

5.1. Right to a representative

The prompt appointment of a guardian or representative is widely recognised as a key procedural safeguard for unaccompanied and separated children, as it provides someone responsible for the child with a comprehensive view of their case and likely needs, enabling independent review and the possibility to intervene to ensure their best interests are met. Soft law instruments have stressed that the appointment should precede any referral to asylum or other proceedings,[49] while the EU Fundamental Rights Agency (FRA) has affirmed that the timely appointment of a representative able to participate in all actions concerning the child is necessary for the procedure to be lawful.[50] Similarly, the EUAA has consistently highlighted in its practical guides (see the Second Edition, pp. 26-27 and Third Edition, pp. 27-28) that the presence of a representative at the earliest possible stage is required within the asylum framework, including during age assessment procedures.

The new instruments of the Pact have reinforced this requirement. Representatives are required even at stages preceding the asylum procedure, such as during screening under Article 13(3) of the Screening Regulation, or at very early stages of the asylum process, including procedures to determine the Member State responsible for examining an application pursuant to Article 23 of the AMMR.

Moreover, both the amended RCD (Article 27) and the APR (Article 23) introduce safeguards concerning the appointment of a guardian for unaccompanied minors. These relate to **timeliness** (requiring a guardian to be appointed within a maximum of 15 working days from the *making* of an asylum application, with a provisional representative appointed in the interim); **quality** (including limits on caseloads as guardians must not be responsible for more than 30 minors, must possess the necessary qualifications, training and expertise, and mechanisms for performance supervision must be in place); **independence** (requiring representatives to act in accordance with the best interests of the child and to remain independent, such that individuals or organisations whose interests conflict, or may potentially conflict, with those of the child are ineligible for appointment); and **safety** (through criminal-record checks and the establishment of complaint mechanisms).

The following sub-sections show that the above requirements under the Pact are grounded in the jurisprudence of international human rights bodies and EU+ national courts, which have held that:

- The appointment of a guardian is integral to ensuring that the applicant can duly submit an asylum claim and exercise other core rights. The absence of a representative during the proceedings may lead to an annulment, for instance of a decision on international

protection or a decision terminating child custody.

- The presence of a guardian in the procedure must be meaningful, requiring that representatives are qualified and independent, alongside compliance with other requirements set out in the Pact, such as the caseload ceiling intended to ensure that each applicant receives adequate attention.

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  UN Committee on the Rights of the Child (1 September 2005). General Comment No 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, para 21; Council of Europe (14 December 2022). Recommendation CM/Rec(2022)22 of the Committee of Ministers to Sember States on human rights principles and guidelines on age assessment in the context of migration, Principle 1(1) and (20).

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  Fundamental Rights Agency (FRA) and European Commission (26 June 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, pp. 99-105.

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