

**Gemma Halliday**

**Per una tutela effettiva dei minori migranti  
non accompagnati e separati.**

**La raccomandazione CM/Rec (2019)11  
del Comitato dei Ministri del Consiglio d'Europa**

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Il Comitato dei Ministri del Consiglio d'Europa, l'11 dicembre 2019, ha adottato la raccomandazione CM/Rec (2019)11, relativa all'efficacia del sistema di tutela volontaria riconosciuto a garanzia della protezione della categoria dei "minori stranieri non accompagnati e separati" nell'odierno contesto delle migrazioni.

Le linee guida e le misure contenute nella raccomandazione, saldamente ancorata agli standard internazionali ed europei in materia di diritti umani, si applicano ai minori non accompagnati o separati, ai quali deve essere effettivamente garantita la tutela non appena siano stati identificati come "*minore non accompagnato*"<sup>1</sup> quando il soggetto abbia meno di 18 anni e sia stato "separato da entrambi i genitori e da altri parenti", o come "*minore separato*"<sup>2</sup> quando, nonostante sia stato separato da entrambi i genitori, possa comunque essere accompagnato da altri parenti. Secondo quanto dettato dalla raccomandazione, tali principi dovrebbero essere applicabili, se del caso, anche laddove i giovani, dopo il compimento del diciottesimo anno di età o in specifiche situazioni, abbiano ancora bisogno di cure adeguate e del necessario sostegno, anche attraverso la tutela o altri mezzi previsti a loro garanzia.<sup>3</sup>

I minori non accompagnati o separati, sono titolari di diritti e libertà, che, considerata la condizione di maggiore vulnerabilità nella quale si trovano, sono spesso messi a rischio, potendo essere vittime di tratta a scopo di sfruttamento sessuale o subire altre forme di violenza e violazione dei loro diritti, quali il lavoro forzato, la privazione della libertà, la tortura o altri trattamenti inumani o degradanti, il matrimonio infantile e forzato e altre forme di violenza particolarmente dannose.

Nelle migrazioni, laddove il sistema di tutela volontaria sia adeguatamente strutturato e funzioni efficacemente, contribuisce a garantire la salvaguardia essenziale della protezione dei diritti dei minori non accompagnati e separati poiché i tutori svolgono un ruolo chiave a garanzia del rispetto del loro superiore interesse e dell'esercizio dei loro specifici diritti<sup>4</sup>.

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<sup>1</sup> Recommendation CM/Rec (2019)11, Para II, lett. b

<sup>2</sup> Recommendation CM/Rec (2019)11, Para II, lett. c

<sup>3</sup> Recommendation CM/Rec (2019)11, Para I, n. 4

<sup>4</sup> Recommendation CM/Rec (2019)11, Para III, Principle 1 "*Protection of the rights of unaccompanied and separated children in migration through guardianship*"

A tal proposito, la raccomandazione identifica il “tutore”<sup>5</sup> con il soggetto, nominato o designato per sostenere, assistere e, ove previsto dalla legge, rappresentare i minori non accompagnati o separati nei processi che li riguardano, tenendo conto del fatto che il termine utilizzato, così come la funzione e le modalità di nomina del tutore, variano da giurisdizione a giurisdizione.

Pertanto, al fine di raggiungere lo scopo auspicato, si raccomanda in primo luogo, ai governi degli Stati membri di valutare la loro legislazione, le politiche da loro adottate e le prassi ivi definite e di adottare inoltre tutte le misure necessarie a garantire l’attuazione della presente raccomandazione, al fine di definire un quadro coerente e completo<sup>6</sup> per la tutela dei minori non accompagnati e separati, prevenendo altresì che la stessa venga tradotta e diffusa tra le autorità di tutti gli Stati membri competenti, i professionisti e le parti interessate pertinenti.

La raccomandazione CM/Rec (2019)11, è articolata in quattro diversi paragrafi, all’interno dei quali sono stati delineati 18 principi.

Il paragrafo I identifica lo scopo e l’obiettivo perseguito tramite la redazione della stessa; il paragrafo II, presenta le definizioni in essa rilevanti, come identificate dal Comitato del Consiglio dei Ministri.

I primi 9 principi, contenuti nel paragrafo III, delineano le misure da adottare negli Stati membri, in quanto necessarie per assicurare un *“sistema di tutela efficace”*, tenendo effettivamente conto delle circostanze ed esigenze dei minori. Tale sistema dovrà garantire il rispetto del loro superiore interesse, mediante lo stanziamento di adeguate risorse e l’accertamento circa l’affidabilità dei tutori in quanto soggetti adeguatamente qualificati che dovranno essere sostenuti per tutta la durata del loro mandato.

Di seguito, gli altri 9 principi, inseriti nel paragrafo IV, permettono di delineare più nello specifico, *“l’effettiva attuazione dei sistemi di tutela negli Stati membri”*, che dovrebbero disporre di un sistema di tutela efficace, nel rispetto degli obblighi internazionali in materia di diritti umani nei confronti dei minori.

Al fine di implementare l’attuazione della raccomandazione da parte degli Stati e rafforzare i loro sistemi nazionali di tutela, è inoltre previsto che gli stessi istituiscano una piattaforma di esperti, attraverso un comitato del Consiglio d’Europa,

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<sup>5</sup> Recommendation CM/Rec (2019)11, Para II, lett d

<sup>6</sup> Recommendation CM/Rec (2019)11, Para I, lett. b

per promuovere l'attuazione dei principi e delle linee guida, esaminandone l'attuazione tre anni dopo la sua adozione e, successivamente, ad intervalli analoghi.

Identificata l'importanza di avere delle chiare linee guida da seguire per definire le politiche e i quadri di protezione dei minori negli Stati membri, l'adozione di questa raccomandazione determina il raggiungimento di un accordo circa l'esigenza di questa categoria di minori di veder tutelati i loro diritti a tutti i livelli, secondo un quadro giuridico coerente e completo (Gemma Halliday).



**Recommendation CM/Rec (2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration**

*(Adopted by the Committee of Ministers on 11 December 2019 at the 1363<sup>rd</sup> meeting of the Ministers' Deputies)*

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

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

Reaffirming the principle of the equal dignity of all human beings, and underlining the importance of guaranteeing all children within a State's jurisdiction the full exercise, respect, protection and promotion of their human rights and fundamental freedoms, without discrimination on any ground;

Having regard to States' obligations and commitments towards children as undertaken in international legal instruments, notably the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols; the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), supplementing the United Nations Convention against Transnational Organized Crime; the United Nations Convention on the Rights of Persons with Disabilities (2006); the Convention concerning the powers of authorities and the law applicable in respect of the protection of infants (1961); the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and the related Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children (1994); the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996); and other United Nations instruments concerning refugees and stateless persons;

Taking into account the rights enshrined in relevant European legal instruments, and the obligations and commitments undertaken by States, including by virtue of the Convention for the Protection of Human Rights and Fundamental Freedoms

(ETS No. 5) and the protocols thereto; the European Social Charter (ETS No. 35 and its revised version, ETS No. 163); the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its protocol (CETS No. 223); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126); the European Convention on the Exercise of Children's Rights (ETS No. 160); the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197); the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201); and the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210);

Recalling the relevant case law of the European Court of Human Rights and taking into account the relevant recommendations, resolutions and declarations of the Committee of Ministers and of the Parliamentary Assembly of the Council of Europe in this field, and the relevant recommendations of international monitoring bodies and committees;

Deeply concerned that unaccompanied and separated children are among the most vulnerable persons in the migration context, and as such are at increased risk of violation of their fundamental rights and freedoms, in particular the right to life, survival and development, the right to non-discrimination, the right to respect for private and family life, the right to acquire a nationality, the right to seek asylum, the right to the highest attainable standards of health and of access to health-care services, the right to education, the right to housing, access to justice, and the right to freedom from all forms of violence;

Aware that children are forced to flee their homes and/or migrate – accompanied, unaccompanied or separated – for different reasons, such as, conflict or other forms of abuse and persecution, violence, family reunification, changes in the environment that affect their life and living conditions, or the search for better economic, social or cultural conditions;

Recognising that unaccompanied and separated children in migration are right holders and that all children should be guaranteed equal standards of protection, reception and care;

Conscious of the need to put in place comprehensive and child-friendly measures in open accommodation facilities to ensure the protection and assistance of



unaccompanied and separated children in migration in order to effectively prevent neglect, trafficking for the purpose of sexual exploitation or other forms of exploitation, involvement in criminal activities, forced labour, removal of organs, drug trafficking, unlawful or arbitrary deprivation of liberty, torture, inhuman or degrading treatment, involvement in armed conflicts, child and forced marriage, and other harmful practices or forms of violence, including gender-based violence;

Aware of the need for additional protection and assistance measures in circumstances where unaccompanied and separated children in migration are in a situation of additional vulnerability, such as children with disabilities or at risk of violence, re-trafficking or revictimisation, or in any other situation of vulnerability;

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

Taking into account that States must realise the children's right to express their views freely in all matters affecting them and have their views be given due weight in accordance with their age and maturity, and that States have an obligation to ensure the respect of this right; Convinced that an effective guardianship system constitutes an essential safeguard for the protection of the rights of unaccompanied and separated children in migration and that guardians play a key role in the safeguarding of children's best interests and the exercise by these children of their rights;

Convinced that guardianship is critical to ensuring that State efforts to find sustainable, rights-based solutions are initiated and implemented without delay,

Recommends that the governments of member States:

1. set out a comprehensive and consistent framework of measures with respect to guardianship for unaccompanied and separated children in migration, which takes account of the manner in which responsibilities are organised in member States;

2. assess their legislation, policies and practice and, where appropriate, take measures and allocate resources to ensure the necessary reforms to implement this recommendation;
3. ensure that this recommendation is translated and disseminated as widely as possible among all competent national authorities, relevant professionals and stakeholders, including those working for and with unaccompanied and separated children in migration and nongovernmental actors;
4. establish a platform of experts at pan-European level through a Council of Europe committee to promote the implementation by States of the principles and implementing guidelines, acting also as a regular forum for exchanges of experience and good practice, with a view to supporting member States in reinforcing their national guardianship systems and facilitating cross-border co-operation between them, taking into account available resources;
5. examine within the Committee of Ministers, through the appropriate inter-governmental committee, the implementation of this recommendation three years after its adoption and at similar intervals thereafter.

## Appendix to Recommendation CM/Rec (2019)11 Guiding principles and implementing guidelines for an effective guardianship for unaccompanied and separated children in the context of migration

### **I. Purpose and scope**

1. The present guiding principles and implementing guidelines are intended to support States in ensuring that unaccompanied and separated children within their jurisdiction are effectively provided with guardianship, promptly after identification as an unaccompanied child, so that their rights and best interests are adequately safeguarded and duly considered in all processes and decisions concerning them, in line with international and European standards.
2. Taking into account the international and European legal instruments and relevant guidance and experience in this area, these principles and implementing guidelines seek in particular to:
  - a. assist States in effectively implementing the actions necessary to fulfil their responsibilities and obligations towards unaccompanied and separated children in migration, while guiding the policies, decisions and activities of all the competent stakeholders concerned;
  - b. provide guidance on the development and implementation of standards on guardianship, including by developing a common framework, in order to safeguard the rights of unaccompanied and separated children in migration, and ensure respect for their best interests while taking into account the different ways in which responsibilities are organised in member States;
  - c. encourage States to facilitate and promote the exchange of sustainable and promising practices with respect to guardianship to ensure the protection of the rights of unaccompanied and separated children in migration while ensuring a rights-based approach in migration policies applied to them.
3. These guiding principles and implementing guidelines apply to guardianship measures for unaccompanied and separated children immigration.
4. The principles and measures should also be applicable, as appropriate, to young persons who need continuing care and support through guardianship or other means for a transitional period after reaching 18 years of age or in specific situations, as set out under the law of the receiving State.

## II. Definitions

1. For the purpose of this recommendation:
  - a. “child” refers to any human being below the age of 18 years;
  - b. “unaccompanied child” refers to a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so;
  - c. “separated child” refers to a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members;
  - d. “guardian” refers to a person who is appointed or designated to support, assist and, where provided by law, represent unaccompanied or separated children in processes concerning them. Where an institution or organisation is appointed or designated as a guardian to support, assist and exercise the legal capacity for a child, it should designate a natural person to carry out the duties of guardian as set out in these guidelines. The guardian acts independently to ensure that the child’s rights, best interests and well-being are guaranteed. The guardian acts as a link between the child and all other stakeholders with responsibilities towards him or her. This operational definition takes into account that the term used, as well as the function and manner of appointment of a guardian, vary from jurisdiction to jurisdiction;
  - e. “guardianship authority” refers to an authority exercising its responsibility for the management of guardianship for unaccompanied and separated children in migration, including case management and support. This definition takes into account that there are different ways in which States define “guardianship” and organise the discharge of guardianship;
  - f. “sustainable, rights-based solution” refers to a comprehensive, secure and sustainable solution which ensures that the child is able to develop into adulthood, in an environment which will meet their needs, and safeguards their rights, as defined by the United Nations Convention on the Rights of the Child, and will not put the child at risk of discrimination, violence, persecution or any other serious harm. Such a solution involves that a thorough best-interests determination be carried out and that the child’s views be taken into account in the development and implementation of a durable solution;

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

### III. Guiding principles for an effective guardianship system

#### Principle 1 – Protection of the rights of unaccompanied and separated children in migration through guardianship

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

#### Principle 2 – Guardianship frameworks and measures

States should adopt and implement adequate legal, policy, regulatory and/or administrative frameworks to ensure the provision of guardianship for unaccompanied and separated children in migration.

#### Principle 3 – Appointment or designation of guardians without undue delay

States should ensure that an unaccompanied or separated child in migration has a guardian appointed or designated without undue delay, taking into account individual characteristics, to provide support to the child until the age of majority, and that care and support are available through guardianship or other means for a transitional period after reaching 18 years of age, as may be deemed appropriate in specific situations.

#### Principle 4 – Legal responsibilities and tasks of guardians

States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration in processes affecting them, to safeguard their rights and best interests and to act as a link between the child and the authorities, agencies and individuals with responsibilities for them. States should ensure that guardians enjoy the independence and impartiality appropriate to their role.

### Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms

States should ensure that unaccompanied and separated children in migration are provided with relevant information and advice, and that they have access to an independent complaint mechanism and remedies to effectively exercise their rights or act upon violations of their rights.

### Principle 6 – Institutional measures

States should ensure that a competent authority is in place with responsibility for the management of guardianship for unaccompanied and separated children in migration taking into account the manner in which responsibilities for guardianship are organised in member States.

### Principle 7 – Resources, recruitment, qualifications and training

States should allocate adequate resources to ensure effective guardianship for unaccompanied and separated children in migration, including ensuring that guardians are adequately screened, reliable, qualified and supported throughout their mandate.

### Principle 8 – Co-operation and co-ordination at national level

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

### Principle 9 – International co-operation

States should rapidly, constructively and effectively provide the widest range of international co-operation in relation to unaccompanied and separated children in migration, including for family tracing and identifying and implementing sustainable, rights-based solutions, and involve in appropriate ways their guardianship authority and/or guardians.

## **IV. Implementing guidelines for an effective guardianship system**

### Principle 1 – Protection of the rights of unaccompanied and separated children in migration through guardianship

States should have in place an effective system of guardianship which takes into account the specific needs and circumstances of unaccompanied and separated

children in migration in order to protect and promote their rights and secure their best interests.

1. International human rights obligations with respect to children shall be fully respected when establishing and implementing a guardianship system.
2. Every unaccompanied or separated child is entitled to special protection and assistance provided by the competent authorities and bodies, and to receive the support and assistance of a guardian.
3. States should ensure that guardianship measures take into account children's best interests and specific circumstances, including circumstances of particular vulnerability in which they find themselves when outside their countries of origin, as well as any vulnerability factors requiring additional protection and assistance.
4. States should ensure that effective mechanisms are in place for guardianship to mitigate the aggravated risks for these children of exposure to discrimination, neglect, sexual violence, forced labour, drug trafficking, child abduction, child marriage and other forms of violence.
5. States should ensure that guardianship contributes to ensuring that efforts to identify sustainable, rights-based solutions for these children are initiated and implemented without delay, including the possibility of family reunification based on the determination of the child's best interests.

### Principle 2 – Guardianship frameworks and measures

States should adopt and implement adequate legal, policy, regulatory and/or administrative frameworks to ensure the provision of guardianship for unaccompanied and separated children in migration.

1. States should put in place an effective guardianship system, taking into account the evolving nature of needs and the manner in which different State responsibilities concerning children are organised, in particular as regards defining how guardians operate, co-ordinate and cooperate with other services and stakeholders to fulfil the rights of the child.
2. States should adopt and implement a comprehensive legal, policy, regulatory and/or administrative framework for guardianship, including provisions on:
  - a. professional standards, requirements and qualifications;

- b. screening, vetting, recruitment and appointment or designation procedures of guardians;
  - c. duties, rights and responsibilities of guardians, as well as support measures and a guardians' registry;
  - d. training requirements;
  - e. procedures to ensure that children are provided with information and assistance and that their views are expressed, taken into consideration and given due weight at all stages of relevant procedures;
  - f. individual complaint mechanisms available for children and related procedures;
  - g. interagency and multidisciplinary co-operation and co-ordination mechanisms and processes at national and international level;
  - h. confidentiality and data-protection requirements, where appropriate;
  - i. monitoring, supervision and oversight of guardians by the guardianship authority;
  - j. monitoring of the guardianship arrangements for children, including monitoring by an independent authority.
3. The circumstances and procedures related to the appointment or designation and change of the guardian, as well as the termination of guardianship, should be prescribed by law, taking into account the child's right to be heard, the best interests of the child, the need for stability and continuity and, where appropriate be subject to judicial review.
  4. States should ensure monitoring of the guardianship system at regular intervals, including through consultation with children.

### Principle 3 – Appointment or designation of guardians without undue delay

States should ensure that an unaccompanied or separated child has a guardian appointed or designated without undue delay, taking into account individual characteristics, to provide support to the child until the age of majority, and that care and support are available through guardianship or other means for a transitional period after reaching 18 years of age, as may be deemed appropriate in specific situations.



1. Every unaccompanied or separated child should have a guardian, regardless of his or her immigration status.
2. States should ensure that a guardian is appointed or designated, following appointment or designation by another competent body (such as a court) without undue delay, once a child in migration is reported or identified as unaccompanied or separated.
3. In exceptional cases involving a delay in the designation or appointment of a guardian, the State should ensure that there is no gap in the possible exercise of rights or in the effective protection of the unaccompanied or separated child in migration.
4. When there is uncertainty as to whether a person is a child, and even after the national age assessment procedures have been conducted, States should ensure that they have a guardian or that a guarantee of respect for their rights is upheld by a competent authority.
5. Every unaccompanied or separated child in migration should be informed and have their views taken into consideration in the process of appointment or designation of guardians, taking into account their individual circumstances, for example their age, maturity, evolving capacities and need for adequate interpretation and cultural mediation.
6. Every unaccompanied or separated child in migration should be able, in specific cases, to request a change in guardian or, when an organisation is appointed or designated as a guardian, of the person carrying out the duties.
7. A guardian's assignment should last until guardianship is transferred, parental responsibility is in place, or until the child reaches the age of majority.
8. The principles and measures should also be applicable, as appropriate, to young persons who need continuing care and support through guardianship or other means for a transitional period after reaching 18 years of age or in specific situations, as set out in the law of the receiving State.

#### Principle 4 – Legal responsibilities and tasks of guardians

States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration in processes affecting them, to safeguard their rights and best interests and to act as a link between the child and the authorities, agencies and individuals with

responsibilities for them. States should ensure that guardians enjoy the independence and impartiality appropriate to their role.

1. Measures in place should authorise and empower guardians to inform, assist and support unaccompanied or separated children in migration and, where necessary and provided by law, to complement their limited legal capacity in processes and decisions affecting them. More particularly, the role of the guardian should include:

- a. ensuring that children are informed of, and understand, their rights;
- b. informing the competent child-protection system in cases where children are subject to violence, abuse, neglect or exploitation, and requesting and/or facilitating the provision of appropriate protection and care to children;
- c. safeguarding children's well-being and development by, *inter alia*, listening to the child and taking into consideration their views, through supporting their access to adequate care, accommodation, health care, education and professional training, and any other relevant professional support services;
- d. guiding children in their transition to adulthood, including through individualised life projects;
- e. preparing children/ensuring children have access to, and have the opportunity to participate in, procedures and decision-making processes concerning their status and the realisation of their rights, including processes concerning their identity, age and sustainable, rights-based solutions, and that they are provided with support in participating in processes affecting them;
- f. complementing children's limited legal capacity;
- g. supporting children in accessing representation, and if required, legal counsel, in administrative and judicial proceedings;
- h. reporting cases of missing children;
- i. co-operating with competent authorities to ensure the child's best interest e.g. in identification and age assessment processes and family tracing;
- j. managing assets and goods on behalf of the child;

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

2. The guardian should be authorised to take actions aimed at safeguarding the best interests of the child, in particular to:

a. assess the child's best interests in all actions in their regard;

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

c. challenge authorities for failures to safeguard the child's best interests.

3. The guardian should assist in particular in the identification and implementation of measures regarding: the assessment of each child's vulnerabilities, including an assessment of protection risks and needs on a regular basis, best interests' assessments, age assessment, and guardianship procedures. The guardian should assist, where provided by law, in family tracing procedures, tracing of missing children, immigration or asylum procedures, and administrative or judicial proceedings.

4. The guardian has a duty to the child and measures in place should create an enabling environment for the guardian to develop a relationship of trust with the child. Policies and procedures in place should ensure the regularity of personal contacts and visits and establish any confidentiality rules applicable to communications between them for the duration of their mandate and after. Any disclosure of information concerning the child by the guardian should require the prior consent of the child, unless the disclosure is necessary in the best interests of the child.

5. The guardian should act as a link between the child and relevant authorities, agencies and individuals. Measures in place should empower the guardian to cooperate and co-ordinate with other stakeholders, as appropriate, on issues concerning the child, in particular with careers, the child's legal representative(s), education professionals, social workers and social services, health professionals, reception-centre directors, police, law-enforcement and judicial authorities, migration authorities, victim support services and community services. Equally,

measures in place should require relevant stakeholders to inform the guardian and the child about relevant procedures and decisions, and to co-operate and co-ordinate with the guardian, as appropriate, on issues concerning the child.

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

### Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms

States should ensure that unaccompanied and separated children in migration are provided with relevant information and advice, and that they have access to an independent complaint mechanism and remedies to effectively exercise their rights or act upon violations of their rights.

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

2. Such information and advice should be provided to each child in a language that they understand or are reasonably meant to understand, in a child-friendly manner, and the understanding by the child of the information provided should be verified by the guardian. Provision of the information to the guardian should not be an alternative to communicating the information to the child.

3. States should ensure that effective mechanisms are in place to allow children to access an independent and effective complaint mechanism in relation to their guardian, guardianship arrangements and/or guardianship authority. Such mechanisms should, *inter alia*, be easily accessible, child-friendly and transparent, and accompanied by appropriate safeguards to ensure the protection of confidentiality of the information. Triggering a complaint should not lead to a disadvantage for the child.

4. States should encourage the use of alternative dispute resolution mechanisms, such as mediation, wherever they may best serve the child's best interests, although they should not be used as an obstacle to the child's access to justice.
5. States should ensure that every child has access to an effective remedy before a competent authority or body against the decision of the complaints mechanism in cases where the complaints mechanism is not in itself a court-based mechanism. The competent authority should be impartial and independent, in accordance with the standards and safeguards set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Committee of Ministers' Guidelines on child-friendly justice (2010). An effective remedy implies that the child should have access to representation and, where necessary, to legal counsel, as well as interpretation whenever required. Proceedings should be child sensitive and accessible, and the urgency principle should be applied to provide justice in a timely manner, and free of charge. The decision should be explained in a child-friendly manner, which is adapted to the child's age and maturity.

#### Principle 6 – Institutional measures

States should ensure that a competent authority is in place with responsibility for the management of guardianship for unaccompanied and separated children in migration, taking into account the manner in which responsibilities for guardianship are organised in member States.

1. States should ensure that a competent authority is responsible for managing guardianships, that is for recruiting, vetting and training guardians, for making sure that adequate child-protection policies are incorporated into the guardianship system, and for supervising the guardians. States should provide clear eligibility criteria for this authority in order to prevent any conflict of interest with that of the child.
2. The competent authority should be responsible for setting out relevant procedures and support measures or services for guardians and children, which include providing:
  - a. initial and continuous administrative support, advice and assistance measures or services, as well as training and development, to enable guardians to meet and maintain the required professional standards and enhance their knowledge and skills in relation to their duties;
  - b. setting standards for the operational procedures for the conduct of guardians;

- c. mechanisms for communication, networking and self-help among guardians;
  - d. harmonised procedures and processes for guardians for reporting and recording cases of children going missing or suffering from violence, abuse, trafficking or exploitation;
  - e. child-friendly information materials for unaccompanied or separated children in migration, covering, *inter alia*, information on the functions, rights and duties of guardians; the accessibility of the guardian; confidentiality of communication principles; individual complaint mechanisms available to the child, regarding the rights of the child; available assistance and protection measures and service providers; the role and duties of other stakeholders; and any relevant criminal, administrative and civil proceedings.
3. States should take measures to ensure that guardians are responsible for a manageable number of cases allowing the performance of their duties, taking into account their complexity, and the need for the child to have regular access to the guardian's individual attention and adequate personalised support.
  4. States should ensure that regular monitoring, supervision and oversight is carried out regarding the exercise of guardians' duties and functions and the competent authority's discharge of functions, including through the participation of, and the feedback from, children.
  5. Measures in place should ensure that the competent authority has the necessary operational independence from the management of other responsibilities for the child.
  6. The competent authority should be responsible for maintaining an individual case file on every child under its care. This file should include information relevant to the guardianship throughout the guardianship period.
  7. States should ensure that the record-keeping requirements and measures in place enable them to provide, where necessary, evidence for any relevant proceedings and complaint processes, and that the confidentiality of these records is in line with international data-protection standards.

#### Principle 7 – Resources, recruitment, qualifications and training

States should allocate adequate resources to ensure effective guardianship for unaccompanied and separated children in migration, including ensuring that guardians are adequately screened, qualified and supported throughout their mandate.

1. States should collect data on a regular basis, with a view to identifying the number of children, the needs and allocated resources in relation to the guardianship of unaccompanied and separated children in migration and provide for a review of guardianship measures to ensure that they respond to changing needs, including in emergency situations.
2. States should ensure that the guardianship authority is provided with sustainable and adequate financial, human and technical resources.
3. States should have in place processes to ensure that the staff of the competent guardianship authority maintain high professional standards, including standards regarding confidentiality, are of high integrity and possess the appropriate skills.
4. States should take measures to ensure that guardians have the necessary qualifications and relevant expertise in child development, the rights of the child, the child-welfare and protection system and services available, in order to take into account the specific and cultural needs of the children entrusted to them.
5. States should take measures to ensure that guardians and the guardianship authority are provided with adequate support to carry out their functions effectively, which should include initial and continuing education and training.

#### Principle 8 – Co-operation and co-ordination at national level

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

1. States should define the roles, tasks and responsibilities of the guardian and of the guardianship authority in relation to other competent authorities and stakeholders with respect to unaccompanied and separated children in migration, in particular of other national and local authorities, welfare services, youth services and organisations, to ensure accountability and transparency.
2. States should have an operational co-ordination mechanism in place which includes the guardianship authority, so that policies in place ensure that the

continued well-being of unaccompanied and separated children in migration, their best interests and the search for and implementation of sustainable, rights-based solutions remain primary considerations in all matters relating to them, and that relevant professionals co-operate and co-ordinate their actions.

3. States should develop protocols, agreements, standard operational procedures and referral mechanisms to enhance co-operation and co-ordination on a regular basis between guardians, the guardianship authority and all other relevant stakeholders to protect unaccompanied and separated children in migration from the moment of identification until a sustainable, rights-based solution is implemented, including in individual case management.
4. States should ensure that referral mechanisms address the role of the guardian and of the guardianship authority in cases of disappearance of an unaccompanied or separated child in migration and in situations where the child is a victim or is at risk of becoming a victim of violence, abuse, trafficking or exploitation.
5. Processes and channels for co-operation and co-ordination should be established to ensure that confidentiality is respected, including with respect to information sharing with the child and between the child, the guardian and other stakeholders, having the best interests of the child as the primary consideration and taking into account international data-protection standards.
6. States should facilitate effective co-operation and co-ordination between guardians and other stakeholders by providing multi-agency and multidisciplinary training and tools on a regular basis.
7. States should ensure the continuous monitoring and evaluation of co-operation and co-ordination, with the participation of relevant stakeholders.

### Principle 9 – International co-operation

States should rapidly, constructively and effectively provide the widest range of international co-operation in relation to unaccompanied and separated children in migration, including for family tracing and identifying and implementing sustainable, rights-based solutions, and involve in appropriate ways their guardianship authority and/or guardians.

1. States should take measures to define, as appropriate, the role and responsibilities of the guardian and the guardianship authority in the context of



international co-operation for the purpose, *inter alia*, of family tracing and assessing family circumstances, the transfer of care and custodial responsibilities, establishing a sustainable, rights-based solution, preventing child trafficking, preventing disappearances of children and tracing missing children.

2. States should have a legal basis to provide international co-operation in relation to unaccompanied and separated children in migration, both of their own initiative and upon request.

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

4. In order to ensure the rights of the child, the child's well-being and their best interests in cases where their situation is of concern to more than one State, or when the child moves to another State, States should co-operate through the most effective means, including by negotiating or entering into specific arrangements or agreements where necessary, to enable timely co-operation between guardians and guardianship institutions with foreign counterparts.

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