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## SAFE & SOUND

WHAT STATES CAN DO TO ENSURE RESPECT FOR  
THE BEST INTERESTS OF UNACCOMPANIED AND  
SEPARATED CHILDREN IN EUROPE



# Best interest of unaccompanied and separated children in Europe

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# BI process= BIA + process planning and BID

- **Best Interest Assessments [BIA]:**
  - Continuous treatment and must fit closely with existing child protection systems – BIA to inform and manage cases
- **Process planning**
  - To decide on the immigration pathway (multidisciplinary: lawyer, guardian, expert) to enhance efficiency (frontloading)
- **Best Interests Determination [BID]**
  - Relates to decisions affecting the child's future and therefore requires special /enhanced procedural safeguards

## **BID not required for all decisions affecting children**

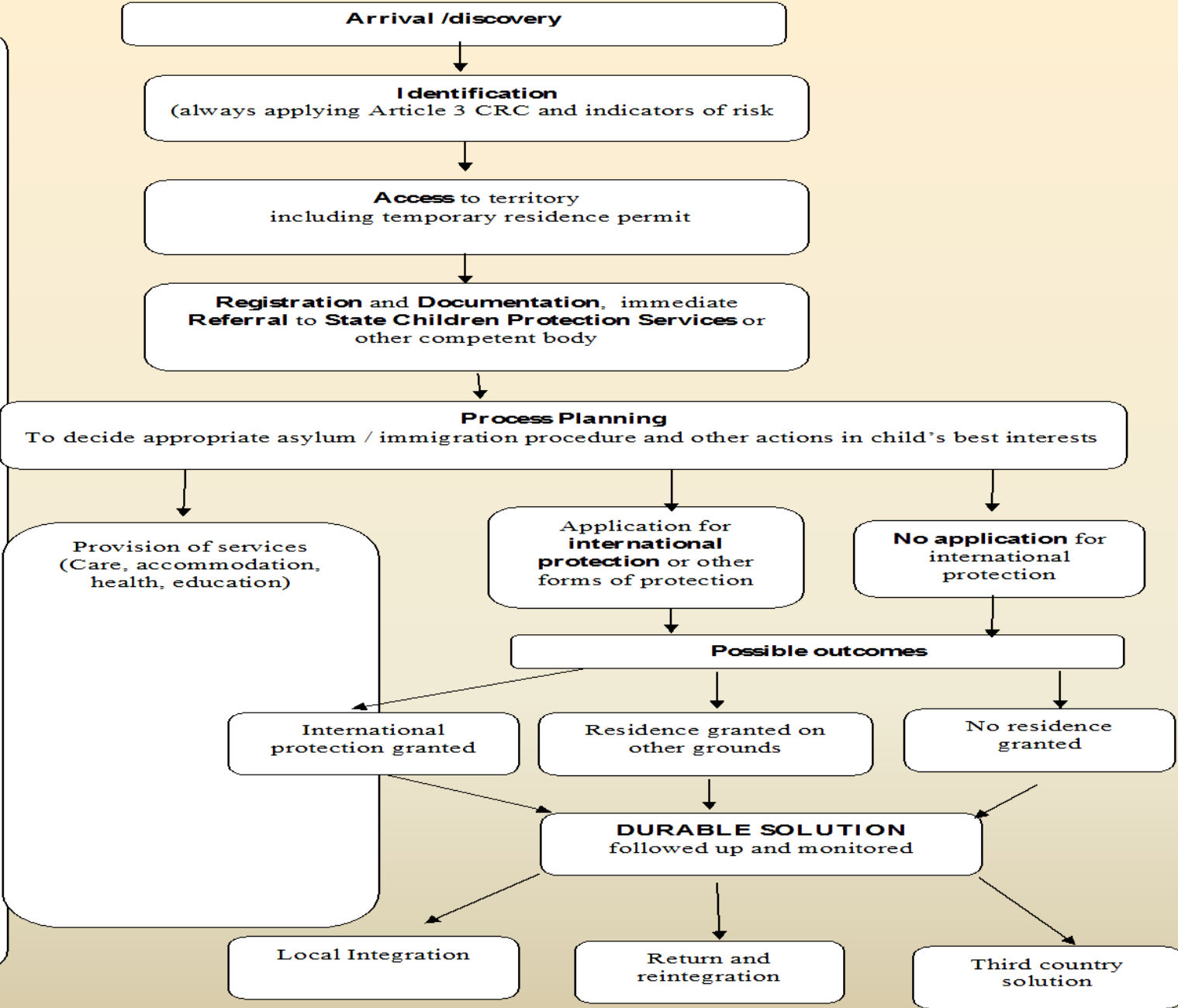
- **“The greater the impact of a decision on the child, the greater level of safeguards need to be put in place”**

# Safeguards

- **Independent Representative/guardian** (recast Asylum Procedures Directive, recast Reception Conditions Directive, Dublin III, Anti Trafficking Directive)
- **Child-friendly information** enabling the child to express its views (CRC GC 14).
- **Interpretation** (Asylum Procedures Directive, Dublin III Regulation)
- **Priority processing** in the best interests of the child (
  - Time factor pertinent but no expedited process)
- **Legal counsel** (APD, Dublin III, RCD, ATD)
- **Written, reasoned decisions** (CRC GC 14)
- **Review of decisions** CRC, ICCPR Art 13 and Art 14(5).

**Procedural Safeguards:**  
Interpreter  
Representative  
/  
Legal representation  
Professional expertise

**Key features / additional safeguards:**  
Multi-disciplinary approach, holistic, input by impartial / independent experts, reasoned outcome, for review where national legislation foresees this



# Conditions that need to be in place

- Access to territory for UASC (at risk)
- Identification
- Registration and documentation
- Safe accommodation and care
- Healthcare
- Education
- Age assessment if necessary (doubt)
- Family tracing and restoring family links
- Durable solution

# Features of a BID

ensure **child participation** through **child-friendly procedures** & **proper information and support**;

be **holistic**

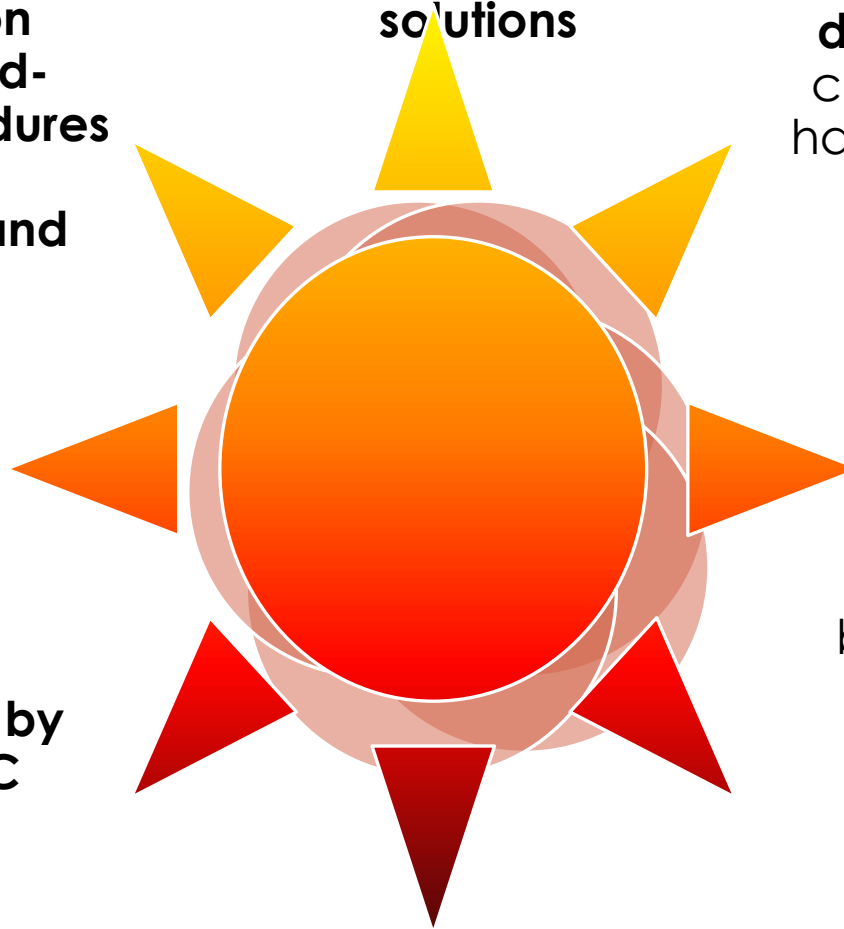
be **informed by the UN CRC**

should **consider a range of solutions**

**demonstrate and document** that the child's best interests have been a primary consideration

be **multi-disciplinary**

be **an independent process that is** with all due process safeguards



## To respect the best interests principle UNHCR and UNICEF recommend States establish procedures which:

- Ensure a **holistic** approach to establish a child's best interests, considering child's characteristics, circumstances and needs.
- **Are child-friendly**
- Allow the child to be **heard**, (age and level of maturity)
- Gather **relevant information about the child** with the child from relevant sources as early as appropriate, for **early understanding of child**
- Actively seek **early establishment of trust**.
- Seek **joined-up vision for the child** across the many actors
- Consider a **durable solution** which enables the child to **develop into adulthood in an environment which will meet his or her needs + fulfils his or her rights**, and will not put the child at risk



**Dilemmas  
states are  
faced with**



# Parallel systems data sharing vs data protection

- Child protection and asylum and migration systems do not work hand in hand with each other (parallel tracks)
- Information exchange not always happening and crucial info obtained during BIAs e.g. for the asylum determination may get lost
- Obstacle can be data protection rules
- Unified case file

# Confidentiality and best interests

- Develop **protocols** for the specific sharing of information re all aspects of the **best interests process**
- Take **precautions** for the safeguarding sensitive information
- **Protect access** to the data
- Manage **data-processing**
- **Informing the child** and her/his guardian about type of information shared and the purpose of sharing the data, giving child opportunity to provide views.

# Establishing trust

- Another challenge faced by States is how to establish trust and how to deal with children who are “not cooperating”
- A child will need **time and reasons why** they should trust the adult in front of her/him.
- Child have many reasons to be **fearful of adults** ; (smuggler or trafficker).
- The **mistrustful child** may not access protection it needs and may, for e.g. try to move on

# Establishing trust (cntnd.)

- Offering **information** to the child **to rectify any misinformation** available from other influences on the child (migrant communities, family, smugglers, traffickers, other unaccompanied or separated children) requires **early investment in establishing a trusting relationship**.
- **A conscious strategy**
- **Avoid situations of pressure**
- Several **short interviews** and **more informal interactions**
- In **re-establishing contact with family**, **full agreement and trusting relationship** are necessary preconditions to avoid unexpected consequences

# Ageing out

- **Noting that the largest group of children are in the age range of 16-17**
- **For children, reaching majority at 18 means i.a.:**
  - Loss of official guardian/representative
  - Loss of the right to accommodation in special homes for young people or foster care arrangements
  - Loss of social, economic and educational rights
  - Risk of detention
  - Risk of deportation to countries they may no longer remember, where they may no longer have any contacts
  - Lack of information about rights as adults

# Ageing out (continued)

- Uncertainties of current **age assessment** methods, erroneous age determination may play an aggravating role.
- Council of Europe UNHCR research and draft resolution (2014)
- States should consider establishing a **transition category**,
  - welfare assistance and education,
  - access to information,
  - extension of housing assistance until solutions are found,
  - access to health care,
- Train social workers
- Peer support groups



**Thank you for your  
attention**

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