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1.6 Balancing the elements of the best interests of the child

Any best-interests process must give due consideration to the child's family situation; the situation in their country of origin; particular vulnerabilities; safety and the risks they are exposed to; protection needs; level of integration in the host country; and mental and physical health, education and socioeconomic conditions. This analysis can be conducted by social workers employed by the asylum authority or by other actors and made available to the asylum authority. It must be set within the context of the child's gender; sexual orientation or gender identity; national, ethnic or social origin; religion; disability; migration or residence status; citizenship status; age; economic status; political or other opinion (51); cultural and linguistic background or other status.
Assessors have to balance different rights of the child (52). The documentation on the best interests should include a detailed description of the child's circumstances, including all the safeguards and findings, and an analysis describing the balancing of the elements, the options considered for the child, which option is in the child's best interests and why.
In the following list, the references from the General Comment No 14 (53), the CRC and EU asylum acquis have also been included (54):

- family reunification possibilities (Article 10 CRC, Article 23(2) RCD(recast));
- the child's life, survival and development (Article 6 CRC); well-being;
- the child's identity (Article 8 CRC) and background;
- situation of vulnerability; potential victim of trafficking (Articles 32 and 39 CRC, Article 23(2) RCD (recast), Article 6(3)(c) Dublin III Regulation);
- other special needs (Articles 20 and 22 CRC, Article 22 RCD (recast));
- the child's right to education (Article 28 CRC);
- the child's right to health (Article 24 CRC);
- family unity (Article 9 CRC, Article 8(2) Dublin III Regulation and Article 25 qualification directive), preservation of the family environment and maintaining relations;
- hearing the child's views (Article 12 CRC);
- protection and safety of the child (Article 19 CRC);
- principle of non-discrimination (Article 2 CRC);
- care and guidance in line with the child's evolving capacities (Article 5 CRC).

These are reflected in EU acquis, and in the chart below showing some of the key elements (nonexhaustive) of the best interests of the child, indicating the legal instruments as reference.

Further guidance, relevant policy and guidance documents can be found in Annex II and the international and European legal framework in Annex III (55).

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(52) ‘There is no hierarchy of rights in the Convention; all the rights provided for therein are in the “child’s best interests”.’ 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.

(53) The key elements to be taken into account when assessing the child’s best interests are listed in Section V of the 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, section V.A, para 48

(54) For further elaboration on this see FRA, Fundamental Rights Report 2018, pp. 184-186.

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