WEBINAR | Durable solutions: ensuring the best interests of the child are fulfilled in context of return processes involving children in migration
What we will look at together:

1. Durable solutions for children in migration – what’s at stake
2. What has EU law & policy got to do with migration & durable solutions for children?
3. Why and how did the guidance and policy paper come to be?
4. Advocacy starts with understanding each other – terminology
5. Durable solutions procedure – what does it look like?
6. Supporting your advocacy
Durable solutions for children in migration – what’s at stake

- Limited data on number of children in migration or return procedures across EU

- Important impact on children’s lives and futures

- Return without prior best interest procedure is common practice throughout the EU, in particular in relation to children in families

- Little to no monitoring of the situation of children after return

Important for MS to engage with the issue
What has EU law got to do with migration?

✓ **EU rules** on international protection procedures & trafficking

✓ EU rules on certain legal migration procedures (e.g. family reunification directive)

✓ Member States rules on migration statuses (humanitarian status etc)

✓ **EU Return Directive** requires MS to take decisions on “illegally staying third country nationals”

✓ Provides rules on return decisions & safeguards in place, including: appeals, detention, special provisions for unaccompanied children
What does EU law & policy say about durable solutions for children?

- **EU Return Directive** obliges MS to take account of the best interests of the child

- EU Return Handbook has a section on return of unaccompanied children but not much on children within families

- European *Commission Communication* on the protection of children in migration (2017)

- Council Conclusions on the protection of children in migration
Why and how did the guidance and policy paper come to be?

**Increasing pressure on EU MS to increase return levels**
- Given the numbers of new arrivals
- Temptation to find simple solutions

**Revision of Return Handbook Guidance**

**Proposed recast return directive – negotiating new rules on return across the EU raises concerns about:**
- increased use of detention,
- acceleration of procedures, from failure of asylum claim to return
- Risk of the specific needs and rights of children being ignored, in particular children within families.
## Two resources

### Guidance to respect children’s rights in return policies and practices

- Technical document
- Produced by UN agencies + NGOs
- For policy makers, policy implementers and advocates

### Durable solutions and the best interests of the child in context of return processes

- Position paper
- Developed by NGOs
- For policy makers, advocates and a wider public
Goals of the Guidance

➢ Reframe the drive for return decisions to finding durable solutions for children in migration

➢ Address both unaccompanied children and children in families

➢ Provide clear guidance across the different stages of proceeding, from the decision making procedure to implementation of the decision
Challenge? Terminology

What’s a durable solution?

Please take a minute to fill in the poll. Thanks!
Challenge? Terminology

What’s a durable solution?

A durable solution is one that protects the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should ensure that the child is able to develop into adulthood, in an environment which will meet their needs and fulfil their rights as defined by the Convention on the Rights of the Child and will not put the child at risk of persecution or serious harm. A secure and long-term residence status is vital to ensure that children in migration access all of their rights, including their rights to well-being and development. A durable solution may involve integration in the country of residence, or resettlement or reunification with family members in the country of origin or in a third country, with support.

When identifying a durable solution for a child, governments have a responsibility to investigate all the options, and the implications for the child, to identify which is in their best interests.
Challenge? Terminology

Who is a child?

Any person under 18 – includes unaccompanied, separated and accompanied children

What is a best interest procedure?

A procedure to identify durable solutions for a child based on a consideration of their best interests as soon as possible after their identification. The procedure must include formal and specific safeguards to ensure that the best interests of children are properly examined before any decision on return and it should be based on a documented procedure to examine the best interests of the child, with procedural safeguards.

For the details of the procedure, consult the upcoming Guidance to respect children’s rights in return policies and practices
The following are crucial from the outset of the procedure:
- Anyone claiming to be a child should be treated as such (unless and until, if necessary - a multi-disciplinary and non-invasive age assessment finds them to be an adult)
- Child-friendly information.

Essential characteristics of the best interests procedure to find a durable solution:
- Open, individual procedure examining all aspects of the child's situation
- Independent and impartial, decision-making with no conflict of interests with rights of the child
- Multi-disciplinary child protection actors, legal representatives, parents, guardian, others as needed
- Views of the child fully heard and considered throughout
- Child-friendly information, counselling, support
- Legal assistance
- Documentation during the procedure (no enforcement actions against the child or family members) and access to services
- Whichever durable solution, discussion and development of plan
- Leads to reasoned, documented decision with right to appeal with suspensive effect.

Integration or reintegration in another country would usually be for family reunification purposes.

If return is found to be in the best interests of the child, it must be implemented through voluntary departure with reintegration assistance. Essential measures at this stage include:
- Support and counselling
- Timing and other aspects of return as consensual as possible (with plenty of time to prepare and ensuring uninterrupted access to education)
- Assistance and cooperation with relevant actors to ensure the conditions for return as a durable solution in the best interests of the child are met.

If return during the agreed voluntary departure period does not take place - in order to proceed in the best interests of the child - the review should consider:
- Why voluntary departure period failed
- Any changes to circumstances underlining the decision that return is in best interests
- Views of the child and other actors
- Whether the essential safeguards are in place to consider removal.

If the decision-makers consider removal as a measure of last resort, they need to assess and ensure that both the essential operational safeguards, and the stipulated return and reintegration conditions and assistance, are available and in place. Some of the essential operational safeguards include:
- Information, preparation, support and assistance
- No immigration detention
- No force or physical restraint
- No family separation
- Several other measures.

* See further details in Section 2: "Implementation of a return decision in the best interests of the child."
Six key steps

1. Develop and establish a **formal procedure** to examine the best interests of the child and identify a durable solution for them.

2. **Key safeguards.** In designing and carrying out the procedure, formal and specific safeguards to ensure that the best interests of children are properly examined are needed.

3. **Information about the child’s situation.** In-depth information needs to be collected. The extent will depend on the complexity of the case, but proactive efforts are required.
Six key steps continued

4. Voluntary departure with assistance prior to departure and for reintegration

5. Procedural and operational safeguards if voluntary departure does not occur

6. Essential safeguards and reintegration requirements if considering removal
Position paper – key messages

- Best-interests’ procedure to identify a durable solution in every decision-making process that could lead to return of a child

- A return decision can only happen after the BIC are examined & return is found to be in their best interests

- Finding a durable solution in the BIC creates the environment for children to reach their full potential

- An effective and sustainable return policy is based on due process and implementation through child-specific return and reintegration assistance

- Good-quality decision-making would reduce the number of unenforceable return decisions

- Durable solutions are needed for all children in migration
Supporting your advocacy

- Work with stakeholders in your countries to create common understandings
- Reflect the experience of practitioners and professionals involved, including those with child protection responsibilities
- Be aware of both national and EU policy opportunities
- Consider bringing the voice of different actors to the advocacy on migration, e.g. children’s actors such as the ombudsman for children, education organisations, health professional associations
Any questions?

Thank you for listening,

Laetitia Van der Vennet, Advocacy Officer, PICUM
laetitia.vandervennet@picum.org

Rebecca O’Donnell, Founding Member of Child Circle
rebecca@childcircle.eu