

Please cite as: EUAA, 'Introduction' in *EASO Practical guide on the best interests of the child in asylum procedures*, January 2022.

Introduction

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Why was this practical guide created?

The legal instruments forming the Common European Asylum System (CEAS) affirm the obligation for European Union Member States plus Iceland, Liechtenstein, Norway and Switzerland (EU+ States) to assess and give primary consideration to the best interests of the child (BIC) in all actions concerning children (1) The Practical guide on the best interests of the child in asylum procedures (practical guide) has been developed to support EU+ States to comply with their obligations related to the BIC.

A child's best interests must be assessed and taken into account as a primary consideration (2) in all actions or decisions that concern him or her (3). However, at present, most EU+ States do not have an established process for implementing this legal obligation within asylum systems. In a communication to the European Parliament and the Council of 12 April 2017, the EU Commission called upon EU agencies to further develop guidance and tools on the best interests of the child. The validated findings of the European Asylum Support Office (EASO) mapping on international protection procedures for children, have confirmed the need for guidance as to how to practically implement giving primary consideration to the best interests of the child.

The aim of this practical guide is to help to identify and highlight the key milestones and flashpoints for the implementation of the best interests of the child. This is done in order to support EU+ States in applying the best-interests principle and enhancing the guarantees within asylum procedures for children. EU+ States should establish child-friendly asylum processes that ensure the protection of the child throughout the procedure in line with EU and international law.

What is in the practical guide?

The practical guide aims to provide guidance and support to the competent national authorities on the required guarantees and safeguards which will ensure that the child's best interests are given primary consideration when making decisions affecting the child in the asylum procedures. It is divided into five sections including an overview of the terminology; 1. the background and elements of the best interests of the child; 2. the relevant guarantees; 3. guidance on how to assess the best interests in practice; and 4. vulnerability and risk indicators.

At the end, the practical guide presents a comprehensive checklist, designed to ensure that all key steps are completed by the responsible authorities and appropriately taken into account when assessing the child's best interests. The guide is complemented with a set of annexes; a compilation of policy and guidance documents relevant to the topic and an overview of the legal framework including international, European and EU legal instruments.

What is the scope of this practical guide?

The practical guide's scope is limited to how to give primary consideration to the best interests of the child in the asylum procedures (4), and addresses only children (with families and unaccompanied). This practical guide focuses on the asylum procedures. The child should be able to make a free and informed decision to apply for international protection. The parents/guardian/representative and/ or CP actors can continuously assess if it is in the best interests of the child to pursue the application. Ensuring the BIC is complied with requires cooperation among all relevant actors with competence in continuously assessing the best interests of the child. Child protection and assessing the BIC go beyond the asylum procedure, hence the need for continuous collaboration with the CP authorities and other actors in a holistic way, such as the reception authority, guardian/representative and legal advisors.
The practical guide intends to support operationalising the implementation of the best-interests principle in the asylum procedures, in line with EU acquis and other relevant international legislation (6) It has been developed with the understanding that in different EU+ States there are different practices and actors involved in the best interests of the child and it is up to the national authorities to ensure that all relevant protection guarantees and safeguards have been put in place during the asylum procedures.

How was this practical guide developed?

This practical guide has been developed by EASO with the support of a group of experts from BE, DK, FI, IE, NO and RO as well as the European Commission, European Union Agency for Fundamental Rights (FRA), United Nations High Commissioner for Refugees (UNHCR) and United Nations Children's Fund (Unicef). Furthermore, the European Commission and EU+ States, and international organisations have been consulted. It is the product of combined experience, reflecting the shared objective to achieve high-quality international protection procedures. The practical guide furthermore takes into account the best-practices identified in the context of the EASO support to the relocation scheme (7) in EL and IT when conducting best-interests assessments (BIA) of children eligible for relocation.

How to use this guide?

The practical guide provides generic guidance and can be used as a benchmark or source of inspiration to update and/or improve specific standard operating procedures developed for children at national level.
The best-interests checklist proposed in the guide will support and ensure the ongoing information gathering and assessment process. It will enable the assessor to verify if the relevant information and safeguards have been provided with due consideration of data protection/security.
The practical guide can be used in conjunction with relevant EU, international and national legislation, respecting a child-rights approach (8). In addition, various existing policy and guidance documents on the BIC have been developed and were used when drafting the present

document’s guidance

How does this practical guide relate to other EASO support tools?

EASO’s mission is to support EU+ States in the implementation of the CEAS through, inter alia, common training, common quality standards and common country of origin information. As with all EASO support tools, this practical guide is based on the common standards of the CEAS. The guidance should be seen as complementary to the other available EASO tools, particularly the **Practical guide on age assessment**, the **Practical guide on family tracing** and the training module on interviewing children.

ADD ICONS AND LINKS TO THE PRACTICAL GUIDES

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(1) It is to be noted that EU asylum acquis uses the term ‘minor’, which is equivalent to the term ‘child’. Both refer to a person under 18 years old. See also Terminology

(2) Article 24, EU Charter of Fundamental Rights; See also Communication from the Commission to the European Parliament and the Council on the protection of children in migration, 12 April 2017, COM(2017) 211 final, p. 14 (Protection of children in migration).

(3) CRC Committee General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14; For UNHCR guidance on best interests see UNHCR, Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October 2014; UNHCR and International Rescue Committee, Field Handbook for the Implementation of UNHCR BID Guidelines, 2011

(4) Some MS conduct BIA at the reception stage separately from international protection procedures. who have applied or expressed their will to apply (5) for international protection. In situations where procedural pathways other than applying for international protection may be in the child’s best interests, appropriate solutions should be recommended by the relevant child protection (CP) authorities, a panel composed of the guardian, migration authorities, and public prosecutors according to national law and/or practice. Assessing the best interests of the child for the purpose of reception (within the meaning of the RCD (recast)) or for other procedural pathways does not fall within the scope of this practical guide.

(5) This is without prejudice to arrangements in some MS allowing children to make an application on their own or through their parents or representatives (Article 7(3) APD (recast)) and includes the making, the registration of the making and the lodging of the application for international protection given their different implications (Article 6 APD (recast)).

(6) Amongst others, relevant provisions set forth in 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 (Anti-Trafficking Directive).

(7) Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece.

(8) See policy and guidance documents (Annex II) and the legal framework (Annex III).
on implementing this principle. Further reference material is available in the policy and guidance documents (Annex II) of this guide.

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