Legal Research Key Findings Brief: 
Considerations for children without parental care displaced from Ukraine

February 2024
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About this document

Children displaced from Ukraine without parental care, especially those evacuated from institutions, have faced a range of legal challenges in host countries, including questions around who maintains the principal responsibility to determine and uphold their best interests. In response, UNICEF ECARO launched a series of research initiatives in May 2022, to assess the applicable legal frameworks and considerations. This document aims to provide a brief overview of the key findings and recommendations that have arisen in this research. It synthesizes issues, good practices and solutions identified when applying international and European laws in EU and Council of Europe Member States, as well as country specific preliminary findings that have emerged from the research of legal experts in Bulgaria, Croatia, Italy, Moldova, Poland, Romania and Türkiye. The brief takes the regional research authored by Child Circle, “Fulfilling the rights of children without parental care displaced from Ukraine – An analysis of international and European law”¹ as a starting point, adding examples, trends, exceptions, and particularities as they arise from the findings of the national research initiatives.

As this document is neither exhaustive, nor are all the key findings definitive, interested actors are encouraged to access the final reports, which will be made available on UNICEF ECARO’s website.²
1. Background and context

Since the escalation of the war in Ukraine on February 24, 2022, a generation of children have experienced nearly two years of violence, fear, loss, and tragedy. Around 5.9 million refugees from Ukraine have been recorded in Europe, among which almost 2.3 million are children and in need of humanitarian assistance. Whenever children are driven from their homes by conflict, their exposure to violence, exploitation, and abuse escalates. These risks are particularly acute for the children who have been displaced without parental care. This includes children who arrive or become unaccompanied outside of Ukraine (‘unaccompanied children’), children who may be accompanied by adults who are not their parents (‘separated children’) and children evacuated from alternative care settings in Ukraine, including from institutions. The government of Ukraine estimates the current number of children without parental care who were evacuated from alternative care arrangements to be over 6,000. Children without parental care are also at heightened risk of involuntary or unsafe returns to Ukraine, unless adequate safeguards are in place to uphold their best interests on an individual basis.

Europe’s response to the refugee influx from Ukraine has been unprecedented in scale and speed. Neighboring countries kept borders open and the EU activated the Temporary Protection Directive (‘TPD’) for the first time. Nevertheless, countries hosting children without parental care have been confronted by overlapping national, regional, and international legal frameworks that are relevant to the status and care of these children. International Refugee Law, International Child Rights Law, Private International Law, and accompanying guidance issued by the EU, UN, and the Council of Europe, all speak to aspects of children’s rights and protections in existing legislation. This complex legislative landscape has generated legal questions and challenges for children without parental care from Ukraine, accompanying adults, national stakeholders, local guardians and legal authorities responsible for upholding children’s best interest.
2. UNICEF Convenes Experts to Promote Understanding, Dialogue and Coordination in the Best Interests of Children

In this context, UNICEF’s Regional Office for Europe and Central Asia (‘ECARO’), along with UNICEF country offices in Poland, Italy, Bulgaria, Croatia, Romania, the Republic of Moldova, and Türkiye initiated a series of research initiatives aimed at:

- Promoting understanding of the legal context, challenges, and gaps,
- Identifying the primary applicable legal considerations and frameworks,
- Fostering dialogue and cooperation between authorities transnationally and at regional level, and
- Outlining recommendations in the best interests of children.

In May 2022, Eurochild, Child Circle and UNICEF ECARO collaborated to produce a discussion paper and Eurochild and UNICEF ECARO also undertook a national-level mapping exercise on laws and policies for children without parental care from Ukraine. These took stock of the legal challenges immediately after 24 February 2022, as well as those likely to arise in the following months. In doing so, they identified the urgent need to improve both understanding of the legal frameworks applicable to this group, as well as coordination between national authorities on their implementation.

Following these initial exercises, UNICEF ECARO collaborated with Child Circle and the seven abovementioned offices to commission dual-level analyses of the legal challenges arising at international/regional and national levels, respectively. The regional research was undertaken by Child Circle, while national research was commissioned by UNICEF teams in country and undertaken by national experts, often working in close collaboration with various national authorities and other entities (See Annex 1 for more detailed information). These coordinated studies sought to capture the legal challenges faced by children without parental care, which may arise when applying international or EU laws in EU and Council of Europe Member states, and to produce concrete recommendations to promote their legal protection.

Throughout the regional research, four priority areas were identified that also served as a common framework for the national research initiatives:
1. Establishing, recognizing, and monitoring legal responsibility, support, and assistance arrangements for children.

2. The protection of children from violence, exploitation, and abuse through the application of national child protection laws, with a particular focus on children in alternative care.

3. Access to international protection which is appropriate to the individual circumstances of the child.

4. Identifying comprehensive, secure and sustainable solutions through best interest procedures and supported by transnational cooperation.

In July 2023, Child Circle published its Report and accompanying Legal Compendium: Fulfilling the Rights of Children Without Parental Care Displaced from Ukraine: An analysis of international and European law. The regional research benefitted from consultations with a Reference Group comprised of experts from international and European bodies, agencies, and networks, as well as thematic consultations with key stakeholders in the region.

Research at the national level benefitted from the development of case scenarios as well as key informant interviews with institutional actors and legal experts. National research also prioritized involvement from key stakeholders, convening regular opportunities to exchange information and best practice to inform common recommendations. For example, the legal analysis in Poland was supplemented by the work of an experts’ group, co-hosted by UNICEF and the Ministry of Justice, focused on discussion around the most important legal challenges concerning unaccompanied and separated children (‘UASC’) from Ukraine. The research in each of the seven countries was tailored to national contexts, as appropriate, to focus on legal challenges and gaps existing in practice within each country. For instance, in Bulgaria and Türkiye, the scope was broadened to also include children on the move without parental care from countries other than Ukraine.
3. Key Findings and Recommendations from Regional and National Research

3.1 Establishing, recognizing, and monitoring legal responsibility, support, and assistance arrangements for children

Where a child is without parental care, their access to procedures and entitlements in host countries often depends on the involvement of adults who provide them with support and assistance, or who exercise legal responsibility over them, if the law so requires. Assigning a guardian to support a child who does not have parental care is a key element of ensuring a child’s protection and a well-established right in international and regional law, including under the TPD.

The question of responsibility, support and assistance is first triggered upon identification and recognition of a child as unaccompanied or separated and should be considered periodically thereafter in line with changes to the circumstances of the child. The research demonstrated that initial identification of children itself has proved a challenge. Children and/or accompanying adults often either choose to remain under the radar or are not familiar with procedures for registering the care arrangement. National authorities have lacked the procedures, resources, and tools to implement identification, screening, and registration of UASC. In Moldova, for example, the actual number of UASC is not known due to the local authorities’ lacking guidance from the central authorities regarding identification, documentation, and referral of UASC. As a result, UASC were not proactively identified.

On the advice of parents/legal guardians who remained in Ukraine, children also often aimed to leave Moldova for an EU country and thus actively sought to avoid identification. Similarly, in Bulgaria, the sheer number of arrivals, as well as the fact that Ukrainian refugees were able to move freely across borders, prevented any tailor-made measures to be put in place to proactively identify and assess the needs of children without parental care.

When identified, the assessment and recognition of an existing responsibility arrangement that might be in place, notably with an accompanying adult that is not the child’s parent, becomes a critical next step. While EU laws are clear in recognizing an unaccompanied child as “a minor who arrives on the territory of the Member State unaccompanied by an adult responsible for him or her whether by law or by practice of the Member State concerned”, the scope of the responsibility of an accompanying adult and the procedural steps by which such responsibility is established, is not specified by EU law. Where there are no explicit procedures for when and how the responsibility of an accompanying adult is assessed, uncertainties and inconsistencies in the recognition of a child as ‘unaccompanied’ increase, giving rise to significant risks for children. The HCCH 1996 Child Protection Convention, which all relevant countries are party to, is critical in this regard as it concerns interstate cooperation relating to
civil measures of protection for children. Article 23 of the Convention states that receiving States should give effect to the responsibility arrangements and measures of protection put in place for children under Ukrainian law. Nevertheless, the research found that limited consideration and understanding of the application of the HCCH 1996 Child Protection Convention in the context of displacement, has led to inconsistencies in recognizing care arrangements both between countries as well as between national authorities at the local level.

For example, the analysis in Italy showed a tendency to recognize children arriving with an accompanying adult as “unaccompanied”, regardless of previous arrangements made in Ukraine, with the purpose of applying protective safeguards introduced in national legislation. In some Italian regions, however, the responsibilities of accompanying adults were recognized as valid through the application of the HCCH 1996 Child Protection Convention. This recognition was often systematically reserved for specific categories of children (notably those evacuated in groups from alternative care settings), whilst private arrangements between parents/legal guardians and accompanying adults were less often recognised.

In Croatia, assessing whether children without parental care were ‘unaccompanied’ was also a challenge, especially for the children arriving in larger groups accompanied by an adult who had been conferred with some form of responsibility by the children’s parents in Ukraine. This includes, for instance, sports groups accompanied by their trainers. Croatian authorities invested significant efforts in defining the unaccompanied or separated status of the children, including by communicating with parents who remained in Ukraine. In most instances, the accompanying adults were recognized as the children’s guardians.

The research has demonstrated that such discrepancies and challenges in recognizing pre-existing legal responsibility and protection arrangements, have persisted, despite the efforts of Ukrainian consular authorities. This includes their support to host countries in understanding and obtaining official documents issued by Ukraine on the attribution of responsibility and decisions on protection measures. The diverse application of the HCCH 1996 Child Protection Convention demonstrates that, while remaining a pertinent tool, its application in practice remains unclear and may not have envisaged the circumstances which ensued following the escalation of conflict in Ukraine. Further guidance is required to assist national authorities in making the best use of its potential to support determining and upholding the best interests of children with case management histories and/or existing guardianship arrangements.

Giving effect to legal arrangements in place via the 1996 Hague Child Protection Convention does not absolve host countries of the responsibility to put into place needed complementary support, assistance and protection. This includes support in the form of complementary guardianship, assistance to caregivers, and monitoring of care arrangements over time. The research has highlighted a fragmentation of regional and national approaches to providing this complementary guardianship support. Critical gaps in Bulgarian and Polish national legislation were recognized as challenges in providing and complementing legal responsibility, exposing how these systems were not prepared for the influx.

In Poland, a lack of legislation prevented a mechanism for the timely appointment of
guardians. To overcome this gap, the concept of a “temporary guardian” was introduced into national law, establishing a system of legal guardianship measures dedicated solely to protecting children from Ukraine. While welcomed, the temporary guardian mechanism has created a parallel system, whereby Ukrainian children who were appointed a temporary guardian might not automatically benefit from the protections provided by Poland’s regular and more developed child protection system.

In Bulgaria, from the very onset of the Ukraine crisis, authorities agreed that to prevent separation, children with temporary protection who were accompanied by an adult who was not their parent or legal guardian would not be registered as unaccompanied. This practice diverges from that of UASC seeking asylum or granted international protection, who in the same scenario would be recognized as unaccompanied and reflects a gap in national legislation. The existing Bulgarian legal framework only considers legal responsibility arrangements for UASC seeking asylum or granted international protection, and not temporary protection. For this latter group, the procedures relevant to legal responsibility are regulated by the Child Protection Act or Family Code, which are not adapted to a refugee influx situation, thereby resulting in Ukrainian children without parental care to fall through the cracks. Instead, a notarized power of attorney is given to the adult, conferring on them the legal responsibility and authority to care for and represent the child in front of the authorities whilst in Bulgaria. Considering the overwhelming number of arriving refugees, only a handful of cases were able to be examined by Child Protection Departments prior to the delivery of the power of attorney and the process may have left certain children at risk of exploitation.

In Italy, on the other hand, national legislation, which in 2017 introduced the concept of voluntary guardian (tutore volontario) as a new form of guardianship to protect unaccompanied foreign minors,14 was used to quickly provide children identified as unaccompanied with a guardian. In Türkiye, children mostly arrived with their guardians’ or ‘caregivers’ who had been appointed in Ukraine, however whose roles and responsibilities were not familiar arrangements to Turkish officials. This caused uncertainty as to whether to treat them as unaccompanied and in need of protective measures under statutory State care. Typically, the legal representation for administrative purposes and access to services (i.e. health and education) for children who are under official care and residing in institutional settings (including hotels), is fulfilled by the care institution officials as per the exceptional authority they hold under Turkish legislation.

In Moldova, border authorities, being both overwhelmed as well as not specialised child protection actors, focussed on the “presence/absence of documents for crossing the border,” as opposed to a more thorough assessment of whether children were truly accompanied or not (as per the international definition above). Where children were recognized as being accompanied by “unauthorized adults” who were not their parent or legal guardian, they were appointed as a “custodian” This is a form of temporary guardianship, but without the right to legally represent the child. In such cases, evaluation of the “unauthorized adult” to determine whether they can accompany the child when crossing State borders, typically involved consultation (by phone, or via WhatsApp) with the primary or customary caregiver remaining in Ukraine. Finally, in Croatia, national legislation stipulates that unaccompanied children should be appointed a special
guardian. Despite this being regulated by the Family Act and the importance of additional assistance to UASC being recognised in Croatian policy and legislation, the national research demonstrated that in practice, some children were not able to be appointed a special guardian for several months.

Sub-nationally, the research has demonstrated that the application of national measures has also differed between regions within a particular state. In Italy, regions that were already well equipped and accustomed to utilising its voluntary guardianship model to protect UASC were able to respond rapidly to the needs of children without parental care from Ukraine, whereas other regions had to find emergency solutions to cope with the lack of voluntary guardians. In Moldova, the absence of guidance from the central authority on when to consider a UASC as being “temporarily left without parental protection” meant that local authorities did not adopt a uniform approach in ensuring children benefited from protection measures. This outlines potential risks and challenges in the protection of children without parental care in decentralised child protection systems in novel and unpredicted situations.

Finally, the legal responsibility, support and assistance arrangements for children without parental care should be the subject of ongoing attention from national child protection services. This is particularly critical as the crisis has become protracted and arrangements which might initially have been conceived as temporary, stretch in duration. Consultations with key stakeholders undertaken throughout the research, revealed that the scrutiny of the circumstances and the suitability and capacity of accompanying adults and guardians, has been less intense than would be required, outlining the clear need for stronger transnational collaboration, including with Ukrainian authorities. In Poland, for example, a lack of common standards for the verification of temporary guardian candidates, meant that judges verified guardianship arrangements based on varying processes, including through informal discussions via telephone and court officer reports. Moreover, while social workers in Poland were designated the responsibility of supervision of temporary guardians, the research highlighted that the performance of this responsibility in practice has varied. In Italy, guardians who had too many children in their care and/or lacked proper training, were not always able to perform their functions, placing children at heightened risk.

Recommendations identified in the research:

- Establish transnational mechanism(s) to enhance cooperation and exchange between actors in host countries and authorities in Ukraine, including actors with different responsibilities for children without parental care.
- Promote the recognition and enforceability of legal responsibility/guardianship arrangements to ensure continuity and stability for children to the best extent possible, including by maintaining contact with family and relatives in Ukraine.
- Strengthen the capacity of national authorities in the understanding and application of the HCCH 1996 Child Protection Convention alongside considerations for other applicable international and national legislation.
- Encourage the development of an information sheet for host country authorities on the nature, scope and purpose of different responsibility arrangements for children under Ukraine law for the purpose of identifying
and assessing them, as well as the responsibility arrangements that may arise in host countries.

- Promote additional guidance for guardianship authorities to address new aspects of guardianship for children without parental care when internationally displaced (i.e., temporary guardianship in situations of mass influx, complementary forms of guardianship).

3.2 The protection of children from violence, exploitation, and abuse through the application of national child protection laws, with a particular focus on children in alternative care

Children without parental care displaced abroad are at heightened risk of violence, exploitation, and abuse. This is especially true for children who have been evacuated from Ukrainian alternative care settings, often in large groups. Many of these children are known to have specific needs arising from disabilities and have arrived in host countries usually accompanied by adults (typically caregivers, teachers or social workers from a care facility in Ukraine), appointed as guardians by the relevant authorities in Ukraine, though the nature of these guardianship arrangements varies. The tremendous challenges faced by accompanying adults have been made evident through the research, particularly so in the uncertain environment of temporary protection. Arrangements which were intended to be short-lived, such as accommodation in large hotels, are known to have increasingly adverse effects on children when they are sustained over time.

Fulfilling children’s rights to protection from violence, abuse, neglect and exploitation poses difficult legal and practical questions. From the onset, a lack of registration within national systems, whether for international protection or national child welfare systems, was found to lead to the protection needs of these children falling under the radar. The engagement of civil-society organizations in the private reception and subsequent management of care placements of evacuated children at the onset of the war, was also recognized as a key protection concern. For instance, in Italy, the involvement of private actors was noted to prevent large groups of children being visible to the national authorities. In Poland, the fact that children were not enrolled in local schools hampered identification of at-risk and vulnerable groups. These examples underscore the importance of ongoing identification and monitoring mechanisms on behalf of host authorities, to ensure that children are visible and able to be supported through child protection, education, health and social protection systems. This is particularly critical considering the high percentage of children with disabilities amongst those evacuated from institutions.

Where protection risks are known, child protection requires the engagement and coordination of several actors, including child protection, health, social and justice services and agencies across local, national, and transnational levels. Challenges in establishing this coordination are further pronounced when actors from more than one country are involved. Indeed, a key question to be resolved is how authorities in host countries work together with Ukrainian accompanying adults to ensure that assessment of the best interests of each child and their individual circumstances guide actions in their regard. This challenge of effective coordination is evident in Türkiye, for instance, where the Turkish authorities provide care and assistance for displaced groups of children under the
ambit of national Child Protection Law.\textsuperscript{16} They do so, however, in close coordination with Ukrainian authorities and the Embassy in Ankara, which has resulted in compromises whereby Ukrainian children do not always have the same standard of care as children in the Turkish national child protection system. In Croatia, on the other hand, strong cooperation between the adults accompanying evacuated groups of children and Croatian authorities and non-governmental organisations, has enabled for Croatian actors to provide supplementary assistance, including psychological support.

The HCCH 1996 Child Protection Convention is once more a valuable framework to consider in determining transnational coordination, as are bilateral agreements between Ukraine and host countries, the Council of Europe Reykjavik Declaration and EU and other regional coordination mechanisms, including the EU Solidarity Platform. Where child protection measures that exist under Ukrainian law and those applied by host countries sit side by side, the HCCH 1996 Child Protection Convention has been utilized to assist, though not without its own uncertainties. In many cases concerning children evacuated from alternative care in Ukraine, where habitual residence is still in Ukraine and the judicial and administrative authorities in Ukraine are operational and effective, Ukrainian authorities may seek to exercise general jurisdiction over these children under Article 5 of the Convention. However, the authorities of the State where the child is present may also seek to exercise general jurisdiction, citing Article 6 of the HCCH 1996 Child Protection Convention, which provides for jurisdiction to be exercised by a host country in relation to refugee or internationally displaced children. Further guidance on the application of the 1996 Hague Child Protection Convention in this specific setting would be valuable to avoid legal uncertainty and risks to children.

Even where existing guardianship arrangements are being maintained, the host country has an obligation to proactively monitor and support children without parental care.\textsuperscript{17} This responsibility is further accentuated when it comes to protecting and supporting children with disabilities, who may have specific protection needs and require the provision of specialised services. In Poland, children evacuated from Ukrainian institutions were brought under a parallel system of care and outside the visibility of the child protection authorities. As a result, these children were not able to benefit from the same standard of care as Polish children and were exposed to protection risks, including being housed in large institutional facilities and without individual assessment of best interests. However, due to recent legal amendments in Poland, all institutions are obliged to develop and implement child protection safeguarding standards, offering a chance to improve identification and reporting of child abuse and neglect cases concerning children displaced from Ukraine. In contrast to the use of parallel systems of care, Moldova utilised one legislation covering both Ukrainian and national children. In Moldova, children from Ukraine in need of protection were recognized as children “being in a situation of risk,” as defined under Law 140/2013 on the protection of children at risk and children separated from their parents, without discriminating based on migration status.

In Italy, while the existing national legislation on the protection of unaccompanied foreign minors\textsuperscript{18} provides national authorities with an advanced framework for the protection of internationally displaced children, inconsistencies in its application sub-nationally has impeded efforts to provide dedicated protective and monitoring measures. In
some instances, groups of children in Italy remained in the emergency facilities which were meant to be in place only as interim emergency care following initial arrival in Italy after displacement. Oftentimes managed directly by small local municipalities who were not equipped to adequately care for larger groups of children, these de facto institutional settings were not in line with Italian standards. The research noted limited individual best interests procedures taking place, violations of the right of the child to be informed and to be heard throughout decisions concerning them, and a lack of services to address individual vulnerabilities. While Italian national legislation is well-adapted to address the protection concerns raised by the arrival of foreign minors, its implementation in practice has struggled to overcome challenges posed by the decentralised child protection system. Similar challenges have been noted in other national contexts; contrary to regional standards and despite initial amendments, private facilities hosting larger groups of children in Croatia also remain active.

Recommendations identified in the research:

- Ukrainian guardians and foster parents should be provided with the necessary support, including access to services, complementary assistance, and training, to adhere to the standard of child protection required in the host country they find themselves in.
- Strengthen mechanisms for cooperation between authorities in host countries and Ukraine to ensure that standards for the care and protection for children in alternative care are met.
- Host countries should consider the particular needs and obligations toward children with disabilities, as articulated in the CRC and CRPD and strategies being developed at Council of Europe and EU level that relate to children with disabilities.
- Strengthen host country mechanisms for identification, registration, and the provision of support so that child protection authorities can proactively monitor and respond to children’s protection needs.
- All procedures involving decision-making aimed to ensure the best interests of children should ensure the participation of children, especially when they are in alternative care.

3.3 Ensuring access to the international protection mechanism which is appropriate to the individual circumstances of the child

The provision of temporary protection, through the application of the TPD or similar national protection schemes, has enabled rapid access to protection and services for most persons who have been displaced from Ukraine. As of December 2023, 5.9 million non-EU citizens who fled Ukraine because of the Russian invasion on 24 February 2022, had temporary protection status in EU countries, with Poland hosting 55% of the total Ukrainian refugee population, or 1.6 million persons. Children account for almost one-third of the Ukrainian beneficiaries of temporary protection in the EU, with women comprising almost half.

Whilst the TPD has been the most prevalent form of international protection applied, a notable exception is seen in Italy, where reports from informants indicate that the chosen regularization path for children without
parental care from Ukraine was rarely the TPD. Instead, local practices reflect the use of three residency permits, with the ‘residency permit for minors’ appearing to be the most used. Informants reported that, oftentimes, local actors defaulted to implementing the ‘residency permit for minors’ procedure as this is a process that is familiar to them, instead of assessing the individual circumstances and needs of the child. As a result, these children were not registered for Temporary Protection. Türkiye decided not to activate a Temporary Protection Regulation, contrary to its response to the mass influx of refugees from Syria. Consequently, Ukrainian refugees are required to apply for asylum or obtain a residence permit after a 90-day visa exemption period. The two most prevalent types of permits for Ukrainian refugees in Türkiye are the short-term residence permit or the humanitarian residence permit, the latter of which is mostly used for unaccompanied children. 419 refugees from Ukraine have made an application for International Protection in Türkiye, though information on the outcome of their applications is lacking.

Additional barriers include inabilities to meet the eligibility criteria set out in the TPD and national implementing legislation resulting from, for instance, a lack of identity documents or proof of permanent residency in Ukraine. Moreover, freedom of movement across borders has meant that some children who fled Ukraine may not have been identified, registered and assisted to make an application for international protection. Children may also remain invisible by either choosing themselves to avoid registering, sometimes upon the advice of parents/legal guardians who remained in Ukraine, as was the case in Moldova, or an accompanying adult choosing not to register them for protection. This latter example is notably the case for children evacuated from alternative care settings and living in private accommodation arrangements, as was seen in Italy.

Whilst providing access to temporary protection is an enormously positive undertaking by States, it is also important to ensure that children without parental care can access the form of international protection that is most appropriate to their needs. The legal implications of accessing the most appropriate protection mechanism are wide-ranging, in view of the procedural safeguards that would be put in place for the child, as well as the entitlements which they would have access to. In Poland and Italy, the scale and speed of arrivals, augmented caseloads, and chronic shortage of trained guardians available, were noted as leading to a lack of individual best interests assessments for the purpose of identifying the most suitable protection regime. In Türkiye, barriers to accessing international protection also included a lack of awareness of legal rights amongst children, coupled with limited legal aid and counselling services.

Child-centred case management, as well as access to specialized legal assistance for children, their guardians, and families, are key to ensuring an understanding of rights and options to assist with more informed pathway planning. Clear information to, and coordination between, authorities, guardians, and lawyers on available international protection procedures in each country will furthermore assist access, as well as the development and delivery of specialized training for legal assistance providers. Throughout the procedure, the child must be informed, her/his point of view must be taken into consideration, and the evaluation of the individual circumstances must be done with primary regard to the best interests of the child. A good practice in this regard can be seen in Bulgaria, where an
unaccompanied child registered as seeking protection is immediately appointed with a lawyer-representative by the National Bureau of Legal Aid. This representative has an obligation to be present at all procedures that take place with the child until they reach the age of majority, or until family reunification, with a view to protecting the best interests of the child. A similar good practice is noted in Croatia, where free legal aid is provided for international protection approval procedures and is regulated in national legislation.

Recommendations identified in the research:

- Strengthen guidance which helps host country authorities to ensure application of appropriate international protection procedures, including actions to improve identification, vulnerability screening, and assessment.

- Promote the exchange of good practices (or development of guidance) on child friendly case management which considers children’s rights and international protection needs and protects them from unsafe return. This should include the role of guardians in ensuring that children have the necessary legal information and legal aid services to navigate through appropriate procedures.

- Encourage the development and provision of clear information to authorities, guardians, and lawyers on available international protection procedures so that they can inform and support children and prevent involuntary and premature returns.

- Promote the provision of free quality legal assistance for displaced children in all relevant procedures (e.g., application for international protection or family reunification in the future).

- Promote the capacity building of legal professionals on child-friendly legal aid within the context of children without parental care displaced abroad.

3.4 Identifying comprehensive, secure, and sustainable solutions through best interests procedures and supported by transnational cooperation

The current displacement situation of children without parental care forced from home in Ukraine is largely provisional in nature and uncertain in duration, raising difficult questions as to how comprehensive, secure, and sustainable solutions for children can be identified and implemented.

While international guidance is clear regarding the need for the best interests of the child to shape all decisions pertaining to children without parental care, it is generally a matter for national law to provide detailed procedures for such assessments with a view to identifying solutions. The absence of a procedure, during which all possible outcomes for the child might be considered, poses a legal difficulty in this regard. Indeed, in Italy, the lack of individualized best interests procedures, which include consideration of the views of the child and his or her guardian, have produced instances whereby the views of children contradict those detailed in the solution identified. Similarly, in Poland, the consequence of not having individual case management and best interests assessment procedures, has resulted in the lack of development of longer-term plans for children from Ukrainian foster care, regarding their accommodation situation and integration into Polish society. A further gap identified
in Poland was the recognition that there is no dedicated legal framework on the family reunification of beneficiaries of national temporary protection.

Unusual to other situations of mass displacement, Ukrainian authorities in many cases arranged the initial evacuation of children and are actively seeking to ensure the ongoing protection of those who have been internationally displaced. The need and opportunity for cooperation between authorities in Ukraine and in host countries is clear. Conflicting interests between the actors involved in decisions considering the return of groups of children evacuated from institutional care, as well as a lack of clarity over which national authority has jurisdiction in taking such decisions, has posed a particular challenge in this regard.

Furthermore, in recognition that many children and caregivers express intentions to return to Ukraine when it is safe to do so, the type of care settings available upon return is important to consider. Both the government of Ukraine and the international community have agreed that returns should only take place to family-based care.

In the Italian context, this has been recognized as a particularly challenging topic, with the intersection between different national child protection systems producing conflicts of interest, a lack of cooperation, and premature returns of groups of children not in line with the national legislation. The decentralised nature of the Italian and Ukrainian social work and child protection systems further compound this cooperation challenge. The Moldovan authorities have notably already started discussions with Ukrainian authorities on future returns, procedures and necessary documents. Turkish authorities also coordinate with Ukrainian authorities when it comes to actions around the return of children.

From the above, it is apparent that specific procedures for cooperation need to be developed and tailored to respond to the needs and vulnerabilities of children displaced without parental care from Ukraine. Such procedures can build on the existing bilateral agreements and European networks to ensure transnational cooperation in identifying comprehensive, secure, and sustainable solutions in the best interests of children.

Recommendations identified in the research:

- Strengthen transnational cooperation between host-countries and Ukraine, including by identifying good practices that have emerged from other transnational cooperation models and successfully upheld the best interests of children.
- Encourage the development of joint guiding principles on a best interests procedure for national authorities to inform decision-making at all stages of case management. This could include coordination with the government of Ukraine on comprehensive secure and sustainable solutions, and possible voluntary returns to Ukraine.
- Enhance information exchange for informed decision making by competent authorities when considering comprehensive secure and sustainable solutions, including information on safeguards in place, the security situation within Ukraine and services available to support and return reintegration, ensuring that all return is safe, voluntary, and dignified.
- Put in place safeguards to ensure that children return to family-based care arrangements in Ukraine as opposed to the institutions from which they were evacuated.
4. Conclusions and implications

The research has highlighted key gaps and recommendations in the protection of displaced children. Particularly, the need to establish effective platforms for discussion between regional, national and local stakeholders. Systems strengthening interventions should encourage duty bearers to uphold children’s best interests on an individual basis. This includes investments into both Ukrainian and host country child protection systems. Specific capacity strengthening activities for Ukraine’s newly appointed Central Authority should be prioritized by the HCCH Permanent Bureau and international partners. This includes promoting further transnational collaboration and cooperation between host countries and Ukraine.

The Council of Europe’s Consultation Group on the Children of Ukraine has recently held its first meeting and represents an important platform for membership exchange and cooperation. Similarly, a number of CSO coordination fora, including the European Guardianship Network hold important coordination roles that should be harnessed for the dissemination of research findings as well as to strengthen coordination among networks of practitioners supporting children displaced without parental care. UNICEF and UNHCR maintain important roles in ensuring that children’s international protection needs and their case management history inside Ukraine are fully understood and considered by guardians, authorities, and courts in making determinations on their best interests.

As the research has revealed, legal ambiguity and complexity can and often does have negative impacts on children’s care and protection. Both at international and national levels, the research has displayed a fundamental tension: host countries have strong commitments to the protection of children without parental care, but often failed to offer the requisite consistency and standards afforded to children in national systems. This gap reflects an opportunity to further strengthen inclusive child protection systems, services and protections and support on both a national and international level. Doing so, in line with the recommendations emanating from the research, will benefit not only Ukrainian children but any child without parental care that is supported by these structures.
## Annex 1 – Research initiatives commissioned by UNICEF

### REGIONAL LEVEL

Fulfilling the Rights of Children Without Parental Care Displaced from Ukraine: An analysis of international and European law

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### BULGARIA

Legal Study on meeting the legal challenges of protecting unaccompanied and separated children from Ukraine and other countries

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### CROATIA

Strengthening national capacities for enhanced protection of unaccompanied and separated children (UASC) from Ukraine

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### ITALY

Legal Study on Meeting the Legal Challenges of Protecting Children Without Parental Care Displaced from Ukraine

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### POLAND
Legal study on situation of children without parental care displaced from Ukraine

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**REPUBLIC OF MOLDOVA**

National legal study on situation of children without parental care displaced from Ukraine

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**ROMANIA**

Title TBC

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**TÜRKIYE**

Meeting the legal challenges of protecting children fleeing Ukraine: A study on the national legal framework in Türkiye

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Links to the abovementioned reports can be found at: https://www.unicef.org/eca/reports/fulfilling-rights-children-without-parental-care-displaced-ukraine
Endnotes


2. Ibid.


5. For more information on these key concepts, please see the “Glossary and Key Concepts” in the report Fulfilling the rights of children without parental care displaced from Ukraine: An analysis of international and European law.

6. There is a continued lack of reliable data on subsets of the child refugee population from Ukraine, especially on the share of unaccompanied and separated children who have applied for national protection schemes. Monthly statistics can be accessed here: https://ec.europa.eu/eurostat/statistics-explained/index.php?oldid=583604#Where_did_unaccompanied_minors_fleeing_Ukraine_go?


8. UNHCR; The European Commission; The Council of Europe; The Permanent Bureau of the Hague Conference on Private International Law; The EU Fundamental Rights Agency; The EU Agency for Asylum; The European Guardianship Network; Eurochild; KIND Europe.

9. For a complete overview of the regional-level methodology, please see the attached report, Fulfilling the rights of children without parental care displaced from Ukraine: An analysis of international and European law.

10. CRC, Art 18(2) and Art 20(1); CRC Committee General Comment 6, “States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child’s best interests.”

11. EU TPD, Art 16(1).


13. Türkiye, the Republic of Moldova and EU are members of the HCCH and Contracting Parties to the HCCH 1996 Child Protection Convention.


15. For example: the National plan for the rights of the child in the Republic of Croatia 2022 – 2026, which includes the recommendation of further strengthening of guardianship system for all unaccompanied children; and the National action plan for the implementation of the EU Child Guarantee.


18. Ibid.


21. Residency Permit for Minor Age, for Family Reasons, and for Foster Care (where the residency permit for family reasons was reserved for those minors placed under the care of family members).

22. Comprehensive, secure and sustainable solution: a solution that, to the greatest extent possible, caters to the long-term best interests and welfare of the child and is sustainable and secure from that perspective. For more information on this concept, please refer to the “Glossary and Key Concepts” of the attached Report, https://www.unicef.org/eca/reports/fulfilling-rights-children-without-parental-care-displaced-ukraine.

23. The voluntary assisted return procedure as outlined by the Italian Law on the Protection of Unaccompanied Foreign Minors.