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Discussion Paper on guardianship, care arrangements and custodial responsibilities for unaccompanied and separated children fleeing Ukraine and arriving in the European Union

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Introduction

This discussion paper addresses issues facing unaccompanied and separated children fleeing Ukraine and arriving in the European Union (EU). In particular, it focuses on the priority issue of how care and custodial arrangements and guardianship under child protection and migration measures are established within EU Member States. This question has implications for how children access protection, how information on their circumstances is managed and ultimately how durable solutions are identified and secured for children.

The purpose of this review is to help identify issues and prompt consideration of how EU action, in particular the Solidarity Platform, but also other EU and regional action including initiatives as appropriate, can support Member States and other stakeholders to address common questions of concern and face challenges, while keeping the best interests of the child at the centre of all actions.

This paper was prepared by Child Circle, as part of a joint partnership with UNICEF and Eurochild aiming to gain a better understanding of the legal issues around the protection of children fleeing Ukraine and arriving in the EU. In parallel, UNICEF and Eurochild are engaged in a mapping of the laws and policies at national level on a range of issues, including guardianship, which is contributing to explorations between the Ukrainian government, EU Member States and the EU on mechanisms for cooperation between them for the temporary protection, care and eventual return of unaccompanied children. Finally, the paper and the mapping will also inform the support that UNICEF is providing to the Ukrainian Ministry of Social Policy as part of a signed agreement to support children in all alternative care settings, both in Ukraine and neighbouring countries.

This paper aims to:

- (a) identify the different circumstances of children arriving and to describe the features of the legal and procedural landscape in EU Member States in relation to guardianship, care arrangements and custodial responsibilities;
- (b) identify priority points for reflection (in light of the common challenges faced by the EU, Member States and stakeholders) and provide initial suggestions for action to explore at regional level amongst key stakeholders. Given the need for urgent review, this paper offers points for discussion - rather than a complete analysis - of the central issues involved.

Care and custodial arrangements, including guardianship, is one issue amongst the many that arise when an unaccompanied or separated child arrives or is identified on the territory of an EU Member State. As a priority safeguard, these arrangements will have an influence on almost all dimensions of the child's life. In discussing guardianship, we touch on some essential procedures in which a guardian will be involved, including access to international protection, protection from child trafficking and exploitation, challenging any racism or discrimination encountered by minority groups, family reunification or transfer to another country and durable solutions, including the possibility of eventual return to Ukraine. However, it would be beyond the scope of this paper to provide a full picture of the issues involved.¹

¹ As further background, we refer to the [Child Circle KIND Europe Note on unaccompanied children fleeing from Ukraine](#), which was published as a resource for all stakeholders during March 2022. When suggesting critical areas for action and practical avenues for EU action, the paper pointed to existing building blocks for action and emphasises that the necessary

Looking ahead, transparent and inclusive procedures, with the understanding and buy-in of all stakeholders involved, will be very important to improving the situation of the children. Moreover, there is significant potential - and indeed the necessity - for different actions mutually to reinforce each other. UNICEF plans to bring together experts and key stakeholders at a regional level to serve as a Reference Group for further review of the legal and policy framework and recommendations for action. EU bodies including the Commission and the EU agencies also regularly convene expert meetings on particular topics in the field, and it will be a particularly important time for this to happen.

I. Circumstances of unaccompanied and separated children

It is worth underlining the unprecedented scale and pace of the situation: 5.6 million people have fled from Ukraine by 3 May 2022 making it the largest refugee crisis since World War II and its aftermath. It has also been one of the swiftest exodus. At present, there are many children in need of temporary protection but this may change as the situation is fluid.

A significant number of children are arriving in the EU without either of their parents or an adult who has been formally assigned legal responsibility for them. Their circumstances are often more complex than those of the unaccompanied children who have sought asylum in the EU in recent years. Their core characteristics are also more varied. For example, many more of them are girls than is usual in the groups of children fleeing from other conflict situations. The age range is also broader including many unaccompanied and separated children, who are much younger than the teenagers who are typically seeking asylum in the EU. There are a large number of children with physical, psychiatric and educational special needs, who have previously been in institutional care. There are groups of children whose needs also arise from their being part of Roma or Jewish communities and the racism and discrimination this may attract. There are also likely to be a greater number of children who are already being controlled by international criminal gangs before they cross the border or who will fall into the hands of such gangs within the EU.

There is much that remains unknown about the overall situation of unaccompanied and separated children fleeing Ukraine, arriving and living in the EU and the types of support which they will need.

The millions of Ukrainians arriving in the EU are legally entitled to visa-free entry for a stay of up to 90 days. This allows a swift entry into the neighbouring EU Member States often dispensing with the requirement for a biometric passport, and even allowing entry to all fleeing with or without documentation. Initially, border officials reportedly did not have the capacity to register all of them properly. For this reason and others, it is very likely to be difficult to keep track of the location of many unaccompanied and separated children until they are registered in destination countries for the purposes of the Temporary Protection Directive or other similar statuses, apply for international protection or otherwise come to the attention of national child protection authorities. In the meantime, they may be at risk of going missing and/or becoming trafficked and exploited.

tools developed to respond to the situation will have an application beyond the situation of unaccompanied children arriving from Ukraine and should also be deployed immediately for other unaccompanied children who may be in precarious situations. It concluded with guiding principles for how stakeholders can act together, including by increasing transparency, developing procedures, harnessing additional capacity, and promoting collaboration both nationally and across borders.

Some children may be travelling on their own, having lost their parents or because their parents have elected to remain in Ukraine to protect their communities from further attacks. There will also be children between the ages of 16 and 18 who were permitted by the Ukrainian authorities to leave Ukraine on their own and who may avoid contact with the child protection system in their first country of reception, fearing that they may become blocked from moving onwards. Some states, such as Ukraine, recognise a range of legal capabilities at the age of 16, but the UNCRC, the EU and the Council of Europe expect states to treat those aged between 16 and 18 as children for child protection purposes. In practice, this may mean that, if identified, these adolescents, who may also be lacking documentation, will be treated as unaccompanied children and may face challenges and delays in continuing their journey to safety and protection without a legal pathway supported by the child protection authorities in the two countries concerned. Children may also become separated from family members after arriving in the EU, for a variety of different reasons. Unaccompanied children arriving on their own in particular will need a trauma-informed assessment in order to ascertain their identity, their needs and vulnerabilities, both obvious and hidden. It should also be acknowledged that they are unlikely to be able to articulate the totality of their needs and trauma without the assistance of a guardian.

However, the reality of whether children are unaccompanied or separated may be obscured by the manner in which they arrive in the EU. Many children may be travelling with adults who are not their parents and in these situations, it can prove difficult to identify these children as being separated from their primary caregivers and to mitigate risks to them. Many may have arrived without formal guardianship arrangements in place, but may have a notarised authorisation from both or one parent to travel with another adult. Moreover, as time passes, the arrangements put in place by a parent(s), which may have been envisaged to be temporary or limited in their scope, may also become unsustainable or inappropriate. Procedures need to be put in place to ensure that every child remains safe if they cross internal EU borders into states with different legal and child protection systems.

The fact that they are travelling with an adult, without any form of apparent permission from a parent, does not mean that the adult intends to abuse or exploit them.

A child may be travelling with a legally appointed foster carer, but it may be difficult to confirm the status of that adult and the names on travel documents are likely to be different. In such cases, it may be necessary to contact the Ukrainian consulate or national, regional or local authorities in Ukraine.

The accompanying adult may be a relative or friend of the family taking responsibility for transporting them from danger and taking immediate care of them or they may have found the child alone during a Russian attack and taken the child with them in order to protect him or her.

There will also be children travelling in groups from state or religious institutions. In such cases, it may be necessary to ascertain what legal responsibility the adults travelling with them bear as individuals for children in their care, as the children are also likely to be the “wards” of a national, regional or local authority or even private organisation and, in such cases, the accompanying adults may be caregiving staff, rather than have legal or parental responsibility for them. It is possible for an adult to acquire legal responsibility for a child but not yet parental responsibility (for example, in Ukraine shared parental responsibility between the state and a parent is common). In most of the cases, these adults will be authorised guardians or will have notarised permission to travel with the children. Both of these may expire after a period of time.

In addition, as in many crisis situations, there is a risk that children from Ukrainian institutions or even individual children may be travelling with international charitable or religious groups seeking to “rescue” them and offer them a “better life” through international adoption. The Ministry of Social

Welfare in Ukraine has tried to be involved in the evacuation of these children, however it is likely that some journeys were organised on an emergency and ad hoc basis. The Ukrainian authorities have sought to support the organisation and agreement of plans with different actors, informing the consular authorities in all countries through which the children travel and seeking arrangements in host countries which will keep the children together in big groups with a view to their return to Ukraine in due course. They have stated that they will not agree to any international adoptions, even those already in process, pending the outcome of the war and without such agreement an adoption will not be able to proceed. This is partly because many of the parents of these children will have retained a form of shared parental responsibility for them and the children are 'social orphans', as opposed to orphans whose parents have both died.

It will be vital to register children who are travelling with adults other than their parents within the child protection system when they arrive in the EU, and also importantly, in any EU country to which they travel onwards, so as to assess the circumstances of the child properly and ascertain what form of responsibility the adults with them are exercising and on what basis.

There will be a need for an immediate assessment before the child continues their journey and to ensure the authenticity of any written permission to be with the accompanying adult, which the adult or child may be carrying. This assessment should be conducted in the context of what is known by law enforcement and other security sector and social sector actors about: the operations of child trafficking gangs (not only in Ukraine, but in neighbouring countries); the transnational nature of these criminal gangs; and the fact that children are trafficked not just for sexual exploitation but also for criminal and labour exploitation. On the basis of their assessments, the authorities may need to put in place appropriate authorisations for children to continue the journey. In some situations, legal amendments or derogations from existing legislation may be needed in order to allow children to leave the first country.

In some countries, authorities may be faced with a procedural obligation to separate children from adults with whom they are travelling pending these verifications; however, careful consideration should be given to the best interests of the child before doing so. Further discussion is also needed about the needs of Ukrainian children previously cared for in institutions. Many of them have multiple special needs and their transfer to individual or small community placements may be very challenging and complex without substantial medical and social care support and without appropriate training for foster families or other carers. Others may have formed strong bonds with other children or their carers and may suffer further trauma if they are placed in other forms of care without a period of cultural and social adjustment.

Immediately for the purposes of accessing protection and in the longer term to ensure sustainable arrangements and to find durable solutions, it will also be important to identify individual children or groups of children for whom responsibility and/or support should not be wholly placed on adults accompanying them.

For example, as noted above, the accompanying adult may be able to provide daily care in the short term, in expectation of returning to Ukraine - and reuniting children with their families - becoming viable soon. In the situation of groups of children, accompanying staff may be able to provide care but may need support to ensure the children access protection status within the EU and find durable solutions.

Consequently, the type of support and responsibility that the host State authority should also exercise in relation to these children needs to be considered carefully. It will be necessary for receiving States

to assess the situation, support accompanying adults where this is in the best interests of the child and in some cases make formal provision for the care and custodial arrangements, including potentially some form of support and/or guardianship, for the child.

II. Current challenges in establishing care arrangements and custodial responsibilities

There are a range of common challenges faced by Member States in establishing care and custodial arrangements for unaccompanied and separated children, who recently fled Ukraine.

It is important to recognise that the practical difficulties in responding to the scale and pace of the situation are exacerbated by the fact that the legal landscape is complex. Establishing what type of guardianship, care arrangements and custodial responsibilities are required may root in a range of different bodies of laws.

It is also important to recognise that there are different models of guardianship in different EU countries. As a consequence, the ability to find common solutions across Europe will benefit from a clear understanding of the different systems that exist and an exploration of how they may be applied or adapted to the current situation.

This section provides some further background to these challenges, before reflecting in Section III on what areas for action at regional level should be explored.

A preliminary word on terminology

Learning from each other about the different ways in which care and custodial arrangements should be provided is complicated by the fact that many different terms are used in this area, and that these terms are not used consistently. Achieving clarity on each of these terms is an important achievement in and of itself in order to create clear procedures, as well as to facilitate transnational cooperation. We are currently preparing a resource sheet on these terms, including definitions from international and EU law. However, it is already useful to consider a few terminology points.

What does it mean to be an “unaccompanied” or “separated” child?

A child who is not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances, is referred to as a **child without parental care** (UN Alternative Care Guidelines). Unaccompanied and separated children both fall into this category. While these terms are often used interchangeably, there is an important distinction to be made between unaccompanied children (who are travelling without their parents or other family members and who are without a caregiver) and separated children (who may be accompanied by a family member or other adult who is caring for them, but who does not necessarily have parental responsibility for them).

An unaccompanied or separated child arriving in the EU may be in an informal or formal care arrangement. Even when the person accompanying them is their caregiver, they may not have custodial responsibilities for the child. In this regard, a caregiver may or may not be the child’s legal guardian and able to exercise parental responsibility.

What is a guardian?

The term guardian is often used in a variety of different ways, in the family and child welfare law setting and in migration measures at national and EU levels. Where a child is deprived of parental care, under family and child welfare law, a guardian may be appointed to exercise custodial and sometimes also care responsibilities, but more typically the duty to take day-to-day care of a child will be allocated to a caregiver within the national

child protection system or possibly to a foster carer. However, when a child deprived of parental care is outside their country of origin or habitual residence, guardianship must also be capable of supporting the child in the protection procedures and specific issues that arise, as a result of their particular vulnerabilities.

As regards the latter and as explained by EU FRA: A guardian is an independent person who safeguards a child's best interests and general well-being. To this effect, the guardian 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. (UNCRC General Comment No 6; UN Alternative Care Guidelines)

The term representative (sometimes referred to as legal representative) is sometimes used in place of the term guardian in EU migration instruments: A representative “means a person or organisation appointed by the competent bodies in order to assist and represent an unaccompanied [child] in [international protection] procedures [. . .] with a view to ensuring the best interests of the child and exercising legal capacity for the [child] where necessary.” (Reception Conditions Directive (2013/33/EU), 17 Article 2 (j).)

Representatives or legal representatives differ from **qualified lawyers or other legal professionals who provide legal assistance**, speak on behalf of the child and legally represent him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings, as provided in national law.

Alongside the guardian, other actors typically are also involved in the situation of the child, and may have particular responsibilities towards them. This includes social workers (who may have a role in supporting care arrangements and access to services), staff at care homes, health professionals, foster carers, cultural mediators, et al.

Under national family law mechanisms within EU Member States there will be provisions for guardianship arrangements, often underpinned by court proceedings, to be established for children deprived of parental care. Relevant provisions of the 1996 Hague Convention on parental responsibility will have a bearing in relation to children, insofar as they are viewed as habitually resident in Ukraine. Where the Temporary Protection Directive is applied, the provisions of article 16 will be relevant: *“The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.”* The Brussels IIb Regulation will have a bearing on cross border situations within the EU. This is further explored below.

In the context of children arriving from the Ukraine, the question of what form of guardianship and care and custodial responsibilities exist, for what purpose, and in what form it is provided, will need to be considered across the different types of circumstances in which children arrive and in line with their situation in Europe.

More broadly we note that typically many different services have roles in discharging the wider range of responsibilities to unaccompanied and separated children. ***Practically speaking, it is critical for different services to understand how guardianship for migrant children operates and interacts with their work. Guardianship should be embedded in a solid child protection system, where the child is at the centre of inter-agency, multidisciplinary interventions.***

Models of guardianship for unaccompanied and separated children outside their country of origin or habitual residence

Existing models for the **provision of guardianship for unaccompanied children outside their country of origin or habitual residence** vary considerably across the EU both in terms of the types of guardians in place, the role they play and their activities. The guidance provided by FRA highlights the role a guardian should play in order to protect a child's best interests and how this role interacts with that of other key actors. Many EU guardianship services are still working towards such a system.

In many states, guardianship is assigned to the head of an institution responsible for the protection or accommodation of unaccompanied or separated children, but the day to day care will be provided by individual employees or volunteers. In some states or different areas within the same state, guardians may all be volunteers or there may be a mix of volunteer and professional guardians. The extent of training and required qualifications may also vary. As will, the need for a court to appoint a guardian.

In many cases, there is a need for additional training to ensure that guardians are aware of the differing needs and histories of the children assigned to their care. Many states, for example, now appreciate the need for guardians to be aware of indicators that a child may have been trafficked or to acquire the skills needed to work with children from Roma and other minority communities. They also appreciate the need to recruit further guardians rapidly to respond to crisis situations, such as the war in Ukraine.

As noted in the ProGuard PAS [report](#), developed by Child Circle with Nidos and Missing Children Europe "there are very different models of guardianship in different States, depending on how reception and care for unaccompanied and separated children are organized in those countries, the roles of the different actors involved and how many unaccompanied children typically are received by a State.

For example, we see that some countries are beginning to develop their formal systems of guardianship for unaccompanied children (e.g. Italy and Greece) whereas some countries have more mature systems (e.g. Netherlands and Denmark). Some countries base themselves primarily on their local guardianship system for all children (e.g. the Orphan's Court in Latvia) whereas others have special arrangements focusing on unaccompanied children outside their countries of origin. Some countries have the same system nationwide (Netherlands, Denmark), whereas others (such as Germany, Italy) have local variations. Some countries have significant experience dealing with guardianship for unaccompanied and separated children, in some countries smaller numbers of such children have been involved (Latvia and Croatia). Some countries have guardianship institutions (Netherlands), others are coordinated by NGOs (Danish Red Cross). Some countries have volunteer guardians (Italy), others have professional guardians, whereas some systems are hybrid models of volunteers and guardians.

In some systems, guardians play a central role in fulfilling the parental responsibility a State owes to a child who is deprived of parental care and takes decisions, as a parent might, on care plans and arrangements (e.g. the Netherlands). In other countries, the guardian's role primarily concerns supporting and assisting the child and acting as a link to other actors involved in discharging key responsibilities towards these children (e.g. Denmark). In most if not all countries, the guardian complements the child's legal capacity if it is limited, and thus can ensure applications for status determination are made as appropriate. In some countries, the guardian's role primarily focuses on supporting the child in engaging with the procedural questions that face them; in other countries, the guardian's role also concerns ensuring the child has support and assistance in relation to their reception and care. In all countries, the role of the guardian is distinct from those actors who provide legal counsel and representation, where this is available."

Activities of guardians

As recommended by FRA, providing each unaccompanied and separated child outside their country of origin with the support of a local guardian in the country of arrival and destination, who can assist them, will often be the surest way to address their most pressing needs, given that local guardians will be familiar with the system in the receiving states. These will likely include supporting unaccompanied and separated children in being:

- Identified and provided with an identity card, if they do not already have one
- Screened and registered for the purposes of the Temporary Protection Directive and other support and services they may require
- Provided with a risk assessment with a view to ensuring any necessary protection from abuse or exploitation
- Provided with a comprehensive assessment of their individual needs to ascertain what actions would be in their best interests
- Put in touch with Ukrainian consular services so that contact with any family members or state guardians is not lost or misunderstood and that the child's legal status, e.g. such as already being a child deprived of parental care or an asylum seeking separated or unaccompanied child while earlier in Ukraine, can be confirmed
- Assisted to contact any parent or family members they may have in Ukraine or the EU with a view to reestablishing family links, facilitating family reunion and providing them with a durable solution.
- Protected from individuals or groups seeking to take advantage of the invasion of Ukraine to organise an adoption which does not comply with international or Ukrainian law
- Provided with the temporary protection of a State body in the destination EU Member State in order that they can be assisted to exercise any legal rights arising from their presence there without being deprived of any rights that they already hold in Ukraine
- Permitted to remain in the day-to-day care of an adult with whom they have been travelling, whilst this is in their best interests and viable

The ability of a guardian in a particular state to carry out all, or even most, of these tasks is likely to depend on the nature of the guardianship system in that state. As noted above, some will be part of a trained and professional guardianship service. Others may be volunteers with training but no professional qualifications. Some will be appointed and supervised by a family or children's court. In other states, the role of guardianship will be allocated, by default, to the head of a residential centre or an official in a municipality or region. This indicates a need for much more support to some states in order to enable them to carry out the tasks recommended by FRA.

The variety of required qualifications for guardians in different states and the possibility to have their own education and professional qualifications recognised are also likely to impact on the ability of Ukrainian staff, who have travelled with these children, to be able to integrate into the national guardianship systems.

In some countries, these activities will be carried out by a combination of different agencies of professionals, including social workers and guardians.

Key features of the legal landscape

A range of national and EU laws will apply: In general, the law and policy in the EU which regulates guardianship and care and custodial arrangements arises out of an interplay between EU and national law. The EU does not have competence to adopt rules on national family law arrangements or general child protection system measures. It does set out obligations of this kind in migration procedures and in laws concerning cross border justice proceedings (in particular Brussels IIb Regulation).

Consequently, these EU migration provisions (such as safeguards for unaccompanied children under the EU Temporary Protection Directive) and cross border family law mechanisms sit alongside general obligations to children deprived of parental care under national child protection systems.

Different bodies of EU and national law, such as temporary or international protection law, anti-trafficking law on the one hand, and child protection and/or family law on the other hand, may apply simultaneously to different aspects of a child's situation.

There are also some uncertainties arising from the application of new laws, which Member States are simultaneously implementing. Member States are currently reporting to the European Commission on the implementation of the EU Temporary Protection Directive. **Therefore, it will not always be clear to authorities encountering children from the Ukraine which legal rules take the lead and should be applied in an individual case.**

Applicability of Ukraine Law: The European Judicial Network on civil and commercial matters has provided an [indication](#) of the application of Ukraine law in relation to parental responsibility. More broadly, the situation of these children is different from many other children fleeing or moving to the EU from third countries in that, as noted above, Ukraine is actively engaged in seeking to put in place new rules concerning their departure from Ukraine, including care and custodial arrangements. and bilateral memoranda of understanding with EU Member States concerning mechanisms for the care, protection and return of unaccompanied children to Ukraine. The question as to how these new rules and arrangements will sit alongside or supersede existing laws on care and custodial arrangements within EU Member States under national or EU law or under other international law such as the 1996 Hague Convention on parental responsibility remains to be fully explored.

Furthermore, the way and extent to which private law family law arrangements under Ukrainian law, as might be recognised under international law, will apply, also needs to take account of the specific safeguards and procedures which arise out of the EU and national public law instruments such as temporary protection directive and other protection instruments. These instruments act to provide specific safeguards to children, based on the needs they have because of the migration dimension of their situation. Amongst these safeguards is guardianship for children who are separated from their parents, to ensure their best interests are a primary consideration in the protection procedures in

Children arriving from Ukraine into the EU may find different legal regimes apply to them within countries depending, *for example*, on whether they are:

- Ukrainian nationals or long-term residents of Ukraine (and entitled to the immediate application of the EU Temporary Protection Directive or national humanitarian schemes and in the longer-term the potential application of international protection directive or other national protection status), depending on when they entered the EU or
- stateless or undocumented (and subject to national protection laws, human rights law or EU migration instruments) or trafficked (where EU anti-trafficking law will apply).

their regard. As noted above, these safeguards may need to apply where children are accompanied but the accompanying adult cannot support them properly.

National, cross border and international procedures may all ultimately be involved. For example, where a child moves from one EU country to another, there may be a need to transfer care and custodial responsibilities. Such procedures tend to be more complex and uncertain and may be insufficiently supported by procedures and tools (such as information gathering and data sharing arrangements) to examine the best interests of the child. The application of the **Brussels II bis Regulation** for transfers between EU Member States will be important. In the event of a transfer of a child to a non-EU country or ultimately their return to Ukraine, the application of the Temporary Protection Directive needs to be considered fully. Equally, the application of international legal instruments, including **the 1996 Hague Convention on Parental Responsibility** and the Hague Convention on Civil Aspects of International Child Abduction, also need to be considered carefully. As does the fact that Ukraine is not a party to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

Procedures applying to unaccompanied children should be shaped by the UN Convention on the Rights of the Child, the EU Fundamental Rights Charter and the European Convention on Human Rights and the Council of Europe Convention against Trafficking in Human beings, alongside authoritative guidance from the UN Committee on the Rights of the Child. However, procedures and practical processes at national and transnational level properly to examine the circumstances of the child and their best interests frequently are under developed.

In conclusion, this complex setting for resolving questions needs to be acknowledged so that it can be addressed in a clear-sighted manner, in both the immediate response to the individual child's circumstances and in the longer term.

III. Reflection points on Priority Areas for Action

There is much still unknown, unclear and uncertain in relation to the situation of children arriving from Ukraine.

Our focus in this paper is the potential for EU action, taking account of other regional action including that of the Council of Europe. There is much already underway at EU level, specifically in relation to Ukraine, but also in relation to asylum and migration, and further in relation to certain forms of justice proceedings involving children and promoting the rights of the child more generally. It involves a wide spectrum of EU actors, including the Directorates for Home Affairs and Justice Affairs within the Commission, the EU Anti-Trafficking Coordinator, the EU Agency for Asylum, and the Fundamental Rights Agency. There are both new measures that are relevant to the situation, such as the decision to trigger the application of the Temporary Protection Directive and the Communication on welcoming persons fleeing Ukraine. There are also a range of existing measures and strategies that have an application in the field, such as the Brussels IIa, soon to be Brussels IIb, Regulation and the EU Strategy on the Rights of the Child.

Of particular note is the commitment from [The 10 Point Plan](#) that *“The Commission, in cooperation with the EUAA, will develop standard operating procedures and uniform guidance for the reception and support of children, paying particular attention to the needs of children with disabilities, unaccompanied minors and separated children, including swift identification and registration in Member States of arrivals and destination, accommodation, transfers and prevention of*

trafficking. The Commission will also develop specific standard operating procedures for the transfer of unaccompanied minors.”

Guidance from the Commission in the field will prove a very valuable tool and we recommend that engaging with the Commission on ways to contribute on this, and preparing contributions, is an urgent next step. Moreover, any guidance from the Commission may need further follow up and support in order to ensure that recommendations are translated into reality.

More generally, there is clearly a need to connect these reflections with what can be done within and with the Council of Europe to build on its Action Plan on Protection of Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) as well as its Strategy for the Rights of the Child (2022-2027). The Council of Europe also has many relevant instruments and guidance, in existence and under development, that are relevant to children’s rights, migration and trafficking, and particular questions of family law. This includes its Recommendations on guardianship for unaccompanied children, its recommendations on life projects for unaccompanied migrant minors as well as its upcoming legal instrument on the protection of the best interests of the child and his/her rights in parental separation situations and/or care proceedings. It also will be important to take account of work within the Council of Baltic Sea States in relation to children at risk and trafficking. The Hague Convention Conference is also an important interlocutor in this field. Finally, the Committee on the Rights of the Child is an important agent for action, guidance and responses to complaints.

Proposed Priority Areas for Action

In light of the background in Sections I and II, we suggest that there are five priority areas that should be explored in a next phase, when considering the issue of care and custodial arrangements and guardianship for unaccompanied and separated children.

- 1. Building knowledge of the circumstances of children as the situation evolves: gathering and sharing information on what is happening**
- 2. Facing new challenges together: including adapting national processes where needed, to ensure the right care and custodial arrangements, and guardianship, are in place for every unaccompanied or separated child**
- 3. Embedding care and custodial arrangements and guardianship more firmly in the child protection system and bringing actors together to work, with the child at the centre**
- 4. Reducing complexity and creating harmonised case management procedures**
- 5. Building proper pathways to durable solutions for unaccompanied and separated children**

Overview of proposed activities to explore under these priority areas for action

Priority areas for action	Activities to explore
<p>Building knowledge on the circumstances of children and the care and custodial arrangements in their regard</p>	<ul style="list-style-type: none"> • Building an overview of what data is available • Making data publicly available • Regular exchange on trends at regional level • Recommendations on improving data collection and use at case management level
<p>Facing new challenges together and ensuring the care and custodial arrangements, including guardianship, are in place</p>	<ul style="list-style-type: none"> • Identifying common issues of concern, reviewing together legal provisions and exploring recommendations for action to face common challenges in assessing, establishing or adapting care and custodial arrangements and guardianship • Exchanging experience and good practices as regards care and custodial responsibility and guardianship • Developing regional resources which could contribute to ensuring the right systems for care and custodial responsibility and guardianship are in place and being strengthened
<p>Further embedding care and custodial arrangements and guardianship in child protection systems</p>	<ul style="list-style-type: none"> • Developing a model Standard Operating Procedure at national level which defines the roles and responsibilities of different authorities and actors as regards procedures put in place for children arriving from Ukraine. This ideally should be rooted in existing procedures of this kind, with adaptations made to address the specific features of children arriving from Ukraine. Where no such procedures exist, they should be developed as a general model as concerns arrivals of children from third countries, with the provision for adaptations to address specific features for children arriving from Ukraine. The lessons learnt from this process may then be applicable to other unaccompanied and separated children arriving in the EU. • Including child protection authorities in model Standard Operating Procedures concerning decision making regarding potential transnational child protection cases and the implementation of transfers • Clarifying and strengthening the involvement of child protection systems in national and transnational referral mechanisms (for dealing with trafficking cases)
<p>Developing harmonised case management procedures to reduce complexity</p>	<ul style="list-style-type: none"> • Exploring what processes can be put in place to create integrated case management systems which ensure that a child is able to access the right protection procedure, from the several that might apply, depending on their circumstances.
<p>Building proper pathways to durable solutions</p>	<ul style="list-style-type: none"> • Developing regional guidance on establishing durable solutions for unaccompanied and separated children from Ukraine, including through transnational cooperation within the EU and with Ukraine, for family reunification, relocation, transfer or return.