



EMN and UNHCR
Conference on
“Protection of
Unaccompanied Minors
and Separated Children in
Ireland and Europe”

27 November 2014 Dublin

SAFE & SOUND

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





Overview

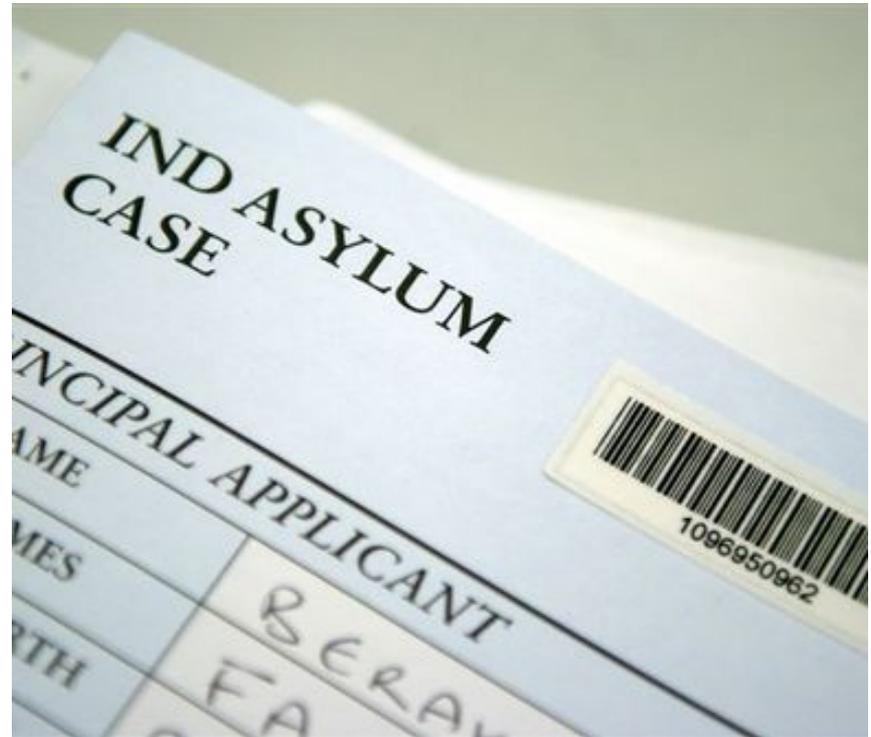
- ❖ Why Safe and Sound?
- ❖ Who it is for?
- ❖ What does it address and how?

- #of UASC arriving in Europe on the rise: Syria crisis, Mare Nostrum
- Majority are 14-17 year old boys from AFG, ERT, SOM, SYR
- Many do not register and move on (smuggled or trafficked) to other destinations in Europe (12,000 UASC arrived in Italy in 1st 10 months of 2014 but only around 1,000 applied for asylum (EUROSTAT)
- Peer pressure and pressure from parents and communities not to reveal parents' whereabouts
- Children go missing from care on arrival or after having been rejected

Current trends & challenges



- No uniform approach to treatment of UASC across EU
- In some countries all UASC channeled into a/s procedure regardless of protection needs
- EC Action plan common approach
 - Better statistics to gauge the scope of problem and to inform policy responses
- Children age out after rejection and are returned when turning 18
- Lengthy asylum procedures (subsequent applications resulting in prolonged stay and issue of rooting)



Objectives of the Guidance

Provides direction on how the best interests principle of Art. 3.1 CRC can be applied in practice from the moment an unaccompanied or separated child arrives until a durable solution is found

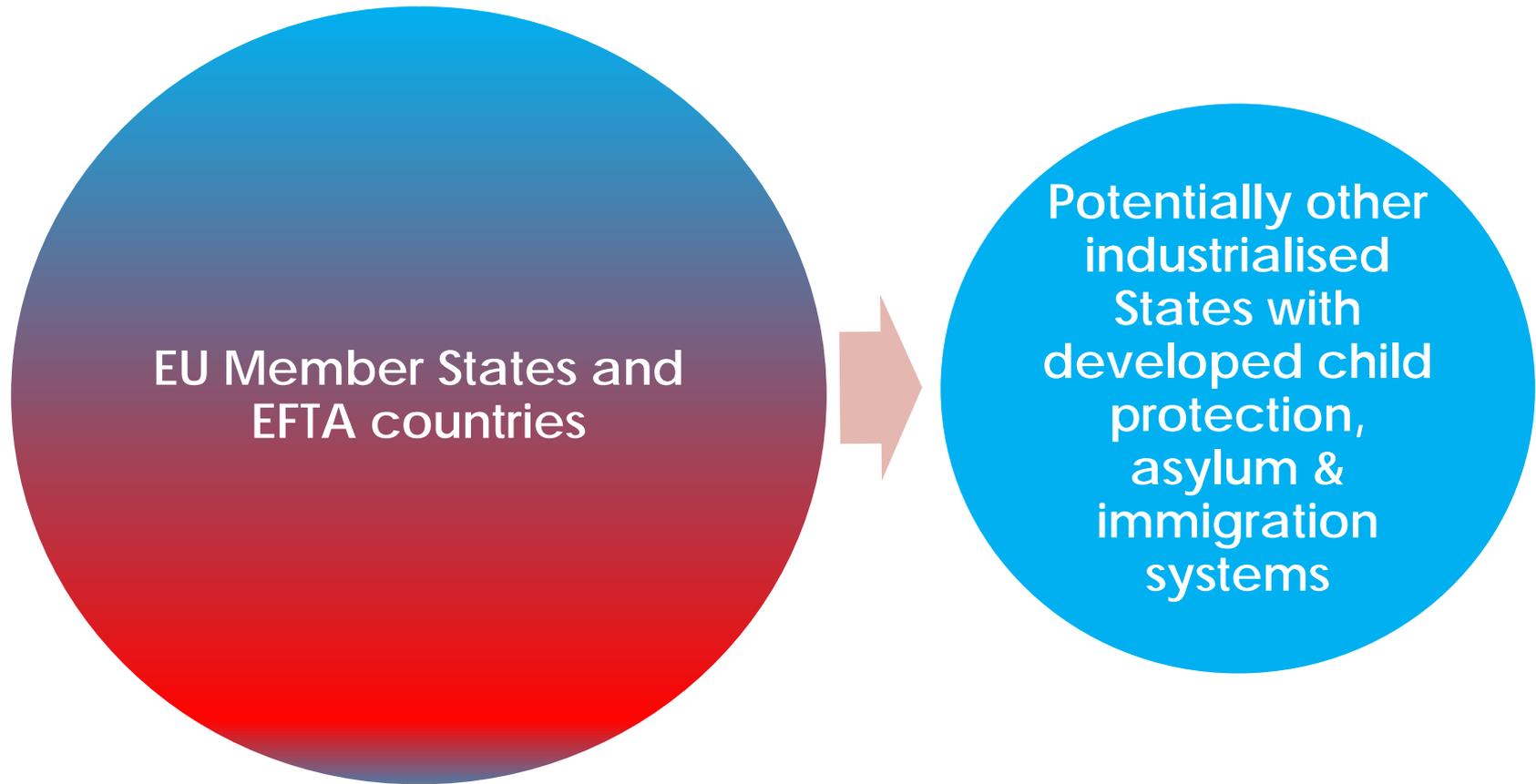


Raises awareness of the legal obligation to respect the best interests of the child, and suggests possible ways to ensure its fulfillment building on noteworthy national practices



Aims to inspire and assist States to develop a best interests process

Scope of its coverage



Target groups and target audience



Protection tool for *all UASC* in line with CRC (not just a/s) but some principles / safeguards could be applied to *children in families* (e.g. right to be heard)



Intended for **policy makers** and **practitioners** including the judiciary

Builds on General Comment No. 14

**Explains
the
principle**

As a substantive right

As a rule of procedure

A fundamental interpretative legal principle

**Describes
features
of a BID**

Multi-disciplinary decision making

Reasoned decisions

Non-exhaustive list of factors for weighing best interest

Building on.....

CRC

CRC General Comments No. 6,
5, 12

EU asylum acquis (RCD, QD,
APD, Dublin, Famre Directive)

Anti-Trafficking Directive

Return Directive

Policy and guidelines

UNHCR

- UNHCR Guidelines on Protection and Care (1994)
- UNHCR ExCom Conclusion No. 107 on Children at Risk
- UNHCR Guidelines on Best Interests Determination (2008)
- UNHCR Guidelines on International Protection No. 8: Child Asylum Claims (2009)
- UNHCR Field Handbook BID (2011)
- UNHCR *A Framework for the Protection of Children*, 2012

UNICEF

- UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe (2006)
- UNICEF Child Protection Strategy
- UNICEF Age Assessment: A Technical Note (2013)
- UNICEF Guidelines on the Protection of Victims of Child Trafficking (2006)
- (SCEP) Statement of Good Practice (4th Edition) (endorsed by UNICEF and UNHCR)

Recognising need for specific guidance for industrialised countries

Addresses key issues states are grappling with including:

- building trust
- data sharing and confidentiality
 - sources of information (child specific COI)
- age assessment
- ageing out
- family tracing
- Identifying relevant factors for a BIA/BID and weight to be attributed to them
- relationship of BID with existing asylum and migration systems



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Getting to the substance

Conditions that need to be in place

Access to territory for UASC (at risk)

Identification

Age assessment if necessary (doubt)

Registration and documentation

Safe accommodation and care (no detention)

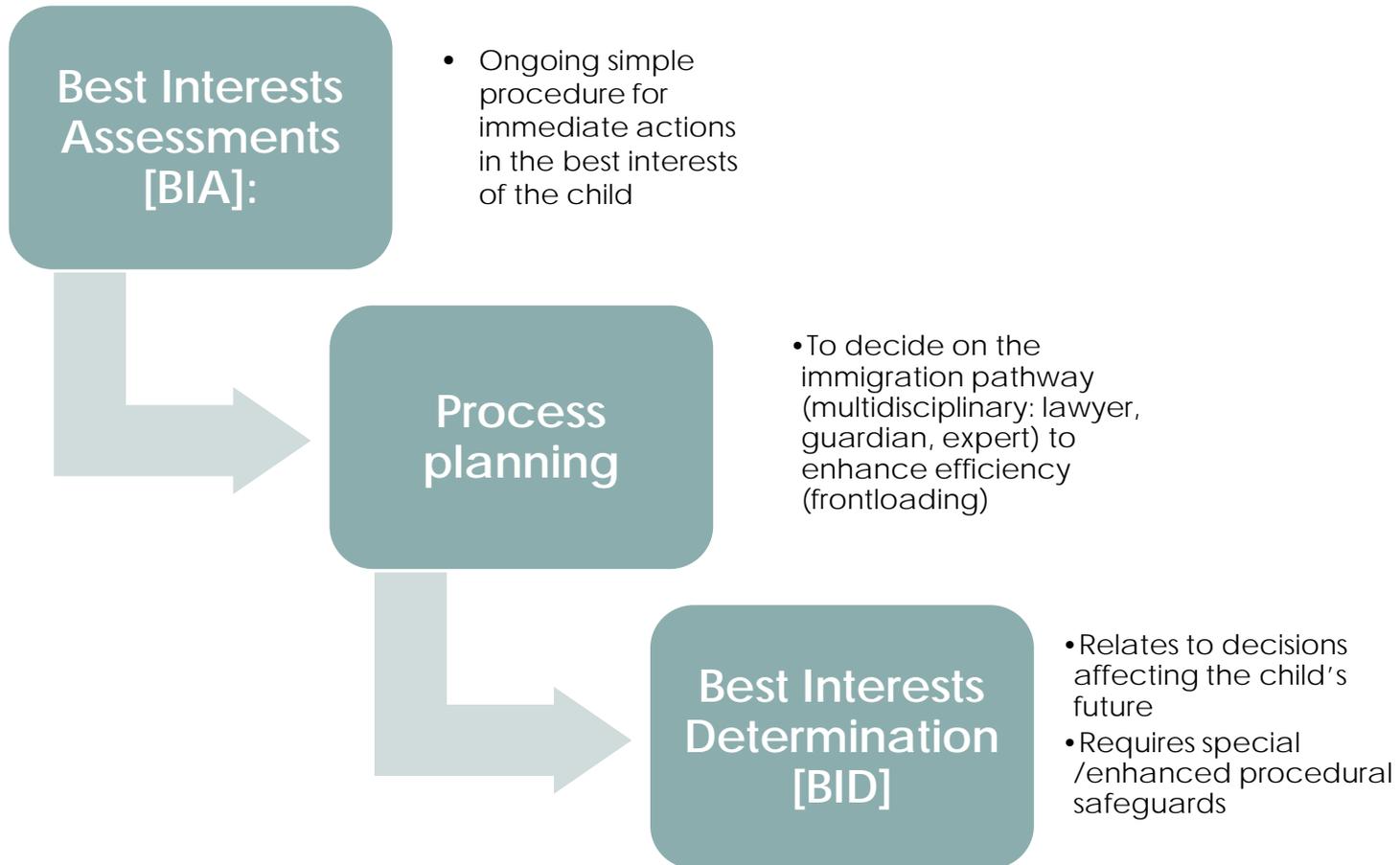
Healthcare

Education

Family tracing and restoring family links where in best interests



BI process = BIA + process planning and BID



UN CRC General Comment No. 14 para. 20

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”



The BID

A BID looks
at wider
child rights

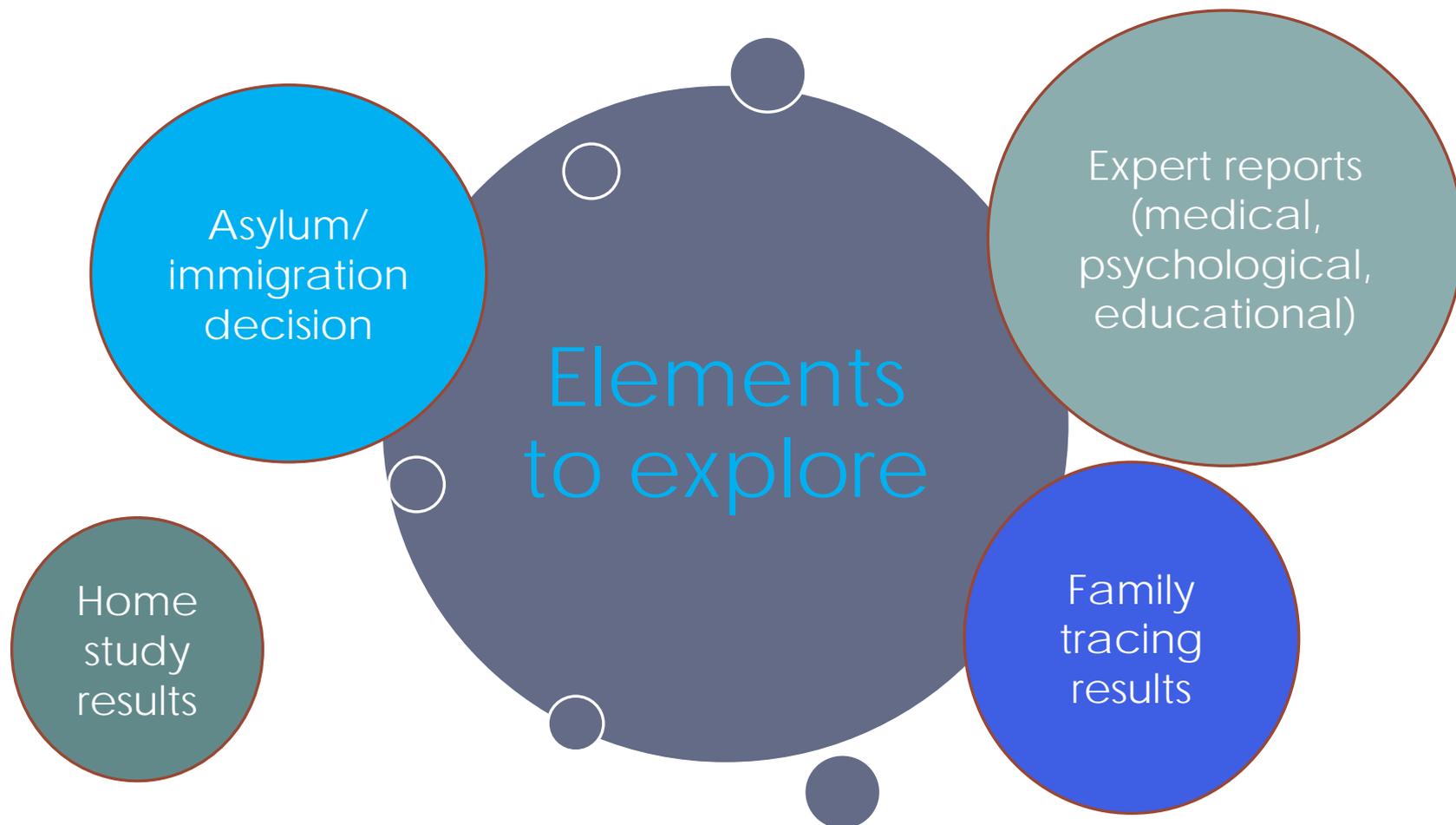
Not limited to
1951
Convention
grounds or
art 15 c QD

Generally
AFTER an
asylum/
immigration
decision

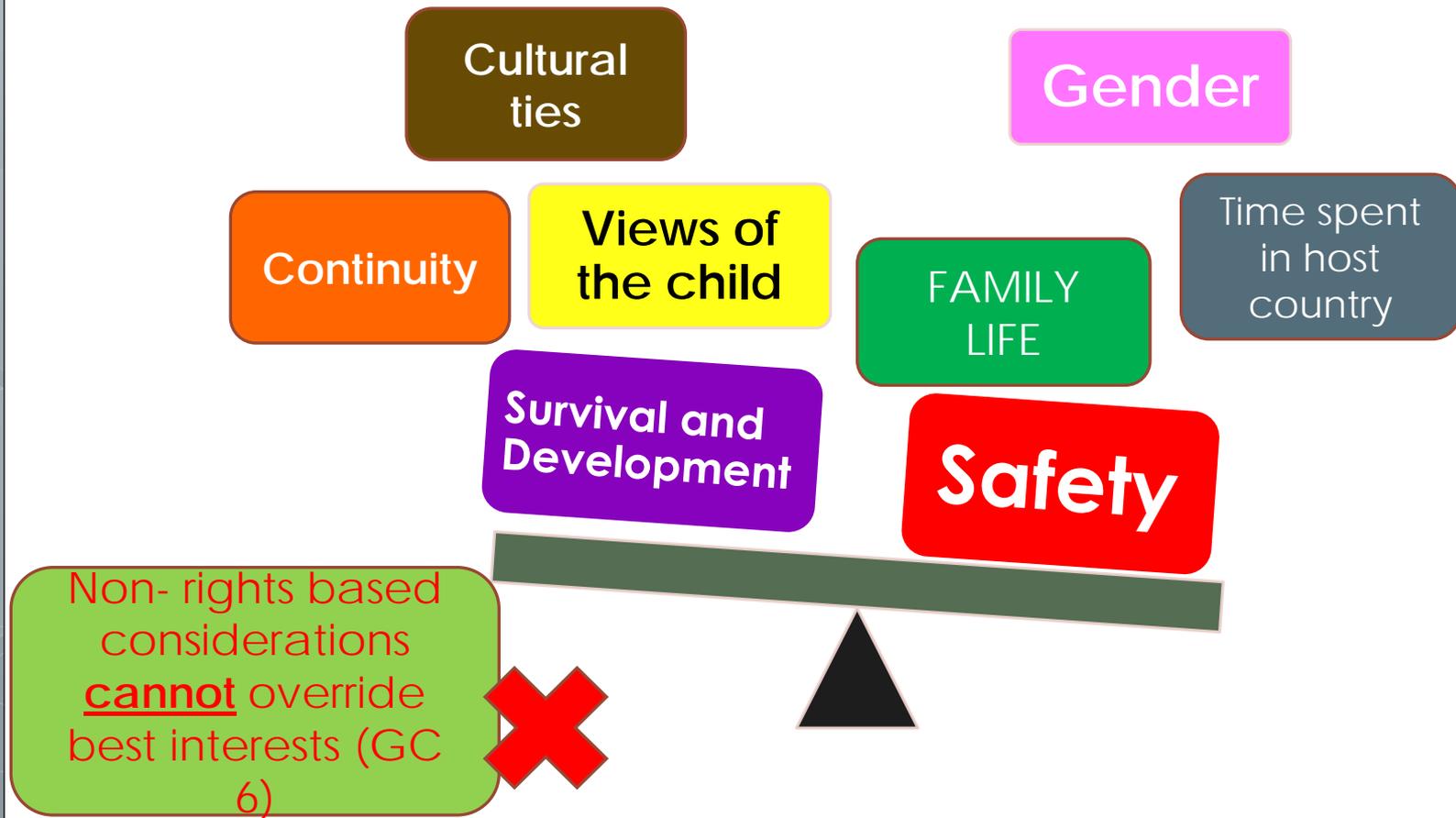
Does not
overturn
decision but
should
identify best
possible
durable
based on
options

Helps ensure
decisions are
in best
interests of
the child and
can be
implemented

Sources of information



Factors and elements to consider; a rights based approach



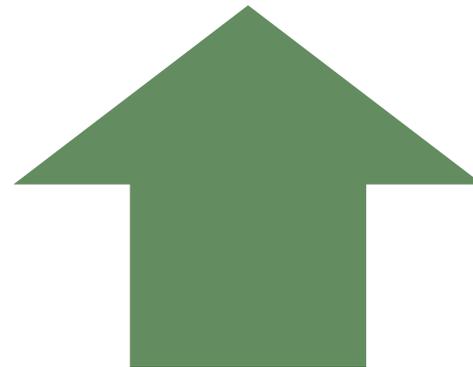
In ranking different elements, there may be competing concerns to consider....

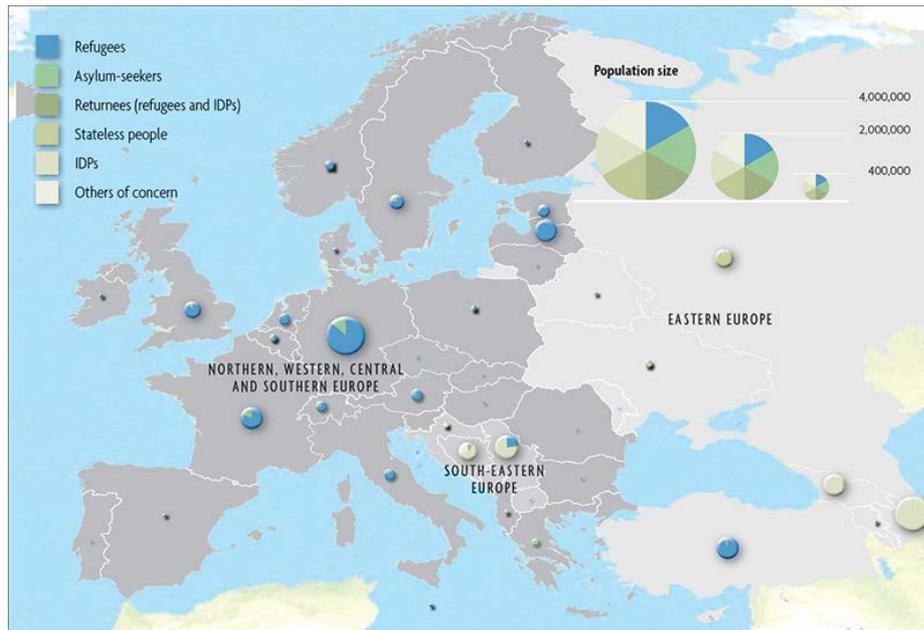


Possibility of harm usually outweighs other factors

The child's right to be brought up by her/his **parents is paramount** except where there **are issues of safety**

Survival and development generally best met by remaining in or **maintaining close contacts** with the **family** and the child's **social and cultural network**





Possible outcomes

- Different options if no international protection granted **but where there are protection concerns or return is not possible**
- Some States grant leave/residence on **humanitarian grounds**
- **This could be a possible outcome of a BID in an individual case**
- **Important that such status does not expire at 18 as this would not be durable solution!**

UNHCR and UNICEF recommend States establish procedures which



Seek **joint vision for the child** across the many actors



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**.



Are **child friendly**



Provide **increased safeguards** as importance of the decision increases



Ensure a **holistic** approach to establish a child's best interests, considering child's characteristics, circumstances and needs.



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UN High Commissioner for Refugees (UNHCR), *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, available at: <http://www.refworld.org/docid/5423da264.html>

**Thank you for
your attention**