurisdiction. If the first court considers itself competent, the second court must decline jurisdiction.

How to determine habitual residence

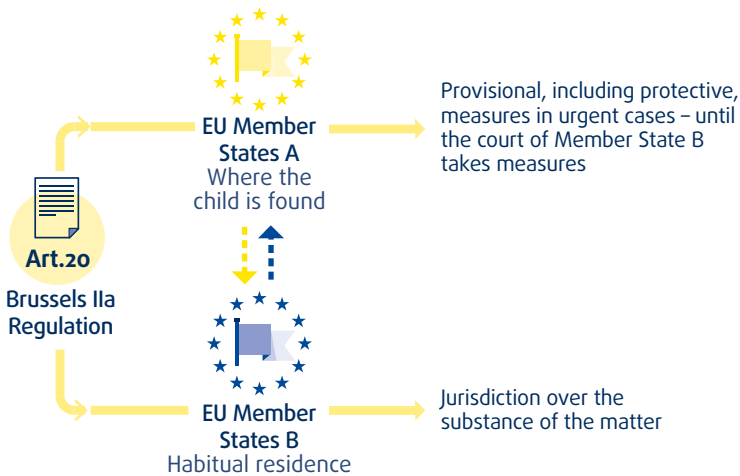
The term ‘habitual residence’ is not defined by the [Brussels IIa Regulation](#) and it must be established on the basis of all the circumstances specific to each individual case. There could be clear cases where the habitual residence is established as the place where the child was residing before moving.

There may, however, be cases where establishing habitual residence is not so straightforward. For example, a child who originates from one EU Member State may have been living in another EU Member State for some time, but without being integrated into any social, educational and other structures of that State, or the child may have lived in several EU Member States in parallel over the last years, meandering back and forth.

Provisional protective measures

Article 20 of the [Brussels IIa Regulation](#) allows an EU Member State to take provisional, including protective, measures in respect of a person, even if the jurisdiction on the substance of the matter lies with another EU Member State. In this way, EU Member States are allowed to take first emergency measures to protect a child. These measures are temporary and their effect is limited to the Member State where they were taken. The authorities of the state where the child is present should communicate with the authorities of the state of habitual residence to determine the most appropriate long-term arrangements for the child. [Figure 11](#) shows the relations between the two EU Member States. Provisional measures should be in the interest of maintaining the child's welfare and protection and uphold the child's best interests.

Figure 11: Provisional measures according to Article 20 of the Brussels IIa Regulation

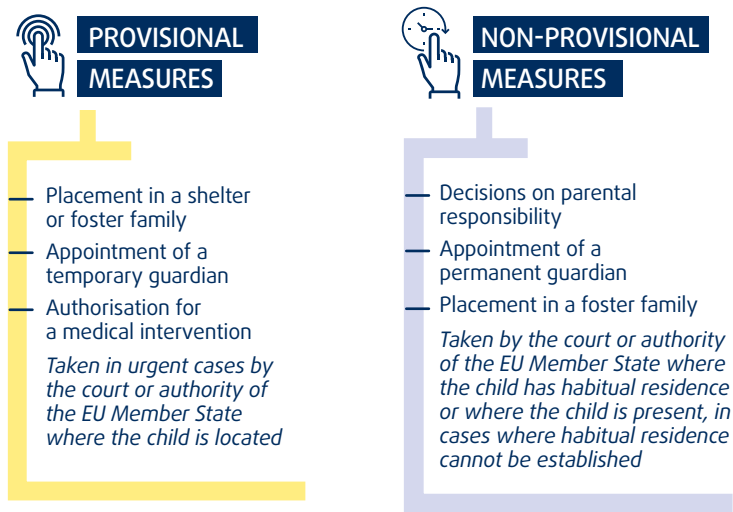


Source: FRA, 2019

There must be a clear distinction between provisional measures in an urgent case (which are taken by the country where the child is located) and non-provisional measures (which should be taken in accordance with the general rule by the country of the child's habitual residence). It has to be determined thus which country has jurisdiction over the case.

Figure 12 provides illustrative examples showing the difference between provisional measures and non-provisional measures. Examples of provisional protection measures include the appointment of a temporary guardian or placement with a foster family.

Figure 12: Illustrative examples of provisional and non-provisional measures



Source: FRA, 2019

When authorities of the EU Member State where the child is located and the EU Member State where the child has habitual residence consider issues of jurisdiction and long-term protection for the child, the best interests of the child must be given primary consideration. To prevent cases of re-victimisation or re-trafficking, priority should be given to the safest and most protective environment for the child.

Central authorities established under the Brussels IIa Regulation

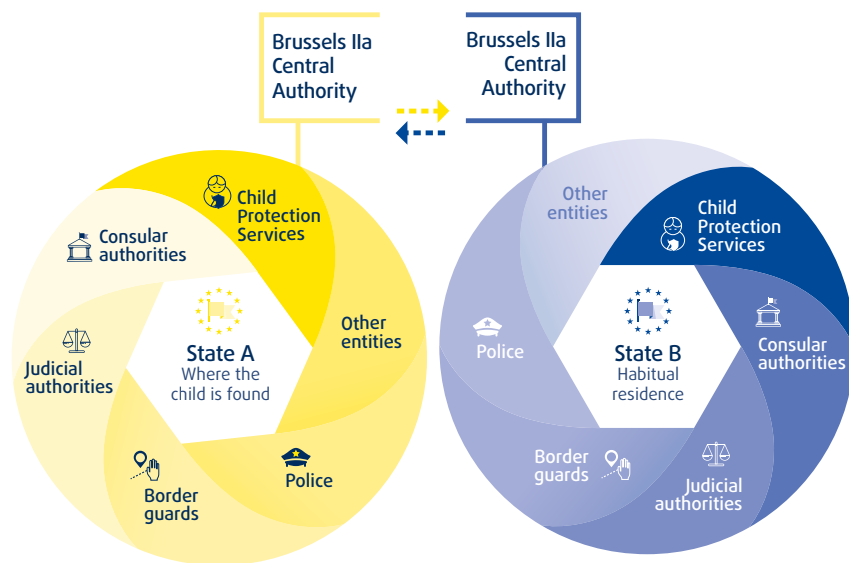
The [Brussels IIa Regulation](#) dedicates a chapter to cooperation between EU Member States. Article 53 establishes that each Member State should designate one or more Central Authorities to assist in the application of the Regulation. Central authorities have already been appointed in EU Member States for the application of the [1980 Hague Convention on Child Abduction](#) and the [1996 Hague Child Protection Convention](#). In some EU Member States, the same authorities support the implementation of the [Brussels IIa Regulation](#). The Hague Conference has established an informal [International Hague Network of Judges](#) that, in relation to issues relevant

to international child protection, acts as a channel of communication and a liaison with other judges within their jurisdictions and with judges in other contracting States, as well as with their national Central Authorities.

→ *Annex 3: Contains the link to the contacts list of Central Authorities.*

For Central Authorities to be able to perform their duties, they will need to liaise closely with different organisations at Member State level, such as child protection services, judicial authorities, police, prosecutors and service providers. As illustrated in Figure 13, such cooperation may involve several different organisations.

Figure 13: Groups that may be involved in domestic and transnational cooperation



Source: FRA, 2019

The evaluation of the implementation of the [Brussels IIa Regulation](#) found that one of the challenges for effective coordination is that some Central Authorities lack resources. If the EU and its Member States strengthened Central Authorities, it would contribute significantly to protecting the categories of children this practical guidance covers.

Involving Central Authorities is sometimes perceived as cumbersome. To avoid delays, communication therefore often happens directly, without going through any central authority. For example, social or child protection services may in urgent cases directly contact child protection services in the child's country of origin or habitual residence, asking for an assessment of the social situation of the child, or police authorities of different EU Member States may get in touch with each other to clarify the identity of a child.

The Central Authorities established under the [Brussels IIa Regulation](#) may, where relevant for carrying out a concrete request under the regulation:

- function as a central point for all communications between relevant authorities in one EU Member State and those in another Member State; or
- facilitate contact between the relevant authorities responsible for a specific case and let them communicate directly.

Their specific role should be decided according to the specific national context and the human and financial resources that the Central Authorities have, and based on the circumstances of the case. Central authorities will usually prioritise very urgent cases.

Central authorities could have a general overview of cases including closed cases where they were involved, and understand the role and capabilities of partner authorities and agencies. EU Member States should define how Central Authorities and other authorities in the country communicate and coordinate with each other.

Article 55 of the [Brussels IIa Regulation](#) states that, upon request, Central Authorities must collect and exchange information on the situation of the child, on ongoing procedures and on decisions concerning the child in individual cases. One of their key roles is to facilitate communication between courts in different Member States in certain cases relating to parental responsibility (Article 55(c) and (d)). Article 56 gives the option of temporarily placing a child in another EU Member State, an action that requires prior consent from that state.

EU Member States may submit or receive requests such as the following in the process of establishing a durable solution:

- reports on the social situation of the child;
- information on the location of a child and of the family, where required for the carrying out of a concrete request under the [Brussels IIa Regulation](#);

- discussion on a specific case with all involved parties in a cross-border case;
- discussion on a transfer of jurisdiction;
- establishing family contact and escorting the child while they visit their family;
- provision of documentation, such as an identification number, schooling certificates or birth certificate;
- information on previous proceedings related to parental responsibility or previous law enforcement investigations;
- information on alternative care possibilities if the parents are not able to take care of the child;
- taking immediate measures.



Transnational referral mechanism model

The International Organisation for Migration has launched an online platform with a transnational referral mechanism model, developed as an outcome of the EU strategy towards eradication of trafficking in human beings 2012-2016.

The tool contributes to ensuring that victims of trafficking can access their rights throughout the process, and especially in a situation of cross-border referral. It links up experts and professionals from different countries involved in identifying, referring, assisting, returning and monitoring assistance to victims of trafficking.

For more information, see International Organization for Migration (2017), 'Transnational referral mechanism model – TRM'.



Transnational child protection

The Council of the Baltic Sea States Secretariat has developed guidelines as well as a practical guide on the protection of children when there is a transnational element, providing practical elements of cooperation between Member States.

For more information, see Council of the Baltic Sea States (2015), 'Guidelines for promoting the human rights and the best interests of the child in transnational child protection cases', and 'Transnational child protection: practical guide for caseworkers and case officers'.

Other cooperation mechanisms between EU Member States

Besides the Central Authorities established under Article 53 of the [Brussels IIa Regulation](#), there are other cooperation mechanisms, including:

- The **European Judicial Network in civil and commercial matters**. It is a flexible network established by Decision No 2001/470/EC, which brings together national judicial authorities. Its main tasks are case-handling between national contact points, facilitating cross-border access to justice through information, appointing liaison judges, and evaluating and sharing experience on the operation of specific EU law instruments in civil and commercial matters. Articles 54 and 58 of the **Brussels IIa Regulation** describe the situations when the Central Authorities members of the network, should use the network to communicate with each other. Regular use of the network can contribute to more effective cooperation between judges and the Central Authorities as well as between judges themselves.
- The **European Judicial Atlas**. This helps people to find the competent civil courts and contact details in other EU Member States.

→ For more information on civil judicial cooperation, see the [e-Justice portal – civil](#).

Taking evidence

Council Regulation (EC) No 1206/2001 (which the European Commission suggested to reform in May 2018) covers cooperation between courts in different EU Member States on the taking of evidence in civil and commercial cases, including family law matters. A court may either request the competent court of another Member State to take evidence or take evidence directly in that other EU Member State. The regulation proposes the taking of evidence by means of videoconferencing and teleconferencing. The [e-Justice portal](#) provides a series of documents, contacts and lessons learned as well as national information on where the necessary equipment is available. It also gives guidance on the use of [videoconferencing](#) to simplify and encourage communication between judicial authorities in different EU Member States, for both civil and criminal law purposes.

Bilateral cooperation agreements

Some EU Member States have adopted bilateral agreements that specifically cover protection and transfer in the event that children who are nationals from their country are found in another EU Member State. Bilateral agreements may, however, lack enough procedural safeguards and prevent authorities from effectively protecting the child. EU Member States should preferably use the existing structures created by and for all EU Member States in the EU legal framework. EU Member States should avoid creating parallel structures. Parallel structures risk supporting only

a portion of the cases, leaving some children out, creating double standards and weakening the mechanisms established under the [Brussels IIa Regulation](#) and the 1996 [Hague Convention](#).

Criminal law issues

For some crimes, EU law establishes rules on jurisdiction. This is the case, for example, for trafficking in human beings. According to Article 10(1) of the [EU Anti-Trafficking Directive](#), EU Member States must take the necessary measures to establish their jurisdiction where:

- the offence was committed in whole or in part in their territory; or
- the offender is one of their nationals.

Other options for establishing further jurisdiction over offences committed outside the territory of a Member State appear in Article 10(2) and 10(3) of the directive.

In all cases, children participating in the proceedings, as victims or witnesses, will be entitled to special protection and support measures, legal assistance and representation, and compensation.

→ For more information, see also [Action 8: Support the child during judicial proceedings](#).

More generally, the EU has developed different instruments for police and judicial cooperation. These operate at different levels. First, EU agencies such as Europol and Eurojust, provide operational and other support to Member States in situations with a trans-border element.



How Eurojust supports judicial authorities

Eurojust facilitates the cooperation and coordination of investigations and prosecutions among judicial authorities in Member States dealing with serious cross-border and organised crime, including trafficking in human beings. Eurojust encourages national authorities to involve Eurojust in all cross-border trafficking cases, considering their complexity and urgency in identifying and protecting all victims, in particular children, while aiming to prosecute and dismantle the whole trafficking chain.



Eurojust has appointed a contact point for child protection issues who carries out a number of activities, including: (i) ensuring that Eurojust has access to best practice in the

field; (ii) following the work of national authorities, law enforcement organisations and other bodies in the field of child protection; and (iii) maintaining statistical overviews of all the cases dealt with in Eurojust related to the topic.

Eurojust's coordination meetings bring national judicial authorities from different countries together around the same table to facilitate the exchange of information, the execution of mutual legal assistance requests or coercive measures (i.e. search warrants and arrest warrants), the prevention or resolution of conflicts of jurisdiction, related issues or other legal or evidential problems. They can easily discuss and agree upon investigative steps and prosecution strategies during coordination meetings.

Eurojust's coordination centre is another tool used in complex cases, which require real-time exchange of information in the context of large-scale actions executed simultaneously in several countries (e.g. arrests, searches, seizure of evidence or assets). Coordination centres link all participating authorities to each other at all times, via dedicated telephone lines and computers, and information is quickly passed from one authority to another via Eurojust.

The competent national authority of a Member State can contact the respective national desk at Eurojust with regard to a specific criminal case. The respective national desk will open a case at Eurojust towards all Member States involved, and even towards third countries, where appropriate.

For more information, see the [Eurojust website](#).



How Europol supports law enforcement authorities

Europol, the European Union Agency for Law Enforcement Cooperation,



supports the Member States law enforcement authorities in preventing and combating all forms of serious international organised crime. The support services offered to EU Member States range from facilitating secure information exchange to providing operational and strategic analysis, expertise and operational support in criminal investigations.

Europol supports the law enforcement activities of the Member States by: facilitating the exchange of information between Europol and Liaison Officers posted at Europol by the Member States and by countries with a cooperation agreement with Europol and who serve as the nexus between the Member State investigators and the Europol experts; providing operational analysis and support to Member States' operations; providing expertise and technical support for investigations and operations carried out within the EU, under the supervision and the legal responsibility of the Member States; generating strategic reports (e.g. threat assessments) and crime analysis on the basis of information and intelligence supplied by Member States or gathered from other sources.

Analysis Project (AP) Phoenix is Europol's operational project dealing with trafficking in human beings within the European Serious Organised Crime Centre. AP Phoenix is specifically mandated to support competent authorities of the EU Member States, as well as EU bodies and associated non-EU countries and international organisations, in preventing or combating the forms of criminality within Europol's mandate associated with trafficking in human beings. Within AP Phoenix, one of the key priorities is child trafficking. For operational purposes, the project allows the storage and processing of

data and criminal information on victims of trafficking in human beings, both adults and children, as well as on suspects.

Information including personal data of suspects and victims can be safely exchanged with AP Phoenix and all other relevant stakeholders via Europol's official communication tool, the Secure Information Exchange Network Application (SIENA), which is available to every Member State. The centralisation of information in Europol's database has obvious and direct benefits for *ad hoc* investigations. It also allows Europol to acquire a complete and thorough intelligence picture of the phenomenon across Europe.

Europol can support competent authorities of the Member States in preventing and combating serious crime affecting two or more Member States. Currently, Europol provides its support on request. However, Article 7 of the [Europol Council Decision](#) allows Europol to request the competent authorities of the Member States to initiate investigations.

For more information, see the [Europol website](#).



How CEPOL supports law enforcement and other authorities

The EU Agency for Law Enforcement Training (CEPOL) is an agency of the European Union dedicated to develop, implement and coordinate training for law enforcement officials. CEPOL organises residential courses, runs online modules, and one online course on trafficking in human beings, which also focuses on child trafficking. CEPOL also has an Erasmus-style exchange programme that allows law enforcement officers to spend 1 week with a counterpart in their country, exchanging knowledge and good practice.



For more information, see [CEPOL'S website](#).

Besides the support EU agencies provide, there are a number of EU law instruments that enhance and facilitate cooperation between law enforcement agencies and courts, such as the [European Arrest Warrant](#) and the [European Investigation Order](#). The [European Mutual Assistance Convention](#) establishes the form and methods of cooperation between EU Member States in relation to criminal procedures. Selected resources available to promote cooperation among EU Member States are:

- **the European Judicial Network in criminal matters:** the EU established this tool to create a network of national contact points to facilitate judicial cooperation in criminal matters. It includes liaison judges;
- **the European Judicial Atlas:** this is helpful in finding competent criminal courts and contact details in other EU Member States;

- **joint investigation teams (JITs)**: this cooperation tool is based on an agreement between competent authorities of two or more EU Member States (judicial, i.e. judges or prosecutors and law enforcement established for a limited duration and for a specific purpose, to carry out criminal investigations in one or more of the states in question. JITs enable direct gathering and exchange of information and evidence without the need to use traditional mutual legal assistance channels. JITs are an effective cooperation tool that facilitates the coordination of investigations and prosecutions conducted in parallel in several Member States or in cases with a cross-border dimension. Eurojust and Europol can participate in joint investigation teams separately as well as jointly.



Practical guide for joint investigation teams

The joint investigation teams network together with Europol and Eurojust, has created a practical guide for Joint Investigation Teams. It provides advice, guidance, useful information, as well as answers to frequently asked questions by practitioners. The JITs Network Secretariat supports the national JIT experts and is based at Eurojust in The Hague.

For more information, see Council of the European Union, Joint Investigation Teams Practical Guide, 2017, which can be accessed in all official EU languages on [Europol's website](#).

- **European Criminal Records Information System (ECRIS)**: this is a tool to provide judges, prosecutors and relevant administrative authorities with easy access to comprehensive information on the criminal history of any EU citizen, no matter in which Member State that person has been convicted in the past.
- **European Criminal Records Information System for third-country nationals and stateless persons (ECRIS-TCN)**: once established, this system will supplement the existing European Criminal Records Information System for EU nationals (ECRIS). It will give the national competent authorities access to an information technology system which will contain the identity information of non EU, European Economic Area, and Swiss nationals convicted by a criminal court within the European Union. Such identity information will include alphanumeric and fingerprint data.



Model memorandum of understanding

The Council of the Baltic Sea States (CBSS) Task Force against Trafficking in Human Beings has developed a model memorandum of understanding to improve cooperation between law enforcement and service providers or NGOs. It serves as a template to tailor to the national context.

For more information, see Council of the Baltic Sea States (2011), [Model memorandum of understanding](#).

→For more information on criminal judicial cooperation, see the [e-Justice portal – criminal](#).

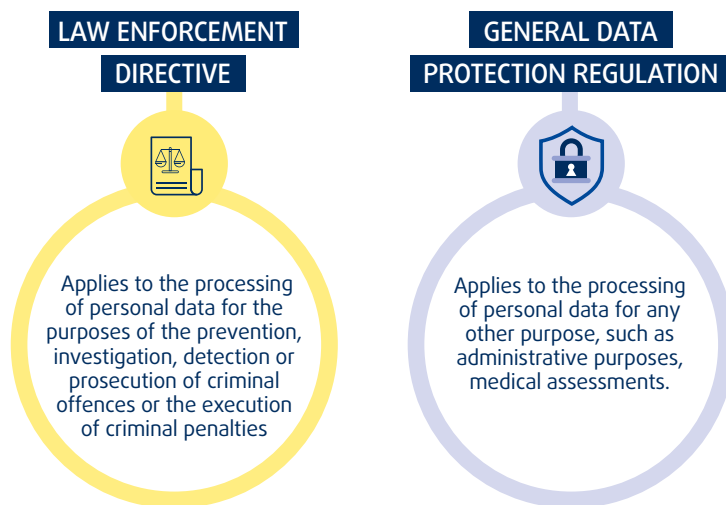
Confidentiality, data protection and information sharing

With the need to share information with several authorities involved within and across different EU Member States set against the right of the child, to respect private life and protection of personal data, authorities will need to consider procedures that respect the privacy of the child and protect confidential information.

Article 8 of the [Charter of Fundamental Rights of the European Union](#) establishes the right to protection of personal data, and Article 7 establishes the right to respect private and family life. EU law comprises of two instruments relevant to this guide, which came into force in May 2018: the [General Data Protection Regulation](#) (Regulation (EU) 2016/679, also known as the GDPR) and the [Data Protection Directive for Police and Criminal Justice Authorities](#) (Directive (EU) 2016/680, also known as the Law Enforcement Directive).

As shown in [Figure 14](#), where a competent authority processes personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences, [Directive \(EU\) 2016/680](#) applies. Where competent authorities process personal data for purposes other than the ones mentioned above, the general regime under the [General Data Protection Regulation](#) applies.

Figure 14: Scope of application of the General Data Protection Regulation and the Law Enforcement Directive



Source: FRA, 2019

Some provisions are the same or similar in both legal instruments. The data protection principles of lawfulness and fairness, purpose limitation, data minimisation, storage limitation, data accuracy, integrity and confidentiality serve as the starting point for any processing operation (Article 5 of the GDPR; Article 4 of the Law Enforcement Directive). Moreover, most of the rights of the data subject are applicable in both settings (see Articles 12-23 of the GDPR and Articles 12-18 of the Law Enforcement Directive). In crime prevention and investigation, the rights of any individual are subject to specific limitations because they could jeopardise ongoing investigations and procedures. The obligations of the data controllers with regards to data breach notifications (Articles 33-34 of the GDPR; Articles 30-31 of the Law Enforcement Directive) or the records of processing activities (Article 30 of the GDPR; Article 24 of the Law Enforcement Directive) are similar under the two contexts.

Children merit specific protection, because they may be less aware of the risks and consequences involved in data processing. When information and communication about processing are addressed to a child, they should be in clear and plain language that the child can easily understand (Article 12 of the GDPR).



Handbook on European data protection law

The FRA, EDPS and Council of Europe handbook provides an overview of the EU's and the Council of Europe's applicable legal frameworks in the area of data protection, including the General Data Protection Regulation (GDPR) and the Law Enforcement Directive. It also explains key case-law, summarising major rulings of both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights. The handbook will be available in all EU languages.

For more information, see FRA (2018), 'Handbook on European data protection law'.

The need to respect confidentiality, privacy and data protection rules does not prevent the sharing of information to protect a child, provided certain safeguards are respected. The [General Data Protection Regulation](#) establishes that it is lawful to share information to protect vital interests of the data subject (in this case, the child) or to perform tasks carried out in the public interest or in the exercise of official authority (Article 6 of the GDPR).

When assisting children who are deprived of parental care and in need of protection, the right to respect for private life, protection of personal data and confidentiality entails the following in practice.

- When authorities collect personal data about the child, the child needs to receive concise, transparent, intelligible and easily accessible information, using clear and plain language.
- Information collected needs to be adequate, relevant and not excessive in relation to the case and the purpose.
- Information must never be shared with persons who are not related to the case; avoid sharing with the public or the media any personal data that could lead to the identification of a child.
- Information registered must be accurate and kept up to date.
- Children need to be told what information will be shared with whom and why; child protection professionals should obtain consent from the child, in consultation with the guardian, unless it is not safe or appropriate.
- The information can be shared without consent if necessary to protect the vital interests of the child or of another person; a record should be kept of what information was given and to whom.

- Child protection services involved could instruct Central Authorities on how to share information with the other EU Member State to ensure privacy (e.g. replacing names with codes).
- Authorities must respect the national data retention rules, and not keep data longer than necessary.
- Measures are needed to ensure security and prevent loss, destruction or damage. For example, code the case files and do not use the individual's name; if paper files are used, they should be under lock and key and in a safe location; protect electronic files with individual passwords with limited access and secure them on safe servers, never on private computers, USB sticks or other storage devices.

Action 8: Support the child during judicial proceedings

A child who is a victim of trafficking, abuse or exploitation or otherwise in need of protection may be involved in different types of civil proceedings. First, the child may be involved as a victim or witness in criminal procedures against the person(s) who trafficked, abused or exploited the child. Proceedings may however also relate to civil or administrative law issues, covering for example, compensation, education, parental responsibility, age assessment, appointment of a guardian or placement in foster or residential care.

EU law accords specific rights and safeguards to children who become victims of crime and some safeguards for child witnesses of certain crimes, such as sexual abuse or trafficking. EU law contains detailed safeguards for children involved in criminal proceedings, but not in administrative or, in particular, civil law proceedings, where the matter is mainly regulated by national law.

Criminal proceedings

Testifying as a victim or a witness in front of a criminal court can be a stressful experience for any person, and even more so for a child. Children need to be provided with legal and social support before, during and after the proceedings. This will facilitate their participation and the collection of sufficient evidence and the successful prosecution of offenders. It will also reduce the risk of harm for the child.



Ending the culture of impunity for trafficking in human beings

“In the context of trafficking, a culture of impunity occurs when those involved in the criminal business model and/or in the trafficking chain do not face any consequences for their act. Arrests, prosecutions and convictions, holding perpetrators accountable, increases the general and specific deterrence constituting an element of prevention. This does not only include the traffickers but also their accomplices and those who knowingly benefit from the services provided by victims. The culture of impunity is sustained by gaps in legislation or the faltering application of existing laws. Countering the culture of impunity and increasing accountability involves intensifying the number of investigations, prosecutions and convictions not only against traffickers but also against those who profit from the crime and exploit the victims.”

European Commission (2018), Working together to address trafficking in human beings: key concepts in a nutshell, p. 5.

EU law safeguards for child victims

To protect children and prevent secondary victimisation, the EU has defined in several instruments a comprehensive set of procedural safeguards for child victims of crime. Table 5 gives an overview of the safeguards established in the [EU Anti-Trafficking Directive](#), the [Sexual Exploitation of Children Directive](#) and the [Victims’ Rights Directive](#). The table shows that these safeguards for child victims of trafficking or sexual exploitation are similar to those that EU law provides for child victims of crime in general.

Table 5: Protection measures for child victims during criminal proceedings in EU law

Measures	EU law instrument		
	EU Anti-Trafficking Directive	Victims’ Rights Directive	Sexual Exploitation of Children Directive
Free legal counselling	Article 15(2)	Article 9(3)(b)	Article 20(2)
Free legal representation	Article 15(2)	Article 24(1)(c)	Article 20(2)
No unjustified delay in carrying out the interviews	Article 15(3)(a)	Article 20(a)	Article 20(3)(a)
Adapted premises for interviews	Article 15(3)(b)	Article 23(2)(a)	Article 20(3)(b)
Interviews by trained professionals	Article 15(3)(c)	Article 23(2)(b)	Article 20(3)(c)

Measures	EU law instrument		
	EU Anti-Trafficking Directive	Victims' Rights Directive	Sexual Exploitation of Children Directive
Same person doing the interviews	Article 15(3)(d)	Article 23(2)(c)	Article 20(3)(d)
Minimising the number of interviews	Article 12(4)(a) and Article 15(3)(e)	Article 20 (b)	Article 20(3)(e)
Right to be accompanied by representative or another adult	Article 15(3)(f)	Article 3(3) and 20 (c)	Article 20(3)(f)
Video-recorded interviews	Article 15(4)	Article 24(1)(a), 23 (3)(a)	Article 20(4)
Hearing with no presence of the public	Article 15(5)(a)	Article 23(3)(d)	Article 20(5)(a)
Hearing through video-link	Article 15(5)(b)	Article 23(3)(b)	Article 20(5)(b)
Witness protection programmes	Article 12(3)	—	—

Note: — = not applicable.

Source: FRA, 2019

The [Victims' Rights Directive](#) establishes a number of protection mechanisms that apply to all victims of crime, including children. In addition, it contains specific guarantees for children. The directive states that, because of their vulnerability to secondary victimisation, children must have an individual assessment to identify their specific protection needs (Article 22). Pursuant to Article 22(4), child victims are presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. This entitles them to all protection measures during criminal proceedings envisaged for all victims with specific protection needs, listed in Article 23, as well as to the child-specific safeguards in Article 24.

Non-penalisation clause

A child victim of abuse or exploitation may have committed a crime such as theft, or an offence related to prostitution, possession of false identity documents or social benefit fraud.

Whenever authorities or other organisations come into contact with a child deprived of parental care who is in need of protection, the priority should be to ensure the child's safety, provide protection, consider the child's best interests and ensure access to the rights and safeguards the child is entitled to.

For child victims of trafficking or victims of sexual exploitation, EU law contains non-penalisation clauses. Under Article 8 of the [EU Anti-Trafficking Directive](#) and Article 14 of the [Sexual Exploitation of Children Directive](#), Member States must ensure that competent national authorities are entitled not to prosecute or impose penalties on victims. These non-penalisation clauses cover criminal activities which victims have been compelled to commit as a direct consequence of the crime they have been subjected to. A non-punishment provision is also enshrined in Article 26 of the [Council of Europe Anti-Trafficking Convention](#).

The duty not to punish the child is grounded in the fact that a child victim of trafficking or sexual exploitation has no autonomy and is not free to make clear or informed choices or resist when forced to commit a crime. A child-sensitive interpretation of the non-penalisation duty would mean that prosecution should not be brought, or should be discontinued, whenever there is a close link between the offence and the trafficking or abuse the child was a victim of.

IF YOU WANT TO KNOW MORE

Practical implementation of the non-punishment provision

The Organisation for Security and Cooperation in Europe (OSCE) developed a paper, which examines the principle of non-punishment in law and the challenges in its practical implementation. The paper concludes with practical guidance and the formulation of policy and legislative recommendations.

For more information, see Organisation for Security and Cooperation in Europe (OSCE) (2013), 'Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking'.

Professionals who come into contact with children should be skilled and appropriately trained on linking possible offences committed by the child to trafficking or sexual exploitation crimes. They should remember that, to prove child trafficking, under Article 2(5) of the [EU Anti-Trafficking Directive](#) there is no need to show that the traffickers threatened or used force or other forms of coercion.

Professionals need to avoid stereotypes and linking certain groups of children, such as those from a specific ethnic background or nationality, to certain types of crimes, or to criminality more generally. Every child deserves a precise and impartial assessment in the process of identification. Proper identification can prevent children from secondary traumatising, which they could suffer if referred to the criminal justice system as suspects.

Children in conflict with the law

In certain situations, national authorities may also initiate criminal proceedings against the child, referring the child through the regular juvenile justice channels. In these cases, the safeguards established in the [Directive on Procedural Safeguards for Children](#) would apply.

The referral to juvenile justice systems should not be too early, as this may prevent identification in cases where the child discloses being a victim at a later stage. Authorities should consider the child's history, social and family background and the obligation to provide protection to all children without discrimination. According to Recital 9 of the Directive on Procedural Safeguards for Children, children who are suspects or accused persons in criminal proceedings should be given particular attention so as to preserve their potential for development and reintegration into society.

IF YOU WANT TO KNOW MORE

Minimum age for criminal responsibility

The Child Rights International Network (CRIN) provides updated information on the minimum age for criminal responsibility in the EU Member States and other European countries.

For more information, see [Child Rights International Network \(CRIN\)](#), 'Minimum ages of criminal responsibility in Europe'.

Civil proceedings

The [Brussels IIa Regulation](#) applies in the event of placement of the child in a foster family or in institutional care, either as a temporary measure under Article 20 or as a long-term measure once the child is already in the EU Member State that has jurisdiction. It does not contain any specific procedural safeguards to protect children during civil proceedings. National law regulates protection of children during civil proceedings. The only exception concerns the duty to hear the child in cases of international abduction, as provided for in Article 11(2). However, the [Brussels IIa Regulation](#) is being reviewed and will, in future, require hearing the child in all cases related to parental responsibility.

Article 17 of the [EU Anti-Trafficking Directive](#) requires that victims of trafficking in human beings have access to existing schemes of compensation for victims of violent crimes. Article 11(2) of the directive entitles victims to access to free legal

counselling without delay and to free legal representation, including for the purpose of claiming compensation.

IF YOU WANT TO KNOW MORE

Practices to support children in judicial proceedings

Safeguards in criminal law proceedings appear more detailed than in civil law proceedings, in terms of the access to legal assistance, the authority in charge of hearing the child, the setting in which the child is heard and the extent of the information provided to the child, according to FRA's research on children and justice in EU Member States. Civil proceedings are more fragmented: depending on the type of the legal issue at stake, hearing the child may be mandatory, optional or not regulated at all. The use of safeguards is also too often left to the discretion of judges or other actors, and not based on the assessment of what the specific child needs, FRA's research shows.

For more information, see FRA (2015), 'Child-friendly justice – Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States'.

Safeguards to support the child

Every professional involved needs to put into practice all sets of safeguards established in EU and national law. In addition, this guide suggests other measures, which though not binding, may support the child during legal proceedings.

Procedural safeguards aimed at protecting the child and avoiding re-traumatisation are not only important in criminal proceedings, but also necessary in civil proceedings to avoid contact between the child victim and the perpetrators. This is particularly important when parents were involved in the trafficking or abuse of the child. Therefore, the [Council of Europe Guidelines on child-friendly justice](#) provide non-binding guidance for all types of procedures involving children, including criminal, civil and administrative.



Barnahus

In 1998, Iceland established the first Barnahus (Children's House) in Europe, to ensure that child victims and witnesses of violence are protected by child-friendly interventions and rapid access to justice and care. By 2019, it is expected that more than 20 countries will operate one or more Barnahus. Regional institutions and the European Barnahus Movement and PROMISE Network work to inspire even more Barnahus to be established according to European standards.

A main principle behind Barnahus is the child's participatory rights to be heard and receive adequate information. Multi-disciplinary and interagency collaboration including law enforcement, criminal justice, child protection, social and medical services is another important principle to be applied during all the phases of investigations, diagnostic and needs assessments and service delivery, with the aim of avoiding re-traumatisation and securing outcomes in the best interests of the child. Eliciting the child's disclosure is essential and of primary importance is that the forensic interview is carried out according to an evidence-based protocol and that the evidentiary validity of the child's statement respects due process, whilst avoiding a need for the child to repeat her/his statement during court proceedings. The PROMISE project has developed the quality standards being applied by most Barnahus.

For more information, see the [Promise Project](#).

Legal and social professionals interviewed for [FRA's research on child-friendly justice](#) raised several concerns which are common to both civil and criminal proceedings. The same concerns were raised by the children interviewed. Professionals interviewed recommend applying procedural safeguards to all children equally, including those involved in civil proceedings. Children who are involved in both criminal and civil proceedings – such as custody cases linked to abuse cases – complain that procedural safeguards available in criminal proceedings are unavailable in civil proceedings.

A number of recommendations or suggestions, which emerged from the research may go beyond what the specific EU law instruments require, but could be part of the national legal framework.

Authorities working with children in civil or criminal proceedings can take EU law requirements as a starting point and complement them with measures to fill the gaps, which emerged from FRA's research. They should consider the following actions.

- ✓ **Ensure high-quality professional behaviour.** The respectful, friendly and empathic behaviour of professionals is the most important element in making the experience of the child as smooth and useful as possible. Professionals need training and practical guidance. Coordination mechanisms should be established for the different professionals involved in one case.
- ✓ **Limit the number of interviews.** Children feel stressed when they have to testify more than once and before numerous people. It should be possible to record a core interview with the child, and base the investigation on that interview. In addition, the transmission of a video testimony could replace the witness's hearing in court, but generally only if the defendant and their lawyer had the opportunity to ask questions during the recording.

- ✓ **Limit the number of persons present.** Children generally prefer having as few people as possible present during hearings and want to be informed about what roles those present have in the hearing. The public should not be allowed in the room while the court is hearing children.
- ✓ **Reduce the length of proceedings.** Children frequently report that proceedings are lengthy. They criticise the delay between hearings at different procedural stages, and the multiple – often repetitive – interviews and hearings they face with numerous professionals. Many children also noted that the hearings themselves were too long, often partly because the waiting times before they provide testimony were also too long.
- ✓ **Avoid contact with the defendant and their family.** This should be respected not only in the courtroom during the hearing, but also in the corridors of the court building, the waiting rooms and the toilet.
- ✓ **Consult the child on the type of procedural safeguards.** Some children involved in criminal proceedings place great importance on being able to make an informed decision about the available procedural safeguards, with an awareness of the possible consequences of choosing some measures over others, for example choosing a video link instead of a screen to avoid visual contact with defendant.
- ✓ **Ask the child to choose** whether the hearing should be conducted by a man or a woman, if possible.
- ✓ **Ask the child if and when a person of trust** will accompany them during the hearing. This could be a support person, such as a social worker, or a trusted adult, such as a parent, foster parent or caregiver.
- ✓ **Conduct the hearing in a child-friendly space.** Children generally find court or other solemn settings intimidating and frightening, and associate them with criminality. Thus, they prefer hearings conducted outside the court environment or in court-based hearing rooms with child-friendly features – provided they also perceive the professionals' behaviour to be child-friendly.
- ✓ **Ensure the child has legal assistance and representation.** Children FRA interviewed rarely report that they receive legal support. Some children do not recognise lawyers or legal counsellors as sources of support because they believe that the professionals fail to inform the children about the proceedings. Professionals whom FRA interviewed raise a number of issues regarding access to legal aid, including the lack of guidelines on how to request free legal assistance; the training and availability of specialised child lawyers; and the timely and systematic appointment of legal representatives.

- ✓ **Ensure the child is well informed.** Children consider information crucial. Children FRA interviewed often complain that they do not receive updates and information about their cases' development during proceedings — for example about the defendants' whereabouts in criminal proceedings. Children suggest that information should be provided early enough for them to prepare for hearings and then consistently throughout the proceedings at regular intervals. They would also like to receive, within a reasonable timeframe, information on possible waiting times before hearings, the length of proceedings, and the verdict and its consequences. Professionals should inform the child in a language they understand, providing interpretation services if needed.
- ✓ **Avoid situations that frighten the child.** Numerous children FRA interviewed report encountering the defendants, because procedural safeguards were insufficient. Such unwanted encounters with defendants and their relatives — which often take place before or after hearings — are the main source of fear for children. In addition, children's sense of security is undermined by the lack of separate entrances and/or poor court security arrangements, such as the failure to coordinate parties' arrival and departure times so that children do not encounter defendants. Children are also frightened by the inappropriate behaviour of professionals, intimidating environments, a general lack of confidentiality including information sharing to which they have not consented. Children are sometimes so anxious about proceedings that they just want them to end even though this is not in their best interests. Professionals need to guard against this.
- ✓ **Ensure privacy and data protection.** Children FRA interviewed report being scared and stressed about insufficient confidentiality and data protection. They are afraid that details of their cases and the proceedings may become public. Children report feeling distressed when people around them know about their role in proceedings, their family situation or the court's decisions. Sometimes children also report being bullied or stigmatised by their peers or in the local community because of information revealed by teachers, parents, relatives or professionals, or through the media.



Checklists for professionals involved in judicial proceedings

Based on extensive research with professionals and children involved in judicial proceedings, FRA has developed a practical checklist to support professionals with a list of actions that need to be taken into account for judicial proceedings to be child-friendly.

For more information, see FRA (2017), 'Child-friendly justice — Checklist for professionals'.

Action 9: Determine and implement durable solutions

After the best-interests assessment explained in Action 5, authorities should be able to propose and implement a durable and sustainable solution for that particular child. There are generally three possible durable solutions for children who are deprived of parental care found in need of protection, including victims of trafficking, in an EU Member State other than their own:

1. transfer back to the EU Member State of habitual residence;
2. integration in the EU Member State where the child is physically present;
3. transfer to a third country (within or outside of the EU).

EU law only contains an express duty to take the necessary measures with a view to finding a durable solution only for child victims of trafficking. Article 16(2) of the [EU Anti-Trafficking Directive](#) underlines that such durable solution must be based on an individual assessment of the best interests of the child.

The Committee on the Rights of the Child recommends in its [General Comment No 14 on best interests](#) (paragraph 97) that any decision concerning a child must be motivated, justified and explained. The decision on the durable solution should thus be a formal, written decision, copies of which the child, the temporary guardian, the holders of parental responsibility (if appropriate) and the Central Authorities (if they were involved in the case) receive. A formal decision will reduce the risk of repeated exploitation or re-trafficking and ensure better monitoring of the child's situation. The decision should include legal reasoning and mechanisms for review (paragraph 98). The child and the guardian, as well as other interested parties, such as holders of parental responsibility, should be entitled to request a review or to appeal against the decision. If it was not possible to implement the durable solution within a reasonable period, the decision should be reopened and a new durable solution identified for the child.

EU Member States should establish which authority in each national context is the one to agree on the durable solution together with child protection services. In some cases, a competent authority which has jurisdiction under the [Brussels IIa Regulation](#) could take the final decision but, depending on the elements of the case, some circumstances will require the involvement of a court. A transfer of jurisdiction according to Article 15 of the [Brussels IIa Regulation](#) or Articles 8 and 9 of the 1996 [Hague Convention](#) may be necessary if the suggested solution, as agreed by the

involved parties in the EU Member States, is the transfer of the child to a third country or integration in the EU Member State of physical presence, and not a transfer to the country of (former) habitual residence, where the jurisdiction generally rests.

Here are some of the common elements to consider in the implementation of any durable solution.

- **Consent of the child:** all durable solutions should ideally be implemented with the consent of the child. A child who strongly disagrees with the proposed decision will not cooperate in its successful implementation, and may be exposed to further risks or abscond from the care of authorities. Competent professionals should accompany the child in this process, explaining the reasoning behind the decision and exploring why the child opposes it. The child should not be forced either to stay in the host country or to be transferred to the country of habitual residence or a third country. The general rule under the [Freedom of Movement Directive](#) is that EU children cannot be expelled from an EU Member State, unless the expulsion is necessary for the best interests of the child (Article 28(3)) or is based on imperative grounds of public security.
- **Gender considerations:** in all steps undertaken to implement durable solutions, consideration should be given to the different needs of boys and girls, and the type of exploitation suffered. This could have an impact on, for example, the accommodation selected, the type of reintegration and assistance support, or whether a man or a woman escorts the child during travel.
- **Care arrangements:** every effort should be made to transfer a child deprived of parental care to their parents, except where further separation is necessary for the best interests of the child. Authorities should assess the parental capacity to ensure that the parents will not put the child at risk, and that there was no parental involvement in the initial trafficking or abuse of the child. When it is not possible to return the child to the family, alternative care arrangements will need to be found, preferably in family-type settings, such as foster families. Small residential homes could be a temporary measure. According to Article 20(3) of the [Convention on the Rights of the Child](#), when considering alternative care solutions, due regard should be given to the child's ethnic, religious, cultural and linguistic background.
- **Individual plan:** no matter in which EU Member State the child will be settling, they should receive assistance based on an individual needs assessment with integration support. An individual plan for each child should be drawn up with the aim of promoting their social integration. The child could need support in the form of medical care, insurance, psychological support, legal assistance,

income-generating projects or support with integrating back into the school system (tuition, transport fees, school materials).

- **Travel documents:** children should be provided with the necessary travel documents and be issued with residence permits in order to travel and/or settle down in the Member State in question.
- **Guardianship:** the guardian should continue to represent the child until the child reunites with the holders of parental responsibility or until a new guardian is appointed. At that point, the guardian could coordinate the completion and handing over of their responsibilities through the Central Authorities.
- **Support to the family:** the durable solution to be chosen will depend on the family situation and whether or not the family is able and willing to take care of the child. There may be cases where the family will manage this only if they receive some additional support, such as childcare arrangements, social benefits or family income-generating projects.
- **Monitoring:** social service authorities, in cooperation with other bodies, such as non-governmental organisations, should monitor the living conditions of the child after family reunification and/or placement in alternative care. Social protection measures may be necessary for children when they reach the age of majority. The individual plan should also include some basic information on how its implementation will be monitored.

→ See also [Action 10](#): *Monitor the well-being of the child for more information on monitoring.*

Transfer to the EU Member State of habitual residence

Transferring a child back to the Member State of habitual residence should not be an automatic response. It should happen only if based on a best-interests assessment (Article 3 of the [Convention on the Rights of the Child](#)). This is essential to protect children from future abuse or re-trafficking, but also to make sure that interventions by the authorities are effective and sustainable.

The [Council of Europe Convention on Trafficking](#) specifies in Article 16 a number of issues in relation to return, including that ‘child victims shall not be returned to a State, if there is an indication, following a risk and security assessment, that such return would not be in the best interests of the child’ (Article 16(7)). The [EU Anti-Trafficking Directive](#) does not cover issues related to the transfer to the country of

habitual residence. The [Brussels IIa Regulation](#) determines only the procedures to ensure a prompt return in child abduction cases (most often parental abduction).

In addition to the common elements listed above which are relevant for implementing any durable solution, these are some specific elements to consider in cases of transfer of the child back to the Member State of habitual residence.

- **Coordination:** authorities in both EU Member States should make sure that all the details of the transfer and the handover are discussed and agreed. For example, it should be clear who the escort accompanying the child will be, who the person receiving the child at the airport will be, what accommodation will be provided for both the child and the escort and what documents and files are necessary for the formal handover of the child.
- **Preparation for transfer:** the child should be prepared for the return to the country of habitual residence. This should include basic information on the process and on how life will be there. Authorities need to ensure there is enough time to prepare the transfer of the child without unreasonably delaying the process.

Depending on how long the child has spent abroad, they may need basic information on the city they are coming back to, school, family situation, etc. The child should receive contact information about organisations that can assist them in the country where they are transferred to. In addition, the child may need some psychosocial support, including reintegration into the family. Similarly, authorities should also provide the parents, or other family members who will take care of the child, with the necessary information about the child. Authorities should also provide parents with support in caring for the child, given the possibly traumatic experiences the child has lived through.

- **Transfer costs:** clear procedures on how to cover the transport costs should be in place. The travel costs can be funded by the family, on its own or together with financial support from public authorities, or by the consular office. Costs could include flights, trains or bus tickets, food during travel, and possibly accommodation for the child and the escort.
- **Travel escort:** a guardian or a social worker known to the child should accompany the child during the transfer, whatever the means of transport.
- **Safety during transfer:** measures should be put in place to prevent the child from going missing during travel, either voluntarily or forced by traffickers. The escort is responsible for the safety of the child and should not leave them under

any circumstances until the child is handed over to the responsible person in the country of habitual residence.

- **Arrival:** the child should be received upon arrival, ideally by a social worker and the parents if it is in the best interests of the child. The escort and the child should physically meet the persons receiving the child, and the escort should hand over responsibility for the child as well as the child's personal files.
- **Care arrangements:** if the parents and other family members are not able to care for the child, the transfer of the child should not happen until secure arrangements have been made for care and custodial responsibilities.
- **Return schemes:** every effort should be made to include the child in any return schemes available, such as those run by the International Organization for Migration or other organisations. The IOM supports the return of children and could possibly also support the family with income-generating projects.

Integration in the EU Member State where the child is physically present

In certain cases, based on the best interests determination, authorities may decide to integrate the child in the EU Member State where they were found. Authorities in the Member State where the child was found and where the child had habitual residence should cooperate in the assessment and the decision-making.

If nobody from the Member State of habitual residence asks the child to be returned, the Member State where the child is present could take provisional measures for the protection of the child (Article 20 of [Brussels IIa Regulation](#)), and prolong those provisional measures until the current Member State has become the new habitual residence of the child. If no court was seized before in the Member State of previous habitual residence, the Member State of the new habitual residence would in its own right have jurisdiction based on Article 8 of [Brussels IIa Regulation](#) without having to request a transfer as per Article 15 of [Brussels IIa Regulation](#).

→ For more information on jurisdiction see also [Action 7](#).

This decision to place the child in the EU Member State where they are physically present could also be temporary, for example, if family reunification in the Member State of habitual residence is not yet possible, and no adequate care arrangements have been found. Article 56 of the [Brussels IIa Regulation](#) gives the option for the authorities of habitual residence to temporarily place a child in another EU Member State and requires

prior consent from that state. Applying Article 56 to obtain a temporary placement in another EU Member State could be used to test a possible durable solution. If a court that has jurisdiction over the case believes that it may be better for the child to be placed in another EU Member State, but is not sure, it could use Article 56 for a temporary placement. The outcome and the well-being of the child should be monitored during the temporary placement. If the placement is successful and its conversion into a durable solution in the best interests of the child before the State where the child has been placed has become the new State of habitual residence, then the court could transfer the jurisdiction to the competent court in the Member State where the child was temporarily placed.

Jurisdiction for new decisions will automatically be vested in the EU Member State of new habitual residence. If the EU Member State where the child was present before has taken concrete decisions, these remain in force until one of the two Member States involved lifts them, or the EU Member State of the child's new habitual residence changes them. They will be applied in that EU Member State under the conditions set forth in its national law, according to Article 15(3) and Article 17 of the 1996 [Hague Convention](#).

All the general elements for any durable solution listed above apply when the child stays in the EU Member State where they were identified: the child should consent to it; an individual plan should be developed; care arrangements should avoid institutional care as much as possible and favour foster family and family-type settings; etc. Adoption is usually not an appropriate option for a trafficked child. Before adoption can be considered, all possibilities of reuniting with the parents and the extended family should be exhausted.

When the child is staying in the country of physical presence, they should enjoy all rights enshrined in the [Convention on the Rights of the Child](#), including education, training, employment and healthcare, as enjoyed by children who are nationals of the country. The guardian should remain responsible for the child until the appropriate court appoints a permanent legal guardian for the child. Authorities should also ensure that the child receives whatever documents are necessary according to national law for the child to legally reside in that EU Member State.

The decision that the child should stay in the EU Member State where they are physically present should never be forced, for example, because authorities want to proceed with the prosecution of the crime. The EU has sufficient other mechanisms for judicial cooperation among EU Member States.

→ See also [Action 7: Establish jurisdiction and transnational cooperation](#).

Transfer to a third country

Transfer to a third country could mean to another EU Member State or, less frequently, to a country outside the EU. In the case of third countries outside the EU, the 1996 [Hague Convention](#) applies if the third country is a party to it.

The solution to transfer the child to a third country could be justified in cases of high security concerns (a child under witness protection, for example), or when it is in the best interests of the child to reunite with the family and it is now residing in the third country. The residence of the parents in another EU Member State is one of the factors that determine ‘particular connection’ and thus allow a transfer of jurisdiction according to Article 15 of the [Brussels IIa Regulation](#).

All the general considerations for any durable solution listed above, apply when the child is transferred to another EU Member State or third country. The specific issues listed, such as travel arrangements, escort, security during travel, handover, individual plan and residence permit, also apply.

If the third country is an EU Member State, its central authority may be able to trace the family under the [Brussels IIa Regulation](#), if so requested. If it is a non EU Member State and party to the 1996 [Hague Convention](#), its central authority may trace the family under that Convention. International Social Service, the International Committee of the Red Cross or consular authorities may also be able to assist.

Action 10: Monitor the well-being of the child

Monitoring is an important element to ensure the well-being of the child, evaluate the measures taken, and adapt or change the measures whenever necessary. Child protection authorities, in cooperation with relevant bodies, such as NGOs or law enforcement agencies, should monitor the child’s situation after any form of durable solution has been implemented. The objective of monitoring family reunification or placement in alternative care in the EU Member State where the child is physically present, in the country of habitual residence or in a third country should be to ensure the successful reintegration of the child, and to prevent any risk of re-victimisation.

Given the transnational nature of these cases and possible issues of jurisdiction, authorities from all EU Member States involved should agree on who will monitor a case, how, when and for how long.

Monitoring systems

When a durable solution is implemented, there are two types of monitoring to consider.

1. **Monitoring by the authorities where the child is located:** this would follow similar processes to the monitoring of child protection cases in the national context, when looking at the family situation, integration in school and community, general well-being, etc. Some specific elements are suggested below.
2. **Monitoring by the authorities that transferred the child and require information on the child's situation:** the EU Member State that identified the child in its territory, led the best- interests assessment and decided on the durable solution together with the other relevant EU Member State should be entitled to receive information on the situation and integration of the child, at least for a certain time. This would also help the EU Member State to evaluate the effectiveness of its response and adapt, if necessary, its actions for future cases. Some EU Member States have agreed on a monitoring and reporting system and receive, for example, a report six months after the actual transfer of the child. In the absence of any such bilateral practice arrangement, the General Data Protection Regulation and relevant national law of the Member State where the child is now living would determine which information can be provided to the other Member State and under what conditions.

Monitoring and follow-up of a case will be required especially when the EU Member State where the child is located does not have jurisdiction. This may be the case if a temporary placement measure is taken under Article 56 of the [Brussels IIa Regulation](#) and the child remains so closely connected with the placing Member State that their habitual residence is still there. In this case, although the authorities of the EU Member State of habitual residence still have jurisdiction over the child, the authorities of the host state may be in a better position to conduct the monitoring. If the jurisdiction is transferred by applying Article 15 of the [Brussels IIa Regulation](#), the court which previously had jurisdiction has no authority any more to request information concerning the case and monitor the well-being of the child.

Elements to consider when monitoring the situation of the child include the following.

- **Sources of information:** the main source of information should be the child. The family, guardian or care providers should be also consulted. Authorities could organise announced and unannounced visits to the family, foster care, extended family or suitable residential accommodation where the child is living. They could

use discussions to evaluate the implementation of the individual plan and the services that are being provided.

- **Professionals involved:** child protection or social services, ideally the social workers managing the case, should have the main responsibility. It could, however, be necessary to involve law enforcement authorities if security issues are raised. Central authorities under the [Brussels Ia Regulation](#) could be responsible for transmitting the information to another Member State, when so requested.
- **Complaint mechanism:** the child and the parents or guardian should have access to a complaint mechanism in case the support that the child is receiving is insufficient or inappropriate. The complaint mechanism should be child-friendly.
- **Confidentiality:** monitoring should not interfere with the right to respect the private and family life of the child and their family. Those involved should also continue to respect confidentiality. Monitoring authorities should be aware of the risk of stigmatisation of child victims in the community and should keep a low profile when visiting (e.g. not visit the child's school with a police car or with uniformed officers).
- **Reaching majority:** when the child reaches 18 years of age, they may lose certain entitlements. Measures should be taken to ensure that the child is independent and prepared for reaching adulthood and is supported during this transition. Depending on the specific case, authorities could consider extending certain protection measures for those children who could not reintegrate back to their families (for example, extending the support of social services up to the age of 21 years, if their national law provides for this possibility). When the child reaches adulthood, they will still be entitled to a number of protection measures, according to the [Victims' Rights Directive](#) and the [EU Anti-Trafficking Directive](#), or national victim protection laws.
- **Adapting the individual plan:** the individual plan agreed at the beginning of the integration phase should be the basis for the monitoring exercise. The monitoring exercise should look into whether or not all agreed measures were implemented and if the individual plan should be updated.
- **Adapting the monitoring plan:** based on the results of the monitoring, it may be necessary to extend the duration of follow-up measures, to change the frequency of the visits or to amend the report sent to the other EU Member State through the Central Authorities.

Annex 1: Legal references

EU instruments	
EU Charter of Fundamental Rights	Charter of Fundamental Rights of the European Union, OJ C 364, 2000, Vol. 43, 18 December 2000.
EU Anti-Trafficking Directive (2011/36/EU)	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 2011, p. 1.
Council Directive (2004/81/EC)	Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261, 6.8.2004, p. 19.
Victims' Rights Directive (2012/29/EU)	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 2012, p. 57.
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Free Movement Directive (2004/38/EC)	Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 2004, p. 77.

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Annex 3: Contact list

Organisation/network	Website
Contacts at national level	
Central authorities established under Brussels IIa	e-Justice portal
Central authorities established under the Hague Children's Conventions	Hague contacts
National rapporteurs or equivalent mechanisms on trafficking in human beings	National rapporteurs contacts
Civil society platform against trafficking in human beings	Civil society platform
Relevant EU agencies	
Europol – European Union Agency for Law Enforcement Cooperation	Contact for law enforcement agencies
Eurojust – European Union's Judicial Cooperation Unit	Contact for practitioners
CEPOL – European Union Agency for Law Enforcement Training	CEPOL

Annex 4: An overview of what responsible bodies should do

Body	Possible actions
Police	- Detect a child in need of protection - Establish identity - Carry out a risk assessment - Take measures to protect the child's safety - Investigate and start of legal proceedings - Refer the child to protection services, including for victims of trafficking - Inform the child - Hear the child and consider the child's views
Border guards	- Detect a child in need of protection - Refer the child to protection services, including for victims of trafficking - Inform the child - Hear the child and consider the child's views
Child protection / social services	- Detect a child in need of protection - Open and maintain an individual case file - Provide immediate assistance and protection - Refer a child victim of trafficking to the responsible body, including the national referral mechanisms (NRM) in case of child victims of trafficking - Appoint a temporary guardian - Assess the child's best interests - Inform the child - Hear the child and consider the child's views - Trace the family and assess the family situation - Monitor the child's well-being after a durable solution is implemented
Guardian	- Be the main contact person for the child - Monitor the child's well-being - Represent the child - Safeguard the child's best interests - Inform the child - Hear the child and consider the child's views
Judicial authorities	- Appoint a guardian and make sure the child has a legal representative - Carry out legal proceedings (civil, administrative, criminal) - Establish jurisdiction - Keep contacts with the court in the other EU Member State(s) - Hear the child and consider the child's views
Central authorities under Brussels IIa	- Coordinate communication between different EU Member States on individual cases within the scope of the Regulation when requested - Act as liaison or facilitate contacts between courts - Transmit requests to social or child protection services for a social report regarding the general situation of the child - Provide information to the parents
Consular authorities	- Assist a child deprived of liberty - Act as liaison between EU Member States - Organise travel arrangements - Inform the child - Hear the child and consider the child's views

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Children deprived of parental care found in another EU Member State other than their own aims to strengthen the response of all relevant actors for child protection. The protection of those girls and boys is paramount and an obligation for EU Member States, derived from the international and European legal framework. The guide includes a focus on child victims of trafficking and children at risk, implementing an action set forth in the *2017 Communication stepping up EU action against trafficking in human beings*, and takes into account identified patterns, including with respect to the gender specificity of the crime.

Through a set of “10 actions” the guide provides practical suggestions on how to identify, refer and support children, elaborating on how to implement principles such as the right of the child to be heard and how to ensure their best interests when deciding on a durable solution. The guide provides practical information to enhance national and transnational cooperation within the EU and on the support relevant EU agencies can provide, including for countering the impunity that fosters child trafficking. Professionals, such as law enforcement and judicial authorities, social workers, health professionals, child protection officers, guardians, judges, lawyers, or Central Authorities established under the Brussels IIa Regulation, but also authorities defining procedures and protocols, can benefit from this guidance. Enhancing cooperation within the EU and promoting a fundamental rights approach of all actors involved will strengthen the protection of all children deprived of parental care, including child victims of trafficking, and contribute to prevention efforts.