

Guardianship systems for children deprived of parental care in the European Union

Summary



The Charter of Fundamental Rights of the European Union sets out rights that are of particular relevance to the interests and well-being of children who are deprived of parental care, the most important of which are the rights of the child (Article 24); the prohibition of slavery and forced labour (Article 5), the right to asylum (Article 18), protection in the event of removal, expulsion or extradition (Article 19), non-discrimination (Article 21), and prohibition of child labour and protection of young people at work (Article 32).

Guardians are one of the most important features of a protection system for children who are deprived of their family environment and cannot have their interests represented by their parents. They are key to safeguard the child's best interests and general well-being, and to complement the limited legal capacity of the child, when necessary, in the same way that parents do. Despite existing legal provisions, guardianship systems in EU Member States

often fail to provide adequate support and protection to unaccompanied children. Some unaccompanied children are not assigned with a guardian; very often assigned guardians have no personal contact with children and do not meet them in person. The most common gaps and challenges in national guardianship systems are related to lengthy appointment procedures, limited availability of independent and qualified guardians, lack of systematic training of guardians, lack of necessary support for the children and the guardians including in accessing legal advice. Effective guardianship systems will enhance the protection of unaccompanied children in the EU and safeguard their best interests.

This FRA summary provides a brief outline of guardianship systems in the European Union, highlighting the fundamental principles of these as well as a guardian's mandate and their core tasks. It also provides an overview of relevant EU instruments and publications in the field.

Key findings

As the numerous references to "legal guardian" in the United Nations (UN) Convention on the Rights of the Child (CRC) indicate, 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. The European Union (EU) Strategy towards the eradication of trafficking in human beings 2012–2016, which the European Commission adopted in June 2012, notes

the absence of a "uniform definition of a guardian and/or representative across the Member States and their roles, qualifications and understanding of competencies vary from one Member State to another". To address this gap, the European Commission together with FRA will develop a good practice model on the role of guardians and/or legal representatives of child victims of trafficking (priority 2.1, action 3).

FRA conducted desk research to map guardianship systems in the 28 EU Member States. The research covers four specific areas, namely:

- the type of guardianship systems in place;
- the profile of appointed guardians;
- the appointment procedures; and
- the tasks of the guardians.

The research findings primarily served to inform FRA's work on a guardianship handbook to provide guidance to EU Member States on how to strengthen national child protection systems. The FRA handbook, *Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, published in June 2014, was developed in cooperation with the EU Anti-Trafficking Coordinator's Office in the European Commission to implement the EU Anti-Trafficking Strategy and protect children's rights. This comparative analysis should thus be read in conjunction with the handbook.

This comparative report explores the key features of guardianship systems put in place to cater for the needs of all children requiring such protection and those at risk of becoming victims of trafficking or of other forms of exploitation. In this way, the report looks at how existing guardianship systems for children deprived of parental care respond to the particular needs and vulnerabilities of presumed or identified child victims, or children at risk of trafficking and exploitation, such as unaccompanied children.

It aims to assist EU Member States to understand better the strengths and weaknesses of their national system. It may also assist them to take adequate measures to reinforce their guardianship systems to protect children better.

Legal and policy framework in the European Union

A number of European and international legal instruments relate directly or indirectly to guardianship (see the list of relevant legal instruments at the end of this summary).

Addressing trafficking in human beings is one of the strategic priorities for the EU and its Member States. Trafficking in human beings is a grave human rights violation, expressly prohibited in Article 5 of the EU Charter on Fundamental Rights. It is a particularly serious crime listed in Article 83 of the Treaty on the Functioning of the European Union (TFEU).

The cornerstone of the EU anti-trafficking policy is Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Anti-Trafficking Directive), adopted on the basis of Article 82 (2) and Article 83 (1) of the TFEU. The directive places victims' rights at the centre, providing a number of measures specifically addressing child victims, such as the appointment of guardians.

Dealing with child victims of trafficking, the EU Strategy towards the eradication of trafficking in human beings 2012–2016 seeks to promote victims' rights and safeguard their protection while ensuring appropriate support and access to justice. The strategy underlines that "comprehensive child-sensitive protection systems that ensure interagency and multidisciplinary coordination are key in catering to diverse needs of diverse groups of children, including victims of trafficking". It also calls on Member States to strengthen their child protection systems. It further notes the importance of guardianship as a key element of child protection systems and calls on FRA to work together with the European Commission on this issue.

National guardianship systems

Each EU Member State has a national child protection system, which provides for the protection of children deprived of parental care. It safeguards the child's best interests, provides legal representation to the child and, more generally, promotes the well-being of children, when parents are unable, unwilling or precluded from doing so, in line with Article 20 of the CRC and Article 24 of the Charter.

When a child is deprived of parental care, EU Member State law provides for the appointment of a guardian or a representative to exercise the tasks usually carried out by parents. In different Member States, however, the term guardian is used to describe persons with differing mandates and functions. Sometimes, other terms' are used to describe persons exercising guardianship duties.



Table 1: National institutions to which guardianship is assigned by law, when no natural person is appointed, EU-28

EU Member State	Name of institution	EU Member State	Name of institution
AT	Child and Youth Welfare Office (Kinder- und Jugendwohlfahrtsträger)	IE	Child and Family Agency
BE	Guardianship Authority (<i>Service des tutelles</i>)	IT	Local Social Services through the mayor (and residential care facility in case of emergency)
BG	Social Assistance Department (<i>Агенцията за социално подпомагане</i>) or the director of the residential care facility	LT	Municipal Child Rights Protection Unit (establishes temporary guardianship)
CY	Social Welfare Service (<i>Υπηρεσιών Κοινωνικής Ευημερίας</i>) through its director	LU	Public institutions including residential care centres through their directors
CZ	Authority for Social and Legal Protection of Children (<i>Orgán sociálně-právní ochrany dětí</i>)	LV	Municipal Child Rights Protection Unit (Orphan's court, <i>Bāriņtiesu</i>) The head of childcare institution The head of the Prevention Centre for Minors under the State Police
DE	Youth Welfare Office (<i>Landesjugendamt</i>)	MT	The residential care facility where the child resides
DK	State Administration (<i>Statsforvaltningen</i>)	NL	Nidos Youth Care Agency (<i>Bureau Jeugdzorg</i>) for national children
EE	Municipal child protection Authority	PL	The residential care facility where the child resides
EL	First Instance Public Prosecutor Child protection service (not yet created)	PT	Care Agency The residential care facility where the child resides
ES	Youth Welfare Authority of the respective region "Autonomous Community"	RO	Director of residential care institution facilities General Direction for Social Assistance and Child Protection (GDSACP) (<i>Directia generala de asistenta sociala si protectia copilului</i>) through its director
FI	Social Welfare Service of the Municipal Authority The director of the reception facility	SE	Social Welfare Service at municipal level (<i>Socialnämnden</i>)
FR	Child protection service (<i>Aide sociale à l'enfance, Conseil Général</i>) of the local authority (<i>Département</i>)	SI	Social Work Centres (<i>Centri za socialno delo</i>)
HR	Social Welfare Centre	SK	Office of Labour Social Affairs and Family (<i>Úradov Práce, Sociálnych Vecí A Rodiny</i>)
HU	District Guardianship Offices (<i>járásigámhivatalok</i>) under the coordination of Social Welfare- and Guardianship-Authority (<i>Szociális és Gyámhivatal</i>)	UK	No guardianship system in England, Wales and Northern Ireland. Local authorities take children into care but do not exercise legal representation. In Scotland, Scottish guardianship service is set up, in non-statutory basis, for unaccompanied children.

Notes: Four EU Member States, Belgium, Denmark, Finland and the Netherlands, have developed a different guardianship system for unaccompanied children.

Source: FRA, 2013

Lack of uniform approach

The majority of EU Member States have entrusted guardianship functions to municipal or local level social services, and only a few Member States have a central guardianship authority at national level. When guardianship is implemented at regional or

local levels, different approaches are sometimes applied in different parts of the country.

Most of the EU Member States assign guardianship duties to natural or legal persons. Guardianship duties are usually assigned in priority to close relatives or persons coming from the broader family

environment, thus acknowledging the importance of maintaining family links and of the personal relationship between the future guardian and the child.

If, however, no suitable person to act as guardian can be found among the child's relatives or within the child's family environment, national child protection authorities are responsible for the care of the child. In such cases, either employees of the guardianship institution or entity designated by law, or natural persons, following their appointment by a court or other competent authority, perform the guardianship duties. This often occurs in cases of unaccompanied children and of child victims of trafficking, exploited and identified outside their country of origin, since they usually do not have close relatives or other family members residing in the country. This report focuses on situations in which guardianship is not assigned to a child's relatives or other persons within a child's family environment.

Guardianship system for foreign children

Constitutional or other domestic law provisions in all Member States usually protect all children in their territory irrespective of the child's nationality or status. Notwithstanding this, children's specific migration and residence status is often key to determining the level and type of protection granted to them and, more specifically, their guardianship and representation arrangements. A few Member States have set up a separate guardianship system for unaccompanied children who only have a temporary right to stay in the Member State or have no right to stay at all. However, in practice, differentiated arrangements are in place in many more Member States depending on the specific status of the child. Even with regard to the treatment of EU and European Economic Area (EEA) unaccompanied children found in the territory of another EU Member State, FRA's research reveals that there is no uniform approach across Member States, where law and practice is often unclear or inconsistent.

Guardianship for child victims of trafficking

No EU Member State has developed a separate guardianship system exclusively for child victims of trafficking. In principle, guardianship of child victims of trafficking falls under the scope of the general guardianship provisions set forth in civil and/or family law, irrespective of the migration or residence status of the child victim, even in Member States where a separate guardianship system

for unaccompanied children is in place. Migration and asylum law provisions, however, apply to child victims who are third-country nationals as long as they are not formally identified as victims of human trafficking by the competent national authorities.

Ensuring independency and impartiality of guardians

The absence of any conflict of interest between the potential guardian and the child is a key criterion in the selection of individual persons or institutions as guardians. The way in which a guardian's independence is understood, however, varies among EU Member States. This is particularly relevant for the appointment as guardians of persons responsible for providing material or other types of care to the child, namely staff working in reception centres or other accommodation facilities where the child resides, or for the appointment of social workers within social services. The guardians' independence from migration and asylum authorities is also vital for unaccompanied children who are subject to migration law or seek international protection. In some EU Member States, migration authorities nevertheless play a role in the appointment of guardians or representatives of third-country national children.

Employment status of guardians

In practice, guardianship duties in EU Member States are exercised either by employees of institutions or other entities designated by law, or by private persons, who competent national authorities appoint as guardians for a particular child. It is therefore possible to distinguish three categories of natural persons who can exercise a guardianship role:

- close relatives or persons coming from the broader family environment chosen and designated by an appointing authority;
- professionals employed by guardianship institutions or similar legal entities; and
- individuals unrelated to the child who offer their services to act as guardians (referred to as 'volunteer guardians' in this report) and who are either designated by an appointing authority or, more often, are offering their services on behalf of the entity assigned with guardianship duties.

In most EU Member States, the different categories of guardians coexist.

In a few Member States, guardians are primarily ‘volunteer guardians’, usually entitled to some form of compensation for their time and the expenses incurred while performing their duties. In some Member States where guardians are primarily volunteers, a specific system of recruitment, placement and supervision of guardians has been developed. The responsible guardianship authority or another designated institution or non-governmental organisation (NGO) is in charge of recruiting volunteers.

Qualifications and skills of guardians

Although legislation in the majority of Member States provides for the appointment of competent and qualified guardians, the requirements set concerning their professional or educational background are typically very general. Legislation does only exceptionally regulate the length and the content of training courses for guardians, and few Member States make it mandatory for guardians to participate in training activities. Overall, the training of guardians is not organised in a systematic and consistent way, allowing them to be equipped to address effectively the needs and vulnerabilities of particular groups of children.

Specialised or advanced training offered to guardians, focusing on the needs and vulnerabilities of particular groups of children, such as child victims of trafficking or unaccompanied children, differ considerably among Member States. Typically, they do not provide any systematic specialised training on identification, protection and assistance to child victims of trafficking. When such courses are available, NGOs working with victims of trafficking usually organise these.

Appointment procedures

In principle, the competent judicial authorities and courts appoint a guardian. In many cases, however, guardianship is assigned by a court decision or by virtue of law to an institution. It is then the task of this institution to assign a person – usually one of its employees or a volunteer as guardian – to a specific child. In that case, the assignment of the natural person exercising the guardianship role takes place internally.

In cases of child victims of trafficking, it is most often the police or the migration authorities who identify a victim and report a case either to the court, the child protection authorities or the victims support service. Some EU Member States have set up

a referral mechanism for child victims of trafficking that ensures timely appointment of guardians and protection of victims.

Despite legal provisions requiring the immediate appointment of or a relatively short timeframe for appointing guardians, the actual time taken to appoint a guardian can in practice last from a few days to several months, or sometimes even over a year. Variations exist in the appointment process and in the length of appointment procedures within EU Member States. Such differences are more evident in decentralised states where the responsibility for guardianship lies at regional or local level.

Duties and tasks of guardians

The guardian’s mandate can be either broad, covering all aspects related to guardianship, or be delimited upon appointment by the competent authority. When the second of these two possibilities occurs, the duties assigned and the duration of the appointment depend on the particular situation of the child, often his or her migration and/or residence status, or the particular legal procedures that the child is involved in. It is also possible that the duties of ensuring the child’s well-being and representing his or hers best interests are dissociated and performed by different persons or institutions.

Guardians’ duties and tasks are often defined by law in a general manner. The most common tasks that Member States assign to guardians encompass ensuring that the child receives care, accommodation, education and healthcare, and managing the child’s finances and the child’s legal representation (i.e. complementing the limited legal capacity of the child). How these tasks are performed varies. Guardians of unaccompanied children are to some extent also involved in decisions on long-term solutions for the child.

Legal representation duties of guardians

The duty to legally represent the child is one of the main tasks of a guardian included in national legislation. The guardian has to complement the limited legal capacity of the child and assist the child in all actions concerning his/her legal status for which the child lacks full legal capacity. Guardians complement the child’s limited legal capacity in all civil, administrative or judicial proceedings. The guardian’s rights and duties in such proceedings are in principle clearly defined in national legislation.

In certain legal proceedings, a professional lawyer needs to represent the child. National legislation, however, does not always stipulate any clear rules concerning the interaction between the guardian, acting as legal representative of the child, and the child's lawyer. The guardian should, however, be fully involved and ensure that the competent authorities appoint a lawyer or another qualified professional for the child, in accordance with the national law. In certain cases, the guardian may need to authorise the lawyer to act on behalf of the child, especially in the context of court proceedings.

Legal representation and legal aid for child victims of trafficking

Specialised legal assistance and legal representation in court proceedings are key for child victims of trafficking. Nevertheless, appointing a lawyer to the child victim is not always mandatory for the proceedings, and in some cases free legal assistance is provided only subject to a means test. In most Member States there are a limited number of

lawyers who have specialised knowledge in trafficking in human beings and of working with child victims, and they may not always be available to deal with particular cases.

Accountability and monitoring system

Effective supervision and monitoring of guardians is essential to ensure the quality of guardianship systems. It safeguards the best interests of children under care and protects them from abuse or the violation of their rights. In general terms, all Member States' guardianship authorities have developed an internal system of supervision and monitoring of guardians, while external monitoring is exercised by judicial or other legal authorities, such as the public prosecution service. Such monitoring systems are often not clearly structured and efficient. Complaint mechanisms accessible to children are missing. In the majority of EU Member States, external monitoring by independent authorities other than the court is lacking, although positive examples exist.



Fundamental principles of guardianship systems

Guardianship systems in EU Member States vary from one country to another. Nonetheless, they share common features and encounter common challenges. Regardless of the type of guardianship system and the national child protection system

within which it operates, there are six fundamental principles, derived from international standards that should apply to all types of guardianship arrangements.

Figure 1: Fundamental principles of guardianship systems



Source: FRA, 2014

1. Non-discrimination

All children deprived of their family environment and parental care are entitled to the same level of protection irrespective of their age, immigration status (i.e. EU national, legal resident, asylum seeker, migrant in an irregular situation), nationality, gender, ethnic background or any other non-discrimination ground listed in Article 21 of the EU Charter of Fundamental Rights. Particular attention should be given to the gender dimensions of violence against children.

The principle of non-discrimination also requires equal protection for all children within the state's territory, irrespective of the place of residence. EU Member States should harmonise guardianship provisions and services. Where protection systems are the responsibility of regional or local government, national governments should ensure consistency of standards and practices among different regions and localities within their territory.

2. Independence and impartiality

Appointed guardians and legal representatives must be in a position to make independent and impartial decisions, assessment, actions and representations guided by the best interests of the child. Organisations, institutions and/or individuals should be precluded from guardianship and/or legal representation duties if their interests conflict, or could potentially conflict, with those of the child.

3. Quality

Appointed guardians and legal representatives should have appropriate professional qualifications in the field of child welfare and/or child protection. In addition, they should receive appropriate initial and continuous training by the relevant authorities. To identify and protect child victims of trafficking it is important that guardians have the

knowledge and skills required to detect child victims. Guardians who deal with children with particular needs, such as child victims of trafficking or unaccompanied children, must also have the necessary expertise to respond effectively to such needs, for instance knowledge and experience in working with traumatised children.

4. Accountability

National law should provide the legal basis of guardianship and define the authority responsible for it. This guardianship authority should be held responsible and accountable for the acts of the appointed guardian. The exercise of guardianship and other representation functions should be monitored regularly and independently. The legal basis of guardianship in national law should include sufficiently precise legal provisions defining a guardian's duties and functions.

5. Sustainability

Guardianship and legal representation systems should be an integral part of the national child protection system. States should allocate sufficient human and financial resources for the guardianship system's operation. The budget should include costs related to effective monitoring and oversight of guardianship services as well as training.

6. Child's participation

Guardianship and legal representation arrangements and procedures should respect the child's right to be heard, and they should give due weight to the child's viewpoint. Children should receive, in a manner they understand, appropriate information regarding the scope of guardianship arrangements and about all available services that could provide assistance to them. Children should also be adequately informed about their rights and the possibility of lodging complaints whenever they feel that their guardians are not respecting their rights.



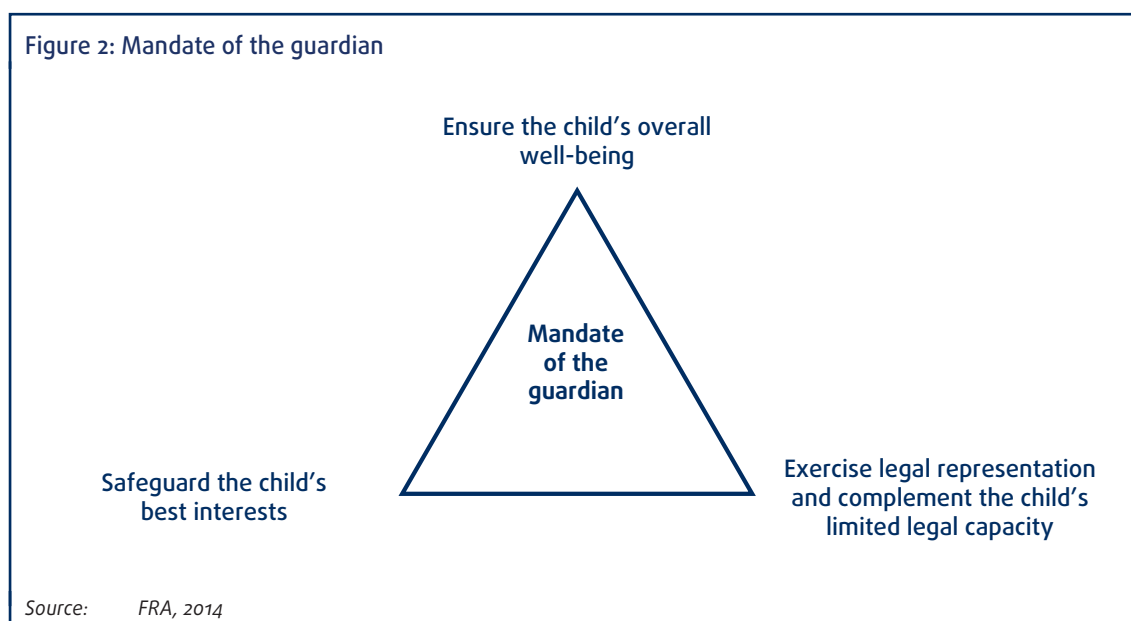
Mandate of a guardian

The use of the terms ‘guardian’, ‘representative’ and ‘legal representative’ is inconsistent, and national terminologies also vary, so the emphasis should be on the functions of the appointed person, rather than on the title or terminology used at national level.

The guardian is considered to be an independent person who safeguards the child’s best interests and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do.

A guardian who can cover all three functions should always be appointed for all children lacking parental care such as unaccompanied children. This will help to ensure that the child’s best interests and overall well-being are protected and safeguarded. This goes far beyond pure representation in given proceedings or complementing the limited legal capacity of the child when required.

Figure 2: Mandate of the guardian



The guardian differs from a qualified lawyer or other legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, migration or other legal proceedings as provided for in national law.

The guardian must also be distinguished from social workers and other caregivers responsible for the material needs of the child. Social workers or other caregivers and persons who provide a child with day-to-day care are not guardians, unless, as a result of provision by law, they exercise responsibility for

the well-being of the child and complement the limited legal capacity of the child.

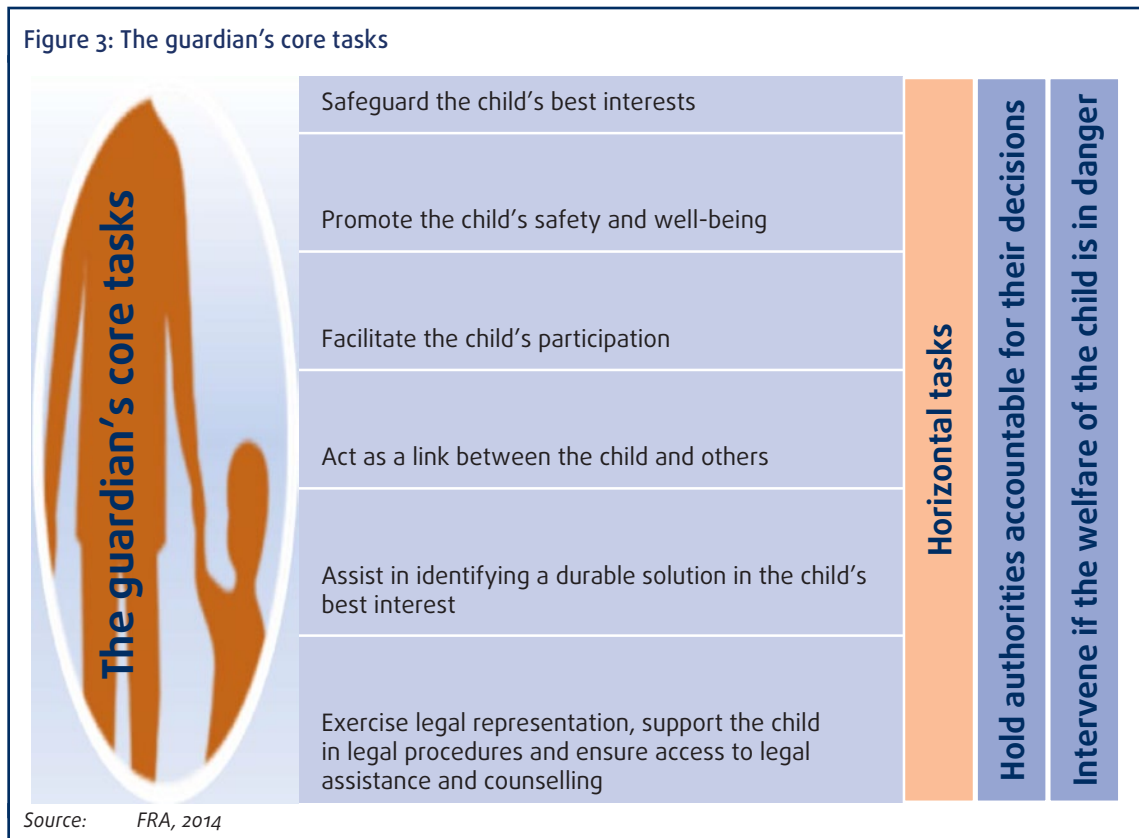
Responsibility for legal representation of the child within particular legal or administrative proceedings might be dissociated from the other two functions of guardianship. In this case, such responsibility is assigned solely to an independent person or institution, usually called the ‘legal representative’ or ‘representative’. Representatives, unlike guardians, have a restricted mandate, which is in often precisely defined when they are appointed: to represent the child in particular proceedings.

Guardian’s core tasks

The guardian’s tasks and duties should be defined in domestic law or policy documents and, where necessary, further clarified in official guidelines. The four core principles of the United Nations Convention on the Rights of the Child must guide the guardian in all aspects of his or her work throughout the assignment. In the absence of the parents, or if they are precluded from exercising parental responsibility, the guardian is given the duty of safeguarding and

promoting the child’s well-being. Each time a decision is taken affecting the child, the guardian’s role is to promote the option which is in the best interests of the child. The guardian must ensure that the child’s views are heard and given due weight. The guardian must inform the child and consult with him or her on all aspects of the guardian’s work, taking into consideration the child’s maturity and developing capacities.

Figure 3: The guardian’s core tasks



Creating and maintaining a trustful relationship with the child

A relationship of trust between the guardian and the child is an essential precondition for an effective guardianship. Without trust, the guardian will not be able to ascertain the child's wishes and feelings, making it difficult to promote the child's best interests.

The guardian should communicate with the child in a child-friendly way, showing cultural sensitivity and adopting a gender-sensitive approach. Although many factors have an impact on whether trust is built or not, the following four are particularly significant:

- respecting the views of the child;
- treating the child with respect and dignity;
- being available for and accessible to the child;
- respecting confidentiality.

Frequent contact and accessibility of the guardian are necessary elements in building a relationship of trust with the child.

Guardians who work with child victims of trafficking should be aware of the effect that the experience of trafficking can have on children's behaviour and of the consequences of trauma. Individuals suffering from trauma often have memory problems, for example, and are unable to recall details of events, or they may recall different information over time. This does not mean that the child is lying or does not trust the guardian. The guardian should raise awareness of these aspects with the other professionals working with the child.

Emotional care of the child is a basic need, which the guardian should not disregard. Appointed guardians must be supported in performing their roles, including providing this emotional care, in particular by ensuring that their workload and the number of cases assigned to them allow them sufficient time to spend with the child and build a personal relationship with him or her.

List of relevant legal instruments

EU instruments	
EU Charter for Fundamental Rights	Charter of Fundamental Rights of the European Union, OJ 2000 C 364, Vol. 43, 18 December 2000
Reception Conditions Directive (2013/33/EU)	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013 L 180, pp. 96–116
Asylum Procedures Directive (2013/32/EU)	Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ 2013 L 180, pp. 60–95
Dublin Regulation (EU) No. 604/2013	Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29 June 2013, pp. 31–59
Victims' 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 2012 L 315, pp. 57–73
Qualification Directive (2011/95/EU)	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ 2011 L 337, pp. 9–26
Directive on combating the sexual abuse and sexual exploitation of children and child pornography (2011/92/EU)	Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ 2011 L 335, pp. 1–14
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 2011 L 101, pp. 1–11
Return Directive (2008/115/EC)	Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348, pp. 98–107
Brussels II Regulation	The Council Regulation (EC) No. 2116/2004 of 2 December 2004 amending Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as regards treaties with the Holy See, OJ 2004 L 367, 14 December 2004, pp. 1–2
Directive on Residence Permits for Victims of Trafficking (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 2004 L 261, pp. 19–23
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 2004 L 158, pp. 77–123
International instruments	
UN Convention on the Rights of the Child, United Nations	UN Convention on the Rights of the Child, United Nations, New York, 20 November 1989, Treaty Series, Vol. 1577, p. 3
Council of Europe Convention against Trafficking	Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005
1951 Convention relating to the Status of Refugees	1951 Refugee Convention, United Nations, Treaty Series, Vol. 189, p. 137
The Hague Convention 1993	Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption



EU instruments	
The Hague Convention 1996	Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children
Other non-binding legal sources	
UNCRC General Comment No. 6	United Nations Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6
UNCRC General Comment No. 12	United Nations Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, 1 July 2009, CRC/C/GC/12
UNCRC General Comment No. 13	United Nations Committee on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13
UNCRC General Comment No. 14	United Nations 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
Resolution 64/142. Guidelines for the alternative care of children	General Assembly, Resolution 64/142, Guidelines for the alternative care of children, 24 February 2010, A/RES/64/142
Council of Europe, Guidelines on child-friendly justice	Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) – edited version 31 May 2011
Council of Europe, Life projects for unaccompanied migrant minors	Council of Europe, Committee of Ministers, Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, 12 July 2007



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. Great disparities exist between the types of guardianship provided to children in and within European Union (EU) Member States. This report explores the key features of guardianship systems put in place to cater for the needs of all children in need of protection, including child victims and those at risk of becoming victims of trafficking in human beings or of other forms of exploitation. It covers four specific areas, namely the type of guardianship systems in place, the profile of appointed guardians, the appointment procedures and the tasks of the guardians. The report looks at how existing systems respond to the particular needs and vulnerabilities of presumed or identified child victims, or children at risk of trafficking and exploitation, such as unaccompanied children. This comparative report helps to understand better the strengths and weaknesses of national guardianship systems and may also assist decision makers to take measures to promote the effective protection of all children.

Further information:

For the full FRA report – *Guardianship systems for children deprived of parental care in the European Union*, see <http://fra.europa.eu/en/publication/2015/guardianship-children-deprived-parental-care>

See also other FRA publications in this field:

- FRA (2016), *Key migration issues: One year on from initial reporting*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2016/key-migration-issues-one-year-initial-reporting>
- FRA-European Commission (2014), *Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, Handbook, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship> (available in all EU official languages)
- FRA-ECtHR (2014), *Handbook on European law relating to asylum, borders and immigration*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2014/handbook-european-data-protection-law> (available in all official EU and other languages)
- FRA (2011), *Separated, asylum-seeking children in European Union Member States*, Comparative report, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra_uploads/1692-SEPAC-comparative-report_EN.pdf

For an overview of FRA activities on the rights of the child and asylum and migration, see:

- <http://fra.europa.eu/en/theme/rights-child>
- <http://fra.europa.eu/en/theme/asylum-migration-borders>



© European Union Agency for Fundamental Rights, 2018
Photo: © Shutterstock

FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel: +43 158030-0 – Fax: +43 158030-699
fra.europa.eu – info@fra.europa.eu
[facebook.com/fundamentalrights](https://www.facebook.com/fundamentalrights)
[linkedin.com/company/eu-fundamental-rights-agency](https://www.linkedin.com/company/eu-fundamental-rights-agency)
twitter.com/EURightsAgency



Print: ISBN 978-92-9491-879-6; doi:10.2811/43850
PDF: ISBN 978-92-9491-887-1; doi:10.2811/060926