



AD HOC QUERY ON 2019.63 Interpretation of Article 3 from the Convention on the Rights of the Child in migration policy

Requested by EMN NCP Netherlands on 17 June 2019

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Spain, Sweden, United Kingdom plus Norway (21 in Total)

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## 1. Background information

In the Netherlands the question was raised to what extent Article 3 of the Convention on the Rights of the Child (CRC) is or should be leading in decisions regarding the right of residence for minor children. Article 3 states the following “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The Dutch interpretation of the first paragraph of article 3 of the CRC is that this article has direct effect in the sense that all decisions about residence permits in which children are involved must take the interests of the child concerned into account as a primary consideration. With regard to the weight given to the best interests of a child in a specific case, according to Dutch case law, Article 3 of the CRC does not contain a standard that can be directly applied by the court without further elaboration

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in national migration laws and regulations. The court must, however, assess whether the Immigration- and Naturalisation Service (IND) has sufficiently taken into account the interests of the child. This means that the judge only assesses whether the IND has taken the child's interest into account in the reasons for the decision. Therefore, the Netherlands is interested in how other Member States deal with the best interests of the child within the meaning of Article 3 CRC during applications where children are involved. The Netherlands wants to know what weight other countries apply to the best interests of the child in proceedings under immigration law in comparison to, for example, the economic interests of the State or public order. Information about the way in which other Member States deal with this can be helpful to provide guidance to Article 3 CRC.

## 2. Questions

1. Besides ratification of the CRC, has Article 3 CRC (or the content of Article 3) been implemented in the national (migration) legislation of your (Member) State? Yes/No. If yes, how did your Member State implement Article 3 (or the content of Article 3) of the CRC?
2. Has Article 3 CRC (or the content of Article 3) been implemented in your Member State's (migration) policy/practice? Yes/No. If yes, how did your Member State implement Article 3 (or the content of Article 3) of the CRC?
3. Does your (Member) State provide national policy for TCN parents which apply for residence with a legally residing child (instead of and/or supplementing international agreements and established jurisprudence of the ECJ or ECHR)? Yes/No. Please explain.
4. If your answer for question 3 is affirmative: has Article 3 of the CRC had any impact (i.e. has it led to any changes) on the development of this national policy? Yes/No. If yes, please briefly describe the changes brought about by the influence of Art. 3 of the CRC.
5. How is the best interest of the child (in accordance with Art. 3 of the CRC) weighed against other interests from the State (for example, the economic interests of the State or public order) during an application procedure of a TCN involving one or more children that wants to reside in your Member State (for example, the interest of the child is considered to weigh heavier than the interests of the State)?
6. Does the best interests of the child (according to Article 3 of the CRC) have a prevailing impact in your (Member) State if the best interests of the child are weighed against those of the State (for example, the economic interests of the State or public order) during procedures involving one or more children ? Yes/No. Please elaborate.



We would very much appreciate your responses by 16 July 2019.

## 3. Responses

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		Wider Dissemination <sup>2</sup>	
	EMN NCP Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Belgium	Yes	<p>1. Yes. In Belgium, international treaties such as the CRC do not require implementation into national law. In the early 2000s, the Belgian Senate nonetheless proposed to implement the central principles of the Convention in the Constitution as a symbolic act to emphasise the position of the child in society. On 22 December 2008, Art. 22bis of the Constitution was extended as follows: "Each child has the right to express his or her views in all matters affecting him or her, the views of the child being given due weight in accordance with his or her age and maturity. / Each child has the right to benefit from measures and facilities which promote his or her development. / <i>In all decisions concerning children, the interest of the child is a primary consideration.</i> / The law, federate law or rule referred to in Article 134 ensures these rights of the child" (<a href="https://www.dekamer.be/FLWB/PDF/52/0175/52K0175001.pdf">https://www.dekamer.be/FLWB/PDF/52/0175/52K0175001.pdf</a>).</p> <p>According to national jurisprudence, Art. 3 CRC and Art. 22bis Constitution are not sufficiently clear, precise and unconditional to have direct affect, i.e. to be enforceable before national courts.</p> <p>In the past decade, "the best interests of the child" have been included in various provisions of the Immigration Act, related to family reunification (Art. 10ter, §2 and 12bis, §7), human trafficking and human smuggling (Art.</p>

<sup>1</sup> If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

<sup>2</sup> A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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			<p>61/2, §2, second paragraph) and return (Art. 74/13 and 74/16, §1 and §2, 3°) (for international protection, see Art. 57/1, §4). Only the provisions related to the special procedure for unaccompanied minors (Art. 61/17) contain more concrete guidelines regarding the search for a “durable solution” for the minor concerned (see Q2). The Immigration Act does not contain a general requirement to take into account the best interests of the child in migration procedures, nor a list of specific criteria to assess this principle (<a href="http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;t...">http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;t...</a>).</p> <p>The Reception Act stipulates that the best interests of the child prevail in decisions involving minors. The Act specifies that several aspects should be taken into account when assessing these interests: the possibility of family reunification; the well-being and social development of the minor; his or her personal security; and his or her personal opinion (Art. 37). The Act contains a number of other provisions related to minors, including the right to material aid for both unaccompanied minors and accompanied minors in special circumstances (Art. 36-42; Art. 59-60) (<a href="http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;c...">http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&amp;la=N&amp;c...</a>).</p> <p>2. Yes, in regard to unaccompanied minors. In the early 2000s, the Belgian government established a special procedure in order to find a “durable solution” for the minor concerned: either family reunification in the country where his or her parents reside legally, return to the country of origin or the country where s/he is authorised to stay, or authorisation to stay in Belgium (Art. 61/14). Priority is given to the safeguarding of family unity in accordance with Art. 9 and 10 CRC and the best interests of the child (Art. 61/17 Immigration Act). Applications for this special status are examined by the Minors Unit of the Immigration Office. According to the Immigration Act, the best interests of the child should also be taken into account in the context of family reunification, human trafficking and human smuggling and return (possibly including detention of families with minor children in so-called “return units”). In practice, the Immigration Office does not use a list of specific criteria to check the principle contained in Art. 3 CRC and may argue that the Convention does not have direct effect (cf. Q1). In other types of migration procedures involving (accompanied) minors, the best interests of the child are not necessarily taken into consideration.</p> <p>3. There is no general policy for the residence rights of TCN parents of a legally residing child. Only certain subcategories of these parents have access to specific procedures. TCN parents of a <i>minor Belgian national or EU citizen</i> have a right to family reunification (Art. 40ter, §2, 2° and 40bis, 2§, first paragraph, 5° Immigration Act) in accordance with CJEU jurisprudence. TCN parents of an <i>unaccompanied minor who is a beneficiary of international protection</i> are also entitled to family reunification</p>
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			<p>(Art. 10, §1, 7° Immigration Act).</p> <p>There are no special procedures for TCN parents of <i>other legally residing minor children</i>, including accompanied minors who have obtained international protection. Like other TCNs, these parents can only apply for authorisation to stay for humanitarian reasons (Art. 9bis Immigration Act). This authorisation is granted by the Immigration Office on a discretionary basis.</p> <p>4. N/A.</p> <p>5. In its decisions, the Immigration Office refers to various human rights provisions, including Art. 8 ECHR and, only on certain occasions, Art. 3 CRC. These principles are subject to a balancing of interests, especially when the Office is left with a wide margin of appreciation (as in the case of applications for humanitarian regularisation on the basis of Art. 9bis Immigration Act).</p> <p>6. No. Like other human rights norms, the best interests of the child are subject to a balancing of interests. For instance, the provisions related to the special procedure for unaccompanied minors are not applicable if it is found that the minor concerned has committed acts contrary to public order and national security (Art. 61/25 and Art. 3, first paragraph, 7° Immigration Act).</p>
	EMN NCP Bulgaria	Yes	<p>1. Yes. These standards are regulated in the Child Protection Act. In this Act is given the legal definition of “the best interest of the child” and it foresees a guarantee for compliance with the principle in art. 15, para. 6 of the Act – at each court or administrative proceeding participates a representative of the Social Assistance Directorate who expresses an opinion or submits a report about the child interest. The opinion or the report are not bound to the court/administrative body but are taken into account in the context of the remaining evidences gathered.</p> <p>In the Child Protection Act is given that the state authorities (in the framework of their competence) conduct state policy for child protection and create conditions for its development.</p> <p>From this year the national migration legislation of the Republic of Bulgaria partially introduces special standards for the best practices of the child in the context of the administrative procedures for applying the</p>


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			<p>right of residence of a child accompanied by his/her parents in case of disagreement between the parents about the residence request. The Foreigners of the Republic of Bulgaria Act (FRBA) regulates that the dispute between the parents shall be settled in the court which calls the Social Assistance Directorate for an opinion about the best interests of the child. The court decision concerns only the admission of an application for granting the right of residence of foreign children and it does not oblige the migration authorities to grant that right. The rejection for granting the right of residence appeals on its own merits.</p> <p>2. Yes. Regarding the accompanied foreign children by their parents or other adults, the migration practices do not foresee special measures for taking into account the best interest of the child when deciding to grant or reject a right of residence.</p> <p>Regarding the unaccompanied foreign children as well as under age foreigners who have entered the territory of the Republic of Bulgaria with an attendant but have been abundant, who have not applied for a protection under the Asylum and Refugees Act or on whose applications there are decisions to deny international protection, in the FRBA for the first time is regulated legal opportunity for granting right of residence until the age of majority (in force from 24.10.2019) after assessing the possibility of their return to a member of their family, appointed guardian or appropriate reception centers in their country of origin, in a third country which is ready to accept them or a country that is obliged to accept them by virtue of a surrender and readmission agreement with the Republic of Bulgaria in case that their life and freedom are not in risk and are not exposed to the risk of persecution, torture or inhuman or degrading treatment. The order for making the assessment is to be settled in the Regulation for Implementation of the Foreigners of the Republic of Bulgaria Act. The same provision states that the competent Social Assessment Directorate represents the unaccompanied children in the migration proceedings and gives an opinion for their best interest as it takes protection measures to the unaccompanied child after an assessment of the best interest of the child. The migration authorities reject for a long-term residence of unaccompanied children when it is found that they can be returned.</p> <p>3. No. The right of residence of the children with parents is linked to the existence of a legal status of the parent/parents.</p> <p>The special provisions for providing the right of long-term residence of unaccompanied children until the age of majority (under conditions laid down by the FRBA explicitly) exclude the possibility of family reunion and the possibility of a parent to apply for a status based on the legal status of the child.</p>
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			<p>4. No</p> <p>5. Regarding the foreign children accompanied by their parents, the national migration legislation does not oblige the migration authorities to make an assessment of the best interests of the child when a right of residence is granted. The administrative authorities are bound only to that whether the applied foreigner is eligible to the FRBA for providing the right of residence. In this case, it can be said that the legislator gives more weight to the interest of the country because it is presumed that the normative acts regulate and protect the national interest of the country.</p> <p>The unaccompanied children may obtain the right of long-term residence until they reach majority (if this is in their interest) and they cannot be returned in the country of origin or other safe country. When there are possibilities for return, a residence rejection is issued which again gives a preference of the interest of the country.</p> <p>6. To a certain extent it can be considered for a privilege of the best interest of the unaccompanied foreign children to the interest of the country the assumption of granting a right of long-term residence in cases when the administrative body has judged that there are no opportunities for returning an unaccompanied child in the state of residence or third safe country and decides to grant a right of residence. In cases when there are no risks for the life, health and personality of the unaccompanied child and it is possible to perform the return, the legislator gives more weight to the interest of the country by determining that the administrative authority issues a rejection for long-term residence permit of the foreign child.</p>
	EMN NCP Croatia	Yes	<p>1. The Government of the Republic of Croatia at the session held on 30 September 1993 delivered a Decision on publishing a multi-sided international treaty which the Republic of Croatia is a party on the basis of a notification of succession. By the Notifications of succession, the Republic of Croatia is party of many multilateral international treaties since 1991 and, inter alia, the Convention on the Rights of the Child of 20 November 1989.</p> <p>Regarding the area of legal migration, the interests of a child shall be taken into account in the course of any procedure before the national authorities of the Republic of Croatia. Special provisions on taking into account</p>

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			<p>best interest of a minor are stipulated in the Aliens Act (Official Gazette 130/11, 74/13, 69/17, 46/18) as regards the victims of trafficking in human beings.</p> <p>As regards international protection Article 10 of the The Law on International and Temporary Protection ("Official Gazette", No: 70/15 and 127/17) stipulates that implementation of the provisions of above said law, shall be conducted in line with the principle of the best interests of the child.</p> <p>Article 56, paragraph 4 states that when accommodating applicants in the Reception Centre, account shall be taken in particular of gender, age, position in a vulnerable group, applicants with special reception needs and family unity.</p> <p>In the area of return, as regards the provisions of Article 3 of the Convention on the Rights of the Child, provisions of Aliens Act (Article 101) relating to the protection in the return process state that the best interest of child and the best interest of minors and the needs of other vulnerable persons, family circumstances and the health condition of a foreigner against whom the measures are being taken must be taken into account when applying measures for ensuring return.</p> <p>The same article states that persons considered vulnerable are persons with disability, the elderly, pregnant women and single parent family with minor children, victims of violence and minors, especially unaccompanied minors.</p> <p>In article 126 of the same Act relating to the prohibition of forced removal, the reasons for the prohibition of forced removal are stated and it is particularly stressed that in the case of a forced removal of a third-country national who is an unaccompanied minor it will be determined whether a minor, when he returns to his state, will be handed over to a member of his family, to an appointed guardian or to an institution for receiving children.</p> <p>Article 138b relating to the placement of minors and families in the Detention Centre states that a third-country national who is a minor will normally be placed in the facility of the Ministry responsible for social welfare, and further the same article specifies the conditions to be fulfilled in the event of an exceptional placement of minors in the Detention Centre (separate accommodation together with a family that guarantees privacy, the possibility of engaging in leisure activities, including play and recreation in accordance with the age of minors, etc.).</p> <p>The Protocol on the treatment of unaccompanied minors was adopted by the Croatian government on 30 August 2018. The introductory part of the Protocol states that the treatment of a child is based on four key principles of the Convention on the Rights of the Child, which are: protection of the well-being of the child, protection against all forms of discrimination, the right to life, security and development, the right to</p>
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			<p>participate and the right to free expression of their opinion. The purpose of the Protocol is to define the holders of obligations, ways of conduct and deadlines for the treatment of unaccompanied minors, with an aim of timely and effective protection of their rights and interests. In addition to the Protocol, the annexes were prepared as practical tools intended for end-users in the treatment of unaccompanied children.</p> <p>2. Regarding legal migration, the interests of a child shall be taken into account in the course of any procedure before the national authorities of the Republic of Croatia.</p> <p>In accordance with the provisions of Article 65 of paragraph 1 of the Aliens Act a temporary stay for humanitarian reasons will be granted to a third-country national if he, as a victim of trafficking in human beings, accepted the aid and protection programme, or if he is a minor who has been abandoned or a victim of organized crime or has been left without parental protection, guardianship or is unaccompanied for other reasons.</p> <p>Regarding international protection, Article 10 of the Law on International and Temporary Protection prescribes the circumstances to be taken into account when assessing the application of the principle of the best interests of the child. The circumstances that are assessed are the welfare and social development of the child, and his/her origin; the protection and safety of the child, especially if the possibility exists that he/she is a victim of trafficking in human beings; the child's opinion, depending on his/her age and maturity; the possibility of family reunification, etc.</p> <p>The best interests of the child are assessed individually in each specific case based on individual facts and circumstances.</p> <p>Regarding the unaccompanied minor who is find in illegal stay or illegally crossing border the basic principle of conducting border guards in the treatment of unaccompanied minors is the best interest of the minor/the principle of child welfare.</p> <p>According to the Protocol on the treatment of unaccompanied minors, police officers of the Border Police act according to the guidelines of the Protocol and when encountering an unaccompanied minor, they immediately inform the Centre for Social Welfare. Also, it is important to note that the conversation with the minor in the police station is only held after the special guardian of the minor appointed by the Center for Social Welfare arrived at the station.</p> <p>The designated employee of the Centre for Social Welfare/guardian will be present with the minor during the entire procedure at the police station and shall at any time, if deemed to be in the best interests of the minor, be able to express in his name the intention to apply for International protection or to apply for a temporary</p>
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			<p>residence for humanitarian reasons. The Guardian will also decide which facility the minor will be located in, and will take a medical examination, together with a police officer and a translator (if necessary), to determine the psycho-physical condition of the minor (acute and chronic diseases, possible abuse). It should be emphasized that unaccompanied minors in Croatia are normally placed in open-type facilities which are within the competence of the Ministry responsible for social welfare.</p> <p>3. Regarding legal migration, in accordance with Article 55 paragraph 1 of the Aliens Act a temporary stay for family reunification may be granted to a third-country national who fulfils the conditions laid down in article 54 of this Act and who is a member of the immediate family of: a Croatian national, a third-country national who has an approved permanent residence, a third-country national who has an authorized temporary stay or a third-country national who is granted protection in accordance with provisions of the law regulating international protection.</p> <p>Article 56, paragraph 1 of this Act stipulates that the members of the immediate family within the meaning of this law are: 1. Spouses, 2. common law partners, 3. minor children of married couples and common law partners, their minor adopted children and minor children of each of them, who have not formed families of their own, 4. parents or adopted parents of minor children.</p> <p>Exceptionally from Paragraph 1 of Article 56, any other relative may also be regarded as a member of the nuclear family of a Croatian citizen or a foreigner granted temporary or permanent residence and a foreigner granted asylee status, if there are special personal reasons or serious humanitarian grounds for the family reunification in the Republic of Croatia.</p> <p>Regarding international protection, the Law on International and Temporary Protection stipulates that an asylum seeker and a foreigner under subsidiary protection have the right to family reunification. The decision to reject a family reunification request cannot be based solely on the fact that there are no official documents proving a specific family status. When assessing the merits of a request for family reunification in the absence of official documents, the parties' statements or individual circumstances of each case shall be taken into account.</p> <p>Article 4 paragraph 18 of the Law on International and Temporary Protection gives a broader definition of family members that includes:</p> <ul style="list-style-type: none"> <li>• A family member of applicants, asylees, foreigners under subsidiary protection and foreigners under temporary protection shall be deemed to be:</li> <li>• the spouse or unmarried partner under the regulations of the Republic of Croatia, and persons who</li> </ul>
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			<p>are in a union, which under the regulations of the Republic of Croatia may be deemed to be a life partnership or informal life partnership;</p> <ul style="list-style-type: none"> <li>• the minor child of the marital or unmarried partners; their minor adopted child; the minor child and minor adopted child of a married, unmarried or life partner who exercises parental care of the child;</li> <li>• the adult unmarried child of an applicant, asylee, foreigner under subsidiary protection or foreigner under temporary protection who, due to his/her state of health is not able to take care of his/her own needs;</li> <li>• the parent or other legal representative of a minor;</li> <li>• a relative of the second degree in a direct blood line, with whom he/she lived in a shared household, if it is established that he/she is dependent on the care of the applicant, asylee, foreigner under subsidiary protection or foreigner under temporary protection.</li> </ul> <p>4. The interests of minors shall be taken into account in the course of any procedure before the national authorities of the Republic of Croatia.</p> <p>5. Regarding legal migration, during any procedure before the national authorities of the Republic of Croatia, special consideration shall be given to the interests of minors, taking into account the interest of the state. Regarding international protection, the principle of best interests of the child is one of the underlying principles on which the application of the LITP provisions is based. Cases where it is established that a person poses a risk to the national security or the public order of the Republic of Croatia shall be particularly carefully considered and each case shall be dealt with individually and a detailed examination procedure shall be laid down specifying all the facts and circumstances and also assesses the interest of the State, namely the existence of a danger to the national security and public order of Croatia.</p> <p>6. Regarding legal migration, Article 54, paragraph 1, item 1 of the Aliens Act proscribes that to a third-country national temporary residence will be approved if he/she justifies the purpose of temporary residence, holds a valid travel document, has means of supporting himself; has health insurance, his entry and residence in the Republic of Croatia is not prohibited, does not pose a danger for public order, national security or public health. Regarding unaccompanied minor who is find in illegal stay or illegally crossing the border, Croatia does not have enough experience for now to give a clear answer. Such circumstances will be considered on a case-by-case basis and will be examined by a greater number of competent authorities. For the aforementioned</p>
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			<p>reason, the Border Management in this case shall not have jurisdiction over the final decision. In such a situation, it is expected that circumstances relating to the child's best interests and the circumstances relating to the protection of public order and national security should be assessed and the final decision will be adopted in accordance with the assessment.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. Yes. In CY national law, there is an explicit provision obliging the Director of Civil, Registry and Migration Department, prior to any decision on removal, to request an assessment of the best interest of the child, from the competent authority, which is the Director of the Welfare Department.</p> <p>2. By requesting an assessment, please see answer to Q1. In addition, the best interests of the child, in terms of family unity, education, for humanitarian reasons, are assessed in an administrative decision for residence permit or for non-removal purposes.</p> <p>3. Yes, they can apply for a residence permit for humanitarian reasons. It is upon the discretion of the Minister of Interior to approve any such application.</p> <p>4. Please see answer above, especially Q1.</p> <p>5. A child could not be consider a danger to national security therefore, the child's best interest are not to be weighted on that scale. However, in the case that the state interest (e.g. public order) may conflict to the best interest of the child, an ad hoq decision is made, weighing both interests.</p> <p>6. in the case that the state interest (e.g. public order) may conflict to the best interest of the child, an ad hoq decision is made, weighing both interests.</p>


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	EMN NCP Estonia	Yes	<p>1. Yes. Aliens Act § 154 section 1 constitutes that upon the issue of a temporary residence permit to a minor child to settle with his or her parent the rights and interests of the child shall be taken into consideration in particular. Section 2 of the same paragraph specifies that a temporary residence permit shall not be issued if the settling of the child in Estonia damages his or her rights and interests and if the legal, financial or social status of him or her may deteriorate as a result of settling in Estonia. Section 4 further stipulates that the residence permit of a minor child shall not be cancelled, and extension thereof shall not be refused if this does not correspond to the rights and interests of the child.</p> <p>2. Yes. When deciding to issue a temporary residence permit to the minor, the interest of the child is taken into considerations.</p> <p>3. There is no national policy for TCN parents that apply for residence with a legally residing child. However, residence permit can be given either for a minor to settle with parents/guardians or by an adult to settle with parents due to health reasons or a disability.</p> <p>4. N/A</p> <p>5. Best interest of the child are not weighed against other interests from the State. Best interest of the child prevails over other interest.</p> <p>6. See previous answer.</p>
	EMN NCP Finland	Yes	<p>1.N/A.</p> <p>2. Yes. In 2015, to ensure proper taking into consideration of the BIC in the administrative practice, the Finnish Immigration Service introduced specific guidelines on the handling and decision making on matters concerning children.</p>

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			<p>3. No. The Finnish national policy is based on and in accordance with the international agreements and established jurisprudence of the ECJ or ECHR.</p> <p>4. N/A.</p> <p>5. N/A.</p> <p>6. Assessment is always made case by case, taking into consideration all the relevant facts among which the BIC is a primary consideration. This question cannot be thoroughly answered in general terms.</p>
	EMN NCP France	Yes	<p>1. No.</p> <p>Article 3 CRC has not been implemented as such although the provisions on child protection and parental authority have been consequently modified in the light of the best interest of the child.</p> <p>Furthermore, the Council of State, which distinguishes between the articles that are directly applicable and those that are not, considered in its decision of 22 September 1997[1], for the first time that article 3-1 of this Convention is directly applicable. In its decision of 25 June 2014[2] it clarifies that its stipulations "are applicable not only to decisions that have the purpose of governing the personal situation of minors, but also those that affect their situation in a sufficiently direct or certain way". The administrative authorities take into account the best interests of the child in all decisions involving children. Regarding unaccompanied minors, the best interests of the child mentioned in the texts concern all minors in dangerous situations as care for unaccompanied minors falls within common law on child welfare.</p> <p>Article L. 112-4 of the Code on Social Action and Families (CASF) states that "the interests of the child, taking into account his or her basic physical, intellectual, social and emotional needs, as well as respect for his/her rights must guide any decisions about him/her." Although the interests of the child are mentioned several times in the CASF, there is only one mention of the 'best' interests. Article L. 221-1, on the role of the child welfare services (ASE) stresses the need to ensure that the "emotional connections the child makes with people other than his or her parents are maintained and developed in his or her best interests".</p> <p>The French Civil Code also contains several mentions of the interests of the child, in particular Article 375-1,</p>


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			<p>which states that the Children's Judge must "rule taking the interest of the child into strict consideration".</p> <p>In addition, Article L. 752-2 of the Code on Entry and Residence of Foreign Nationals and Right of Asylum (CESEDA) makes it compulsory to take into account the best interest of unaccompanied minors who have obtained protection under asylum or as a stateless person in all decisions regarding them, particularly those concerning their placement and searching for members of their family. This same article also states that the legal representation of an unaccompanied minor must be assured and that searching for members of his/her family must begin "as soon as possible". Article L. 741-4 of the CESEDA states that this research must be carried out by the administrative authority "as soon as possible" after the application for asylum and must always protect the best interest of the unaccompanied minor.</p> <p>The best interests of the child are also taken into account in decisions on family reunification. Unmarried minors who have been granted the status of refugee or subsidiary protection could previously only be joined by their direct ascendants of the first degree. Since the adoption of the Law of 10 September 2018 "for a managed migration, an effective right of asylum and a successful integration", they may request the right to be joined by their first-degree direct ascendants (their parents), accompanied, where appropriate, by their unmarried minor children for whom they are responsible (the minor's brothers and sisters).</p> <p>[1] Council of State, 22 September 1997, n° 161364. [2] Council of State, 25 June 2014, n° 359359.</p> <p>2. Yes. See answer to question 1.</p> <p>3. No. There is no general policy instead of and/or supplementing international agreements and established jurisprudence of the ECJ or ECHR for the residence rights of TCN parents of a legally residing child. Regarding family reunification, see answer to question 1. TCN parent of a French child: According to article L. 313-11, paragraph 6, of the CESEDA, the foreign national, who is not living in a polygamous relationship, and who is father or mother of a French minor child living in France, provided he/she</p>
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			<p>establishes that he/she has effectively contributed to the child's care and education as stipulated in article 371-2 of the French Civil Code since the child's birth or for at least two years, can obtain a VPF (vie privée et familiale - private and family life) residence permit, unless their presence constitutes a threat to public policy.</p> <p>4. N/A.</p> <p>5. Every decision is based on a case-by-case review always taking the best interest of the child into account.</p> <p>6. See answers to question 5.</p>
	EMN NCP Germany	Yes	<p>1. See answer to question 2.</p> <p>2. Like all other multilateral human rights treaties, the convention on the rights of the child has been transformed into national law by an act of parliament and thus gained the status of a federal law. The convention of the rights of the child therefore must be applied by all courts and administration especially when interpreting the German national laws and regulations, since the respective act by the German parliament did not provide for a direct application of the convention rights. German courts have taken into account Art 3 of the CRC in several cases with regard to migration. The judgements mention Art 3 of the CRC among other provisions protecting the best interest of the child, namely Art 6 of the German Constitution and Art 8 of the ECHR. The German Courts do not consider that Art 3 of the CRC grants any further protection compared to the aforementioned provisions.</p> <p>According to the wording of Art. 3 of the convention the best interest of the child must be "a" primary consideration but not the only one. Therefore, we interpret Art. 3 that the convention does not require that a state must give less weight to other concerns but that the best interest of the child must be among the main considerations.</p>

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			<p>The German Residential Act is executed accordingly. Its interpretation and case-by-case review is bound to take the best interests of the child into consideration at all times. The rules on family reunification and on custody to secure deportation literally state the consideration of the best interest of the child (see § 32 Para. 4, § 36a Para. 2 and § 62 Para.1 German Residential Act ("Aufenthaltsgesetz")).</p> <p>3. No, Germany does not provide specific national policy. The German Residential Act regulates within § 36 Para. 1 the right of the TCN parents to reunite with their legally residing child in Germany. Here, the best interest of the child has to be taken into consideration categorically.</p> <p>4. N/A.</p> <p>5. Every decision is based on a case-by-case review. The best interest of the child is a primary consideration but there is no prerogative, neither for the child's individual interest nor for the interest of the state.</p> <p>6. See answers to question 2 and 5.</p>
	EMN NCP Hungary	Yes	<p>1. Yes, in the Hungarian migration legislation – in accordance with the Fundamental Law of Hungary – Article 3 CRC has been implemented. According to the Hungarian immigration law, as a general rule a person eligible for preferential treatment shall mean unaccompanied minors, or vulnerable persons such as minors, elderly people, disabled people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, if they are found to have special needs after an individual evaluation of their situation.</p> <p>2. Yes. For the protection of the rights of unaccompanied minors, the immigration authority shall take adequate measures at the beginning of the proceeding to have a representative ad litem appointed. The implementation of the Child Protection Act is guaranteed by several governmental and ministerial decrees,</p>


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			<p>such as the Government Decree 149/1997 (IV.10) on Guardianship Authorities, Child Protection and Custody Procedure.</p> <p>3. According to the Hungarian law the following persons may be granted a residence permit on the grounds of family reunification the parents of unaccompanied minors with refugee status, or their legally appointed guardian. A decision rejecting an application for family reunification with a person with refugee status may not be based solely on the absence of documentary evidence of the family relationship.</p> <p>Family relationship for the purpose of reunification with a person with refugee status may be verified by any reliable means, specifically by DNA analysis.</p> <p>4. Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter RRTN) and the Government Decree 114/2007 (V. 24.) on the Implementation of the RRTN (hereinafter Government Decree) are normative. The above-mentioned Hungarian acts and decrees were drafted with regards to the Article 3 of the Convention on the Rights of the Child (CRC), thus the Hungarian aliens policing authority applies the best interests of the child in proceedings under immigration law.</p> <p>5. Unless otherwise provided for by an act, if the applicant is a minor of limited capacity or if incompetent, the application may be submitted by the applicant's legal representative in his/her stead. If the minor client has reached the age of six at the time the application is submitted, he/she shall be required to appear in person when the application is submitted. The responsibility for ascertaining the minor's physical presence before the immigration authority lies with the legal representative. Where justified by the personal circumstances of the person expelled - such as the length of stay in the territory of Hungary, on account of which more time is required for making preparations for departure, or the existence of other family and social links -, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period of up to thirty days. If the child who is in the parental custody of an expelled third-country national pursues studies in a public education institution, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period up to the end of the running semester. Extension of the time limit for voluntary departure shall be</p>
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			<p>ordered by way of a ruling.</p> <p>6. According to the Hungarian migration legislation an 'unaccompanied minor' shall mean third country nationals below the age of eighteen, who arrive on the territory of Hungary unaccompanied by an adult responsible by law or custom, as long as they are not effectively taken into the care of such a person; or minors who are left unaccompanied after they entered the territory of Hungary.</p> <p>An unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care.</p> <p>If the applicant is an unaccompanied minor under the age of 14 years, he/she will be placed in a child protection institution. The authority shall appoint a child welfare officer so as to provide legal representation. If the applicant is an unaccompanied minor over the age of 14 years, the authority will provide for legal representation (through the competent district office).</p> <p>The applicant's (minor) child is of nursery or school age the authority shall ensure education and learning facilities locally.</p> <p>The detention of a third-country national who is a minor may not be ordered, with the exception set out in the immigration law,</p> <p>Families with minors shall only be detained as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration, if the immigration authority considers that the objective of detention cannot be ensured by other the provisions.</p> <p>Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age; minors depending on the length of their stay, may access education.</p>
	EMN NCP Italy	Yes	<p>1. The New York Convention on the Rights of the Child (signed on 20 November 1989) was ratified by Italy through the Law n. 176/1991.</p> <p>The Italian legislation has drawn on the Convention's principles according to which all decisions about minors shall take into account the best interest of the child, without any form of discrimination among them.</p> <p>So, Italy has implemented the content of article 3 of CRC through different provisions.</p>

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			<p>For example:</p> <p>1) First at all, in 2017 the legislator has introduced a new legal framework (law 47/2017, “Legge Zampa”) focused on the best interest of the child, in particular with regard to unaccompanied minors. The main change concern a specific reception system, which simplifies the mechanism of first reception and identification of minors (the maximum stay time is halved-from 60 to 30 days and there are uniform standards for age verification) and provides a subsequent transfer to a second reception network. The law 132/2018 (Security Decree) – modifying the reception system (art. 12) – and has provided that unaccompanied minors – who apply for asylum – have the right to remain in the Protection System until the decision on the international protections application. So, the second reception system (now called SIPROIMI and not more SPRAR) is reserved to beneficiaries of international protection and unaccompanied minors (also in pending of decision).</p> <p>Other innovations aimed to guarantee the best interest of this vulnerable category of migrants are:</p> <ul style="list-style-type: none"> <li>• the appointment of guardians with the institution of the register of voluntary guardians by the Court of minors.</li> <li>• The possibility to request two types of residence permits, based on minor age and family reasons.</li> <li>• Enrollment in the National Health System and the possibility to study or to start an apprenticeship.</li> <li>• Right to be heard both in administrative and judicial processes and right to legal assistance.</li> </ul> <p>2) The law 142/2015 and in particular the article 19, provides that UAMs have to be subjected to a targeted path since the first arrival and already during the first reception it is guaranteed to them an interview with a psychologist specialized for children and a cultural mediator with the aim to ascertain the personal situation of the minor, reasons and circumstances of the leave from their country of origin and of their travel toward Italy and their future expectations (art. 19 comma 1 of Law 142/2015). Moreover, with the purpose to guarantee the right to family unit, the Ministry of Interior stipulates conventions with international or intergovernmental organizations, humanitarian associations to implement programs aimed at identifying family members of the minor, taking into account his best interest (art 19 comma 7, law 142/2015).</p> <p>3)The law 286/1998 (Consolidate Immigration Law) takes into account the best interest of the child with different provisions:</p> <ul style="list-style-type: none"> <li>• art. 19: minors shall not be expelled, except in cases of danger to public order and security. While for unaccompanied minors, article 19 comma 1-bis of Law 286/1998 states that they shall not be, in any</li> </ul>
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			<p>case, turned back to the border, for accompanied minors the same law provides that they have the right to follow their parents or foster, subjected to an expulsion decision (art. 19 comma 2 of Law 286/1998).</p> <ul style="list-style-type: none"> <li>• Art. 28: in every administrative or judicial procedures aimed to implement the family unit with the involvement of a minor, the best interest of the child shall be a primary consideration, in accordance to the CRC (ratified by law 176/1991).</li> <li>• art. 29: foreigner could ask for family reunion for his minor children. For more, see Q. n. 2.</li> <li>• art. 31: the Juvenile Court – if recognises serious reasons connected to physical and mental development of the child, taking into account the age and the medical condition of the minor concerned – may grant an authorization to the parent to legally enter and reside within the national territory (para. 3). In this cases, a residence permit for minor's assistance is issued (art. 29 para 6). Moreover, in line with the principle of non-refoulement, also in cases in which a minor can be expelled, the Juvenile Court adopts the expulsion measure only if there is not a danger of serious damages for the minor (para. 4).</li> </ul> <p>2. Yes.</p> <p>A clear example of the predominance of the best interest can be found in the field of the assisted voluntary return.</p> <p>According to the national legislation, the Directorate-General for Immigration and Integration Policies of the Ministry of Labour and Social Policies is responsible for Family Tracing &amp; Assessment of UAMs present in Italy, in order to trace family members, also in the Country of Origin. The Directorate-General for Immigration and Integration Policies is also responsible for supporting family reunification when this is a Family Tracing consists of a deep analysis of the context of origin of the child and provides fundamental information to find durable solutions in the best interest of the child.</p> <p>In general, moving from the request of the Directorate for Immigration and Integration policies, IOM activates field staff that contacts the child's family in order to realize an interview, based on a semi-structured questionnaire. Such interview is usually conducted at the family's house and it is accompanied by a deep observation of the socio-economical context. Then, family tracing's results are transmitted by IOM to the Directorate-General for Immigration and Integration Policies, which forwards it to the responsible Municipality and/or to the Guardian.</p> <p>The development of family tracing provides detailed information about the child's background, useful in order</p>
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			<p>to identify durable solutions for the child (both in Italy or in a third Country). According to the national legislation, the Directorate-General for Immigration and Integration Policies is also responsible for supporting family reunification when this is ascertained as the best, durable solution upholding UAM best interests. In order to state the Assisted Voluntary Return of the child, several pre-conditions are essential. First, it is evaluated the result of the Family Tracing, that should provide information on both the possibility and the conditions for the return, in the best interest of the child. Therefore, if the possibility of a positive re-integration is assessed, if the child expresses the will to return and if all competent authorities agree, an individual project of return in the Country of Origin is defined together with the child and according to his/her needs and desires. Such re-integration programs address the whole family and social context of the child in the Country of Origin, in the best interest of the child. Thus, the decision on assisted voluntary return is taken by the Directorate-General for Immigration and integration Polices based on what emerges from family tracing, and considered the opinions of all involved actors (among which the agreement of the Judicial authority and the child's opinion are essential).</p> <p>The law (n. 47/2017) has introduced a priority according to which - if adequate family members have been identified, the placement of the minor in the family should prevail over the placement in a community. So, after the consultations with the family, Ministry of Interior has to decide if proceed with an assisted return decision or with a different measure of protection, such as family or community foster care. If the Ministry retains that the best interest of the child is to remain in Italy, he alerts the judicial authority e social services, asking for "not to prosecute for return" (comma 7 bis, ter, quater of art. 19 of Law 142/2015).</p> <p>With regard to assisted and voluntary return (AVR), Ministry of Interior has promoted a project (in 2018) which included important measures of reintegration (so called AVRR) for 900 TCNs. The activities have been realized in close synergy with the REVITA project, funded under the AMIF fund, in order to further enhance the voluntary return measure and contribute to a correct management of migration flows. Through dedicated IOM staff, the programme has ensured: information and counselling services carried out by 30 IOM Regional Counsellors deployed in all Italian Regions; travel organization, ticketing, support in the issuance of travel documents at the Consulates of the migrants' countries of origin; IOM airport assistance upon departure and in transit; escorting services for vulnerable migrants with health issues; provision of an individual in-cash installation grant of 400 EUR for each returnee, to be awarded upon departure; provision of an in-kind reintegration support of EUR 2.000 for each single returnee/head of family, EUR 1.000 for each adult family member, and EUR 600 for each minor family member (only if departing with the head of family); top-up</p>
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			<p>reintegration assistance in the country of origin for medical cases; reintegration plan implementation and monitoring in close collaboration with IOM Missions in the countries of origin of the returnees; organization of informative sessions for main local stakeholders (municipalities, diaspora, NGOs, reception centres' staff, etc.) to be realized in close synergy with the REVITA Focal Points; production and distribution of information material and leaflets on the AVRR measure.</p> <p>3. Yes. According to article 29 para. 5 of law 286/1998, the natural foreign parent can ask for reunion to his child legally residing in Italy with the other parent. So, according to article 30 para. 1 lett. D, a residence permit for family reason is issued to the foreign natural parent of an Italian minor legally residing in Italy. Moreover, as said in Q. n.1, the Juvenile Court - if recognizes serious reasons connected to physical and mental development of the child, taking into account the age and the medical condition of the minor concerned - may grant an authorization to the parent to legally enter and reside within the national territory (art. 31 para. 3), which allow the issuance of a residence permit for minor's assistance (art. 29 para 6). This type of residence permit can be issued although the applicant is guilty of crimes which normally prevent the granting of residence authorization.</p> <p>4. With regard to this point, it may be interesting to observe how the best interest of the child assumes importance in the development of the national policy, thanks to the interpretation of jurisprudence. For example, on 12 June 2019, the United Chambers of the Supreme Court has stated with regard to the residence permit for minor's assistance (art. 31 para. 3 of law 286/1998). The Court has established that the authorization to enter and reside in Italy cannot be automatically denied because of the commission of crimes, which can represent a threat to public order and security, but it is necessary a specific and case by case analysis with the aim to verify if the parent constitutes a present and concrete danger for the State. Like all solutions which have to strike a balance between different interests, this one has to be assessed in the overall context: interest of the child and security of the State. In particular the judge has to evaluate, in the concrete case, if the interest of the child - to which the rule (art. 31 para. 3) confers primary value, but not absolute - should prevail over State's interests. Again in this sense, the Court of Cassation (decision n. 21799/2010) has stated that the possible damage to physical and mental development of the child shall not be considered unusual and exceptional and the sole prospect for the child of growing separated by parents is not a sufficient element to issue the authorization.</p>
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			<p>Motivations (concerning the minor) able to recognised the permit to stay in Italy for parents can be, for example: serious medical condition, an integration path already started (attendance of school for some years) or past violence or abuses in the country of origin.</p> <p>5. As shown above, the best interest of the child is the guiding principle in the regulation about minor foreigners, which prevails over other factors such as migration control. The field in which it is more evident the primacy of the best interest of the child is that of return decision regarding foreign minors. According to the Italian law (art. 19 of law 286/1998), in general, minors shall not be expelled, except in cases of danger to public order and security. While for unaccompanied minors, article 19 comma 1-bis of Law 286/1998 states that they shall not be, in any case, turned back to the border, for accompanied minors the same law provides that they have the right to follow their parents or foster, subjected to an expulsion decision (art. 19 comma 2 of Law 286/1998). However, it is always necessary to consider the safeguard clause constituted by the principle of non-refoulement which states that a person cannot be return to his Country of origin, if he runs the risk to suffer different forms of persecution, torture or other inhuman treatments (comma 1). In line with this principle, art. 31 comma 4 of law 286/1998 states that, also in cases in which a minor can be expelled, the Juvenile Court adopts the expulsion measure only if there is not a danger of serious damages for the minor.</p> <p>6. N/A.</p>
	EMN NCP Latvia	Yes	<p>1. N/A.</p> <p>2. The article 3 of CRC has not been implemented in the migration legislation of Latvia; however, the principles, embedded in this Article have been considered during examination of cases related to minors.</p> <p>3. There is no national policy regarding the immigration of parents of minors – third-country nationals. Immigration Law does not provide a possibility to obtain a residence permit with minor legally residing in</p>


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			<p>Latvia. In some cases, mostly where a stay of child is related to studies, parents had been granted long-stay visa but there is very limited number of such cases. Sometimes parents are issued a temporary residence permit on ground of humanitarian reasons but mostly in cases where there is a minor – EU citizen – involved.</p> <p>4. N/A.</p> <p>5. The interests of child will be considered as very important and, most often – as prevailing the interests of the State. However, there is very careful case-by-case analysis carried out every time, number of involved minors would play significant role too. These are very rare cases where such evaluation of interests is required and Latvia does not have a lot of practice.</p> <p>6. The interests of child will be considered as very important and, most often – as prevailing the interests of the State. However, there is very careful case-by-case analysis carried out every time, number of involved minors would play significant role too. These are very rare cases where such evaluation of interests is required and Latvia does not have a lot of practice.</p>
	EMN NCP Lithuania	Yes	<p>1. The Constitution of the Republic of Lithuania establishes that minor children are protected by law. Law on Fundamentals of protection of the rights of the child establishes the principle of the best interest of the child shall be followed not only by the parents or other legal representatives of the child, but also by the state, municipal government and public institutions, non-governmental organizations and other physical and legal persons, therefore, best interests of the child must always be considered prior to adopting any decision concerning child. It should also be noted that this Law has a special article on the "Rights of alien child asylum seeker, child refugee, unaccompanied minor" which establishes that a child who is asylum seeker or who is granted international protection or an alien who is an unaccompanied minor shall have the right to assistance and protection.</p> <p>Taking into account the best interests of the child, the search of unaccompanied minor alien's parents, relatives or other physical/legal persons, shall be carried out in a manner that guarantees protection and the rights of the child. The Republic of Lithuania Law on the Legal Status of Aliens also establishes that the best</p>

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			<p>interests of the child should be the primary consideration when considering the application for asylum, the withdrawal of residence permit, the detention of families with minor aliens.</p> <p>2. See answer to Q1.</p> <p>3. Yes. The Law of the Republic of Lithuania on the Legal Status of Aliens stipulates that a temporary residence permit may be issued for family reunification when a child of the alien: resides in the Republic of Lithuania and is a citizen of the Republic of Lithuania or who has been granted refugee status/international protection and has been issued a permanent residence permit.</p> <p>4. Not to the best of our knowledge.</p> <p>5. The decision would be taken on a case-by-case basis with due regard to all relevant circumstances of the individual case.</p> <p>6. The decision would be taken on a case-by-case basis with due regard to all relevant circumstances of the individual case.</p>
	EMN NCP Luxembourg	Yes	<p>1. The Convention on the Rights of the Child (CRC) was signed by Luxembourg on 21 March 1990 and was ratified by Law of 20 December 1993: 1) approving the Convention on the Right of the Child adopted by the General Assembly of United Nations on 20 November 1989; 2) amending certain dispositions of the civil code, so is part of the Luxembourgish legal system.</p> <p>2. The application of the best interest of the child has to be made on a case-by-case basis and it can be balanced against other interests. Nevertheless, the courts will uphold the best interest of the child as it is part of the legal system, except if there is a risk to the society as a whole (i.e. threat to national security or public order). Luxembourgish courts follow the jurisprudence of the European Court of Human Rights and the European Court of Justice.</p>


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			<p>There are dispositions in the amended law of 29 August 2008 on free movement of persons (article 120 (1) of the Immigration Law) and in the amended law of 18 December 2015 on international protection and temporary protection (Article 22 (1) paragraph 3 of the Asylum Law) that allow that the child can be put in detention as a measure of last resort when alternative measures will not be effective.</p> <p>The Law provides for the possibility to detain UAMs in a suitable centre adapted to the needs of their age. In order to do so, the authorities must consider the best interest of the child. In practice, it is very rare that UAMs are held in detention.</p> <p>According to article 124 of the Immigration Law, during the enforcement of the removal measure the best interest of the child has to be taken into due account.</p> <p>Furthermore, since 2018, a Committee for the evaluation of the best interest of the child was established, which analyses the best interest of the child in any return decision (See judgment n° 42536C of 14 May 2019 of the Administrative Court) before such a decision is taken. In autumn 2019, a Grand-Ducal Regulation will provide a legal basis to this Committee.</p> <p>In the same vein, the Ministry of Foreign and European Affairs has concluded an agreement with the International Organization for Migration (IOM) to conduct research in the country of origin of the family of unaccompanied minors, in order to carry out a family assessment and to be able to take this aspect into account to determine whether or not it is in the best interests of the child to return to his/her country of origin. This evaluation process began in October 2017.</p> <p>3. There is no national policy for TCN parents, which apply for residence with a legally residing child. The jurisprudence established by Zambrano (C-34/09 of 8 March 2011), Dereci (C-256/11 of 15 November 2011), Chaves Vilchez (C-133/15 of 10 May 2017), Alopka (C-86/12 of 10 October 2013), Ymeraga (C-87/12 of 8 May 2013) is applicable in Luxembourg.</p> <p>4. N/A.</p>
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			<p>5. In this case, the Directorate of Immigration of the Ministry of Foreign and European Affairs will weigh the interest of the child against other interests. However, the best interest of the child will prevail in most cases except when there is a threat to national security or public order. The Directorate of Immigration will take into consideration the jurisprudence of the European Court of Justice on this subject (see answer to Q.3).</p> <p>6. See answer to Q.5.</p>
	EMN NCP Netherlands	Yes	<p>1. No, in the Netherlands the government is constitutionally bound by the treaty provisions such as article 3 CRC and the judge can directly test against this. For that reason, it is not necessary to implement Article 3 of the CRC in Dutch legislation and regulations. In the Netherlands, decisions are based on Article 8 of the ECHR. The assessment against Article 8 of the ECHR includes a consideration of all the circumstances of the individual case. The best interest of the child is important here. Article 8 of the ECHR must be interpreted in accordance with Article 3 of the CRC. In the balancing of interest within the framework of Article 8 of the ECHR weighing of interests, a heavy - but not decisive - weight is given to the best interests of the child.</p> <p>2. No, in the Netherlands the government is constitutionally bound by the treaty provisions such as article 3 CRC and the judge can directly test against this. For that reason, it is not necessary to implement Article 3 of the CRC in Dutch policy. The assessment against Article 8 of the ECHR includes a consideration of all the circumstances of the individual case. The best interest of the child is important here. Article 8 of the ECHR must be interpreted in accordance with Article 3 of the CRC. In the balancing of interest within the framework of Article 8 of the ECHR, a heavy - but not decisive - weight is given to the best interests of the child.</p> <p>3. There is no national policy in the Netherlands for a TCN parent's stay with a child. Only on the basis of international treaty obligations and jurisprudence of the European Court of Justice, there are two cases in which a parent can obtain residence with a legally residing child. Namely on the basis of Article 8 ECHR and on the basis of the ECJ ruling in the Chavez-Vilchez case.</p>

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			<p>5. Yes, it could be possible that the interest of the child is weighted heavier than interests of the State. However, this has to be decided on by a case-by-case assessment. The interest of the Child is an important interest within the weighing of interests of Article 8 ECHR.</p> <p>6. No, the best interest of the child is not a decisive interest but an important interest within the weighing of interests of Article 8 ECHR.</p>
	EMN NCP Poland	Yes	<p>1. Yes. The principle of best interests of the child derives directly from art. 3 of the UN Convention on the Rights of the Child which stipulates that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".</p> <p>The Convention was ratified by the Republic of Poland and remains a part of Polish law. The Article 9 of the Polish Constitution provides that the Republic of Poland respects international law binding upon it. Moreover, according to Article 87 paragraph 1 of the Polish Constitution the ratified international agreement is one of the sources of law.</p> <p>As a consequence, all authorities and institutions inter alia involved in migration procedures are obliged to respect the principle at all stages of immigration procedures. The concept of "the best interests of the child" functions in Polish law however, there is no statutory definition of the term - the principle has not been defined by the Polish migration law per se.</p> <p>Legal migration and return</p> <p>Some provisions of the Act of 12 December 2013 on Foreigners directly refer to the Convention (including Article 187 p. 7, Article 332, Article 348).</p> <p>Asylum</p> <p>With regard to the Act of 13 June 2003 on granting international protection to foreigners within the territory of Republic of Poland, the art. 68 identify all minors as "persons who may require special treatment during proceeding the application for international protection" (others are: disabled person, the elderly, pregnant woman, single parent, victim of trafficking in human beings, bedridden person, a person with mental disorders,</p>

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			<p>person subjected to torture, victim of physical, psychological, sexual and sexual violence, sexual orientation and gender identity). It obliged to ensure special treatment during providing social assistance, medical care and also during the proceeding.</p> <p>Every applicant (including accompanied minor) is considered to be in need of special treatment in the scope of social assistance if may be necessary:</p> <ul style="list-style-type: none"> <li>• to accommodate in the centre for foreigners: <ul style="list-style-type: none"> <li>○ adapted for the disabled,</li> <li>○ providing a single room,</li> <li>○ designed exclusively for women or women with children;</li> </ul> </li> <li>• to place in a care and treatment facility, nursing home or hospice;</li> <li>• to place in custody corresponding to the psychophysical situation of these persons;</li> <li>• to adjust a diet to health.</li> </ul> <p>When providing social assistance to USMs, the need to secure their interests should be taken into account (Article 69b), in particular, the minor's well-being and social development (as well as the possibility of family reunification, safety and security) especially when there is a risk that the minor is a victim of trafficking in human beings. Another factor which should be considered is the minor's opinion (according to his or her age and maturity).</p> <p>Placement of a child in foster care in the Republic of Poland on the basis of a decision of the court or other authority of a foreign state (Art. 35a paragraph 4 of the Act of 9 June 2011 on supporting the family and foster care system), which may apply to unaccompanied minors seeking asylum, is possible only after determining that such placement corresponds to the best interests of the child (and also that the child has significant connections with the Republic of Poland).</p> <p>On the basis of the Article 65 and Article 66 unaccompanied minors should be interviewed by specially trained case workers in a presence of psychologist and legal guardian.</p> <p>The Constitution of the Republic of Poland states in its Art. 72 as follows:</p> <ul style="list-style-type: none"> <li>• 72. 1. The Republic of Poland shall ensure the protection of the rights of the child. Everyone has the right to demand from public authorities protection of a child against violence, cruelty, exploitation and demoralization.</li> </ul>
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			<ul style="list-style-type: none"> <li>• 72.2. A child deprived of parental care shall have the right to care and assistance from public authorities.</li> <li>• 72.3. In the course of determining the child's rights, public authorities and persons responsible for the child are obliged to listen and, if possible, take into account the child's opinion.</li> <li>• 72.4. The Act determines the competences and the manner of appointing the Ombudsman for Children.</li> <li>• Moreover, the Act on Foreigners indicates the Convention on the Rights of the Child in the context of granting humanitarian protection. Art. 348 point 3 states that a foreigner shall be granted a humanitarian residence permit on the territory of the Republic of Poland, if the obligation to return would violate the rights of the child, specified in the Convention on the Rights of the Child, to a degree that significantly threatens his psychophysical development.</li> </ul> <p>2. Yes. All authorities and institutions inter alia involved in migration procedures are in practice obliged to respect the best interests of the child at all stages of immigration procedures. Both immigration policies and child protection policies as compliant with the UN Convention on the Rights of the Child respects the child's best interest principle. The results of the comprehensive assessment made in each individual case concerning the child defines the appropriate policy applied. The individual assessment of each case, includes possibility for a minor to express his/her views and provide information in different forms (if possible – in person in oral or verbal form or by other persons involved).</p> <p>Legal migration and return The assessment implies the identity identification in the aim to provide the appropriate legislation (TCN and UE/EEA/Swiss Confederation nationals status differs in Polish migration law), but as well to address their special needs. The educational, health and safety needs are assessed. The procedures are focused as well on the family preservation aspects. The Polish migration law (Act of 12 December 2013 on Foreigners) impose the obligation to conduct the proceedings on granting or revoking temporary residence permit issued to the purpose of family reunification (concerning nuclear family, vide art. 167) and on revoking of a long-term resident's EU residence permit due to protection of a national security or defence or the protection of public security and order (vide art. 215 para 3) in a way to secure child's best interests. Pursuant to art. 167, in the proceedings on granting or revoking the permit referred to in Article159(1) the</p>
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			<p>following shall be taken into account:</p> <ul style="list-style-type: none"> <li>(1) the interest of a minor child;</li> <li>(2) the nature and stability of family ties in the territory of the Republic of Poland;</li> <li>(3) the period of the foreigner's stay in the territory of the Republic of Poland;</li> <li>(4) the existence of family, cultural and social ties with the country of origin.</li> </ul> <p>Pursuant to art. 215 para 3, in the proceedings on revocation of a long-term resident's EU residence permit on the grounds referred to in paragraph 1(2), the following shall be taken into account:</p> <ul style="list-style-type: none"> <li>(1) the duration of the foreigner's stay in the territory of the Republic of Poland;</li> <li>(2) the foreigner's age;</li> <li>(3) the foreigner's ties with the Republic of Poland or absence of ties with the country of origin;</li> <li>(4) the consequences of the revocation for the foreigner and members of his/her family.</li> </ul> <p>Art. 187 (7) directly refers to the CRS. That article establishes a premise for granting a temporary residence permit in the circumstances where departure of a foreigner (in the meaning as well of a minor or his/her legal representative) would violate the rights of a child, as defined in the CRS, to the extent that could significantly adversely affect his/her mental and physical development, and that foreigner stays in the territory of Poland illegally.</p> <p>Then the Act on Foreigners provides a possibility to grant a temporary residence permit due to other circumstances to a minor child of a foreigner, born in the territory of the Republic of Poland and residing unattended in this territory (art. 186 (1) (2)). In such a situation, an application is being submitted on a form by a legal representative of a minor (custodian) established by a court to the voivodeship office competent for a place of residence of the minor. The permit is granted whether the minor stays in Poland legally or not under only condition that his/her further stay is necessary for a more than 3 month. No special requirements concerning financial means, health insurance etc. are provided by the law. The permit is being granted for a period longer than 3 months but not longer than 3 years. The presented legal tool secures best interest of an abandoned child, having close ties with Poland, by the way of regulating his/her current migration situation. It is worth to mention that in case of death of parent, the subsequent temporary residence permit may be granted to a minor child of a foreigner that in period prior to death was married to a Polish citizen and was in a possession of a temporary or permanent residence card granted due to that purpose, if it is in best interest of a child (art. 158 para 2 p.3).</p> <p>Pursuant to art. 316 para 1 Act on Foreigners, the authority issuing the decision on imposing the return obligation on a foreigner (return decision) may extend the deadline for voluntary return inter alia in case where</p>
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			<p>foreigner's presence within the territory of the Republic of Poland is required due to his/her exceptional personal situation, resulting in particular from the length of the foreigner's stay within the territory of the Republic of Poland, from the foreigner's family and social ties or a need to continue education by a minor child of the foreigner. The extension due to above-mentioned circumstances may be carried out ex officio or upon the request of the foreigner. The extended period for voluntary return cannot be longer than 1 year.</p> <p>The decision on return concerning a minor can be enforced only under condition that he/she has, in the State to which he/she has been obliged to return, the custody of parent(s) or other adult person(s) or institutions, in accordance with the standards set out in the Convention on the Rights of the Child, and the return is carried out under the care of a legal representative or the foreigner is handed over to his legal representative or to the representative of the competent authorities of the State to which the return takes place (art. 332).</p> <p>The decision on return cannot be enforced and a residence permit for humanitarian reasons may be granted to a minor where it has been already assessed at the stage of the return procedure or it has been assessed sometime after the issuance the decision on return that the return to that country would breach his/her rights as a child, defined in the Convention on the Rights of a Child, adopted by the General Assembly of the United Nations on 20 November 1989, and thus substantially pose a threat to his/her psychophysical development (art. 348 (3)). The residence permit for humanitarian reasons may be potentially granted as well to the parent or legal representative of a child if his/her return would cause the same risk to the child.</p> <p><b>Asylum</b></p> <p>The Office for Foreigners manages 11 centers for foreigners who applied for international protection on the territory of Poland. It is important to emphasise that centres for foreigners are places dedicated for accommodation only children with their parents or legal guardian.</p> <p>Nevertheless, the security issues, including child safety and protection the best interests of the child, are one of the priority areas for the Office for Foreigners. That is why the Office for Foreigners adopted complex program of the Policy on protection of children from harm in facilities for foreigners in November 2016. It determines standards and procedures of conduct aiming to increase awareness about importance of protection of children against all forms of harm, deliver instructions and specify the procedure and scope of responsibility in all actions concerning children's safety and ensure safety for children through prophylactic actions.</p> <p>According to the adopted document, all employees of the Department for the Social Assistance of the Office for Foreigners and their associates operating in centres for foreigners are required to sign:</p> <ul style="list-style-type: none"> <li>• a statement on reading the content of the Child Protection Policy, along with the acceptance of its</li> </ul>
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			<p>provisions and the obligation to comply with them;</p> <ul style="list-style-type: none"> <li>• a statement of no criminal record on offenses against sexual freedom and decency nor against violent crimes to the detriment of a minor.</li> </ul> <p>Anyone wishing to start a regular activity at the centre will also be asked to sign the above-mentioned documents.</p> <p>Moreover, to prevent of crisis situations, including protection best interests of children, the Office for Foreigners has developed a number of internal standard safety procedures for employees working both in centres for foreigners and in headquarters. Their goal is to prevent violence and to establish the way of reaction in extraordinary situations. In response to the identified risks, the following procedures were implemented:</p> <ul style="list-style-type: none"> <li>• Agreement on Standard Operating Procedures with regard to recognition, counteracting and responding to cases of sexual based violence or gender related violence against foreigners staying in reception centers for asylum seekers (2008) – based on that agreement Local Co-operation Groups work in every center and meet at least once every quarter or more often depending on current needs. The aim of the teams is monitoring the current situation in the centres, the degree of threat of violence and the situation of families, where violence has been reported. Local Co-operation Groups consists of: social workers, local police officers, medical staff and representant of NGOs.</li> <li>• Procedure concerning minors who get married or who are planning to get married.</li> <li>• Procedure of dealing with security threats.</li> </ul> <p>In asylum procedure, children are interviewed by a trained and experienced staff member who is sensitized on how to communicate in a child-friendly manner, in a language well understood by the child. Children are interviewed in the place where they are accommodated, so they do not have to travel to Warsaw and they are in a well-known place, which reduces stress and makes them feel safer.</p> <p>Staff members interviewing children must be qualified and confirmed. Furthermore, they are obliged to undergo special training on interviewing children as those provided by external partners, for instance, psychologists from NGO protecting children from abuse. EASO's training module "Interviewing children" is also used. The training covers: child's development stages with particular emphasis on language skills and understanding of abstract concepts (time, emotions, distance, etc.); interviewing children techniques; child specific risks (influence of smugglers, pressure to support family in country of origin, LGBTQ, sexual abuses, etc.).</p>
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			<p>The role of the psychologist during the interview is to observe the child; to see whether the child has some psychological problems, PTSD, symptoms of being abused, very high level of stress, etc.; to support the child and interviewer if there are difficulties to establish contact, if the child is afraid of talking, etc.; to ask additional questions on child's psychological condition; to prepare the opinion/report on the child's psychophysical condition, in being able to suggest that further psychological assistance is needed. The importance of the presence of a psychologist during the interview must be stressed, both to assist the child and to assist the professional. In addition, interviews are conducted in an environment with which the child is familiar.</p> <p>3. General concept of the family reunification is that the residence permit is granted to family member of an adult person already residing in Poland on the ground specified in a law (e.g. refugee status, permanent residence, so-called the sponsor).The derogation from that general rule is made to the family members of a minor being granted a refugee status or subsidiary protection in the territory of Poland and residing in that territory unattended. According to a Polish law on family reunification, USM may act in such a case as a sponsor to his/her ascendant or other adult responsible for him according to Polish laws (e.g. grandparents). In those cases the application is not being filled by the sponsor (or rather his/her family representatives according to the law, taking into account that he/she is a minor), but by the custodian of a minor established by the court.</p> <p>Beyond family reunification procedure (that is limited only to those of USMs being beneficiaries of international protection) still exists a possibility to grant a residence permit to a family member of a minor if his/her departure from the territory of the Republic of Poland would violate the rights of the child, as defined in the UN Convention on the Rights of the Child, to the extent that could significantly adversely affect his/her mental and physical development, where the foreigner stays in the territory of the Republic of Poland illegally (art. 187 p. 7). Where a relative resides lawfully in Poland he/she may apply for a general temporary residence permit (for the purpose of other circumstances than listed in the Law – art. 187 p. 8) proving the existence of the above-mentioned necessity by analogy.</p> <p>4. No.</p> <p>5. The Border Guard authorities are responsible for granting humanitarian residence permit resulting from the return procedure. It is not incidentally that the Border Guard has to consider the interest of the child mainly.</p>
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			<p>The best interest of the child in family reunification is always assessed and determined pursuant to the provisions of the migration law deriving from the UN Convention on the Rights of the Child, in particular the provisions of the above-mentioned art. 167 of the Act on Foreigners. The interest of the State while elaborating the conclusions of the decision is an important factor too. It is always a very delicate issue to make the right balance between them. The length of stay, the good of the child (psychophysical condition), the safety and security of the State) are taken into consideration. However, every case is considered individually. In every single case concerning a child the authorities or court decide whether, despite of a failure to comply with mandatory requirement (e.g. concerning financial means), real necessity exists to grant a temporary residence permit or residence permit for humanitarian reasons to a child or his/her legal representative. No general, objective criteria have been established to determine that best interest of a child may prevail the public interest.</p> <p>In order to maintain the quality of decisions the coordinators for humanitarian issues in Border Guard divisions were appointed. Their task is to support the decision makers in difficult questions.</p> <p>6. Legal migration and return</p> <p>The best interest of a child is taken into consideration, but only in specific circumstances in those cases where the specific decision on refusal to grant a residence permit, to withdraw the permit or on return would seriously affect a child by breaching his/her rights as a child, defined in the Convention on the Rights of a Child, adopted by the General Assembly of the United Nations on 20 November 1989, and thus substantially pose a threat to his/her psychophysical development, the best interest of a child may have a prevailing impact. The findings of a case are preceded in-depth analysis and we cannot say about automatic prevailing impact of a best interest of a child on a decision of the authorities/courts.</p> <p>It should be mentioned as well that Poland though the regular procedures (regular migration) has not experienced the diversity of cases where that best child interest has to be taken into consideration, like in the cases of unattended or separated minors. Assessment on preservation of the rights deriving from the CRC is taking most commonly place during the return proceedings where the decision affects all family members and is being issued to a third country nationals from one of neighboring (or close to be) country , so in most of the cases there is no ground to establish that the rights of the child may be under the serious risk.</p> <p>Asylum</p> <p>While making decision on granting international protection Polish authorities assess the best interests of the child taking into account factors and standards as right to live together with a family and not to be separated</p>
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			<p>from parents, situation in the country of origin, right to education, right to health care and other rights of the CRC. But there is no formalized process of assessment or determination of the best interest of the child. It is assessed in a framework of assessment of need for international protection.</p> <p>Need of international protection and best interest of the child are more important than the economic interests of the State. When minor pose a serious threat to the public order of the State he may be excluded form subsidiary protection.</p>
	EMN NCP Slovakia	Yes	<p>1. In accordance with Art. 7 para. 5 of the Constitution of the Slovak Republic, international treaties on human rights and fundamental freedoms, international treaties for which implementation no law is required, and international treaties that directly establish the rights or obligations of natural persons or legal entities and have been ratified and declared in the manner laid down by law; have priority over national laws.</p> <p>2. See Q1.</p> <p>Moreover, the best interest of the child is generally legislatively enshrined in Article 5 of Act No. 36/2005 Coll. on the Family and on Amendments to Certain Acts as amended as follows:</p> <p>"The interest of a minor is a primary consideration for decision-making in all matters that concern him/her. During the determination and assessment of the interest of a minor child following shall be taken into account:</p> <ul style="list-style-type: none"> <li>(a) quality of the childcare,</li> <li>(b) safety of the child as well as the safety and stability of the environment in which the child is staying,</li> <li>(c) protection of dignity, as well as the mental, physical and emotional development of the child,</li> <li>(d) circumstances relating to the state of health of the child or the disability of the child,</li> <li>(e) endangering the child's development by interfering with his or her dignity and endangering the child's development by interfering with the mental, physical and emotional integrity of a person who is a close to the child,</li> <li>(f) conditions for preserving the identity of the child and for developing the child's abilities and skills,</li> <li>(g) the opinion of the child and its possible exposure to the conflict of loyalty and consequent guilt,</li> </ul>


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			<p>(h) the conditions for the creation and development of relationships with both parents, siblings and other close relatives,</p> <p>(i) the use of possible means to preserve the child's family environment when interference with parental rights and obligations is considered. "</p> <p>3. In case the child has a legal residence in the Slovak Republic, the Act on Residence of Aliens states the following:</p> <p>Article 27</p> <p>Temporary Residence for the Purpose of Family Reunification</p> <p>(1) A police department shall grant temporary residence for the purpose of family reunification, if there are no reasons for the refusal of the application (e.g. TCN is an undesired person; there is a justified suspicion that a third country national would threaten the state safety, public order or public health during his/her residence; and other matters as stated in the Art. 33 par. 6 of this Act) to a TCN who is a:</p> <p>a) family member if the third country national with temporary residence or with permanent residence;</p> <p>b) relative in a direct ascending line of a person granted asylum younger than 18 years of age; or</p> <p>c) dependent person in accordance with an international treaty.</p> <p>(2) The following is considered as a family member of a third country national according to paragraph 1(a):</p> <p>a) a spouse, if both of the married couple are at least 18 years old;</p> <p>b) a single child younger than 18 years of age of a third country national and his/her spouse;</p> <p>c) his/her single child younger than 18 years of age;</p> <p>d) a single child of his/her spouse younger than 18 years of age;</p> <p>e) his/her dependent single child older than 18 years of age or dependent single child older than 18 years of age of his/her spouse who cannot take care of him/herself due to long term unfavourable health condition;</p> <p>f) his/her parent or a parent of his/her spouse who is dependent on his/her care and lacks appropriate family support in the country of origin.</p> <p>4. N/A.</p> <p>5. If a TCN wants to legally reside in the Slovak Republic, s/he must apply for temporary residence and meet the criteria set out in the Act on Residence of Aliens. A TCN must apply for the residence of his/her child in</p>
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			<p>a separate application and submit all the necessary documents outlined by law. This application can be filed at the same time as the application of the TCN however, in practice, the residence of the sponsor must be granted first so the child's residence could follow up on it.</p> <p>6. See Q2. In general, the best interest of the child is considered during all activities, procedures, methods or processes including the decisions that concern or may concern the child while ensuring the proper participation of the child and expressing its opinion (if the age and intellectual abilities of the child permit) about all that concerns him/her.</p>
	EMN NCP Spain	Yes	<p>1. The Spanish Constitution, when listing the guiding principles of social and economic policies, mentions the obligation of the public authorities to ensure the social, economic and legal protection of the family and within it, with a singular character, that of minors. This concern to provide minors with an adequate legal framework of protection also transcends various International Treaties ratified in recent years by Spain and, especially, the Convention on the Rights of the Child, of the United Nations, of November 20, 1989, ratified by Spain on November 30, 1990, which marks the beginning of a new philosophy in relation to the child, based on a greater recognition of the role it plays in society and the demand for greater prominence for it. In Spain, Law 1/1996, on the legal protection of minors, establishes in article 2.1 that "every minor has the right to have his best interest valued and considered as essential in all the actions and decisions that concern him, both in the public field as in the private. In the application of this law and other regulations related to it, as well as in the measures concerning minors adopted by institutions, public or private, the Courts, or the legislative bodies, their best interests shall prevail over any other legitimate interest that could concur" It also establishes that in the event that any other legitimate interest concurs with the best interests of the minor, those of the minor must be prioritized. In the event that all concurrent legitimate interests cannot be respected, the best interests of the minor must prevail over any other legitimate interests that may concur.</p>


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			<p>2. See question 1.</p> <p>3. Yes. In Spain, the third country national, father or mother of a minor of Spanish nationality may apply for a residence permit. In this sense, according to the jurisprudence of the CJEU, it is a matter of avoiding measures, such as denying the residence permit to its parent, a third country national, which forces the child to leave the territory of the Union.</p> <p>4. Although we are currently preparing Legal Instructions about this, as a rule, when granting this type of authorization for non-EU parents of EU-children, certain criteria must be taken into account:</p> <ul style="list-style-type: none"> <li>- The right to respect for family life, recognized in article 7 of the EU Charter of Fundamental Rights.</li> <li>- The best interests of the minor, recognized in article 24, paragraph 2, of the aforementioned Charter.</li> <li>- The circumstances of the specific case, and in particular, in relation to the minor, his age, his physical and emotional development and the intensity of his emotional relationship with his parents (see how the separation would affect his emotional balance).</li> </ul> <p>5. Law 1/1996, on the Legal Protection of Minors, establishes the guiding principles of the actions of public authorities to safeguard the rights of minors, which are:</p> <ul style="list-style-type: none"> <li>• The supremacy of the interest of the minor.</li> <li>• The maintenance of the child in the family environment of origin unless it is not convenient for their interest.</li> <li>• Their family and social integration.</li> <li>• The prevention of all those situations that could harm their personal development.</li> </ul> <p>6. In the event that any other legitimate interest concurs with the best interests of the minor, priority should be given to measures that, in response to this interest, also respect the other legitimate interests present. In the event that all concurrent legitimate interests cannot be respected, the best interests of the minor must prevail over any other legitimate interests that may concur.</p> <p>The decisions and measures adopted in the best interests of the child must in any case assess the fundamental rights of other persons who may be affected. In addition to that, the CJEU has stated, in relation to public order, that the existence of criminal records won't determine the automatic rejection of the applicant.</p>
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	EMN NCP Sweden	Yes	<p>1. The convention on the rights of the Child (CRC) was ratified in Sweden in 1990 and becomes Swedish law on 1 January 2020 through the Act (2018:1197). With the incorporation, the Government intends to clarify how the CRC should be interpreted in relation to Swedish laws and regulations. In the Aliens Act, the CRC is set out in Chapter 1; Section 10 through the provision on the best interests of the child and the provision in Chapter 1. Section 11 that children shall be heard when questions about permits shall be assessed if not considered inappropriate. Added to this there are sections in Chapter 5, 7 and 8 in the Aliens Act that aims to strengthen the children's rights in the field of asylum and migration. As in adult cases, each child's right to a residence permit must be assessed individually. This applies regardless of whether it concerns children in family or unaccompanied children. Legal guidance on child-specific reasons and the handling of children's cases can be found in the legal department's guidelines and comments at the Swedish Migration Agency, but also in the Children's rights in the asylum process – a compilation of documents to support the handling and examination of children's asylum reasons and in UNHCR's guidelines child asylum claims.</p> <p>2. The assessment of the best interest of the child is implemented in the handling of all cases that concerns children. Internal evaluations at the Swedish Migration Agency have shown that there are areas for improvement. Internal guidelines that were issued in 2011 have for this reason been replaced by a new guidance (I 18/2019: Handläggningsstöd - Prövning av barnets bästa i migrationsärenden). Learning programmes are also provided to support the case officers. The assessment has also been implemented as mandatory activities in our digital system for processing asylum cases. An adequate examination of the child's best is achieved by the child getting information about what is happening during the handling of the case, being given the opportunity to express his / her views and the child should be visible in the handling of the case.</p> <p>3. Yes as replied in Q2. The Swedish Migration Agency has issued an internal guidance to improve the assessment of the best interest of the child. The internal guidance is applicable regardless the reason for the application, whether it is an asylum application or for a family reunification.</p>

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			<p>4. The crucial point is to take into account the best interest of the child, that is all children have the right to have their say and be listened to and their reasons are to be examined individually, as a child may have other reasons than the parents. In this case, it is also important to investigate whether there are contradictions or tensions between the child and the parents or other persons concerned.</p> <p>5. The first step is to assess what is the best interest of the child and then justify the conclusion. The next step is to weigh the best interest of the child against other interests, as there might be other interests to consider when handling asylum and migration cases. There is a need to investigate whether there are conflicts of interest between the child's best interests and other interests such as the maintenance of the legislation of aliens. International protection is only provided if the legal requirements are fulfilled. If there are reasons to take a decision against the best interest of the child, the Swedish authorities need to take all appropriate measures possible. This could entail to let the child finish the semester in school before returning to his or her country of origin. The UN committee on the rights of the child has stated that the best interest of the child weighs heavy and that should be taken into account in the assessment and in the decision taken.</p> <p>6. The same answer as in Q5. The first step is to assess what is the best interest of the child and then justify the conclusion. The next step is to weigh the best interest of the child against other interests, as there might be other interests to consider when handling asylum and migration cases. There is a need to investigate whether there are conflicts of interest between the child's best interests and other interests such as the maintenance of the legislation of aliens. International protection is only provided if the legal requirements are fulfilled. If there are reasons to take a decision against the best interest of the child, the Swedish authorities need to take all appropriate measures possible. This could entail to let the child finish the semester in school before returning to his or her country of origin. The UN committee on the rights of the child has stated that the best interest of the child weighs heavy and that should be taken into account in the assessment and in the decision taken.</p>
	EMN NCP United	Yes	<p>1. Response: Yes. Section 55 of the Borders, Citizenship and Immigration Act 2009, which came into force on 2 November 2009, seeks to give expression to Article 3 of the UNCRC into UK law in the field of Immigration and</p>


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	Kingdom		<p>asylum. Section 55 requires the Home Office to carry out its immigration, asylum, nationality and customs functions having regard to the need to safeguard and promote the welfare of children in the UK.</p> <p>2. Yes. In addition to introducing section 55, the UK introduced statutory guidance under section 55: Every child matters. The statutory guidance sets out the key principles to take into account in all activities for safeguarding and promoting the welfare of children and extends to all Home Office staff and those acting on behalf of the Home Office when carrying out immigration and asylum functions in relation to children within the UK. This includes that in the carrying out of these functions, the Home Office shall have regard to the best interests of the child as a primary consideration. Home Office policy guidance and instructions take account of the duty and make reference to it as appropriate.</p> <p>3. A TCN parent who wishes to come to live in the UK as a parent of a legally residing child must apply for Entry Clearance or leave to remain as a parent under Appendix FM. In respect of entry clearance or leave to remain as a parent under Appendix FM, in all cases that otherwise fall for refusal under the Immigration Rules, the decision maker must consider, under paragraph GEN.3.2. of Appendix FM, whether there are exceptional circumstances which would render refusal of the application a breach of ECHR Article 8 because it would result in unjustifiably harsh consequences for the applicant or child whose Article 8 rights it is evident from the information provided by the applicant would be affected. Where the rules are otherwise not met but there are such exceptional circumstances, entry clearance or leave to remain should be granted on a 10-year route to settlement.</p> <p>4. If a child's best interests are to be considered within an application, the decision maker must consider Section 55 of the Borders, Citizenship and Immigration Act 2009. This Act takes into consideration Article 3 of the UNCRC and this has been built into UK Family Policy to establish a decision-making process. These safeguards and promotes the welfare of children in the UK, and this is paramount in any decision that is made.</p> <p>5. In line with the UNCRC, the UK regards a child's best interests as being a primary consideration, which</p>
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			<p>means that we balance best interest considerations with those that arise from the proper exercise of other legitimate functions, including immigration responsibilities. The best interests of a child can be outweighed by the cumulative effect of other considerations, but no other single consideration can be treated as inherently more significant when it comes to making a decision.</p> <p>6. No. See response question 5.</p>
	EMN NCP Norway	Yes	<p>1. Yes.</p> <p>The content of CRC Article 3 is implemented in several articles in the Norwegian Immigration Act (NIA). Among others, the content is implemented in article 38 (3) concerning residence permits on the grounds of strong humanitarian consideration or a particular connection with the realm: "In cases concerning children, the best interests of the child shall be a fundamental consideration. Children may be granted a residence permit under the first paragraph even if the situation is not so serious that a residence permit would have been granted to an adult."</p> <p>The content of CRC article 3 is also implemented in the chapter regulating family immigration in NIA chapter 6. (Norwegian Immigration Act)</p> <p>2. Yes.</p> <p>The content of CRC article 3 is implemented in the Norwegian Directorate of Immigrations' (UDI) quality standards for both unaccompanied and accompanied minors. The content of CRC is also implemented in the Norwegian Immigration regulation and UDIs' circulars regulating for example different country practices, age assessment or providing children with an opportunity to be heard about their opinions and or situation.</p> <p>3. Yes.</p>

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			<p>The Norwegian Immigration Act (NIA) regulates access for residence permits for TCN parents. In NIA section 43, 44 and 49.</p> <p>Section 43 regulates family reunification between a child with a residence permit (under sections 28 or 34 (refugee status)) and the child's parents and siblings. When a child under the age of 18 holds a residence permit for the realm under sections 28 or 34 (refugee status) his/her parent is entitled to a residence permit upon application. It is a condition that the applicants live with the child. If the applicant is a single mother or father, the parent who had parental responsibility and with whom the child lived permanently in the country of origin shall have a preferential right to a Norwegian residence permit. The same applies to siblings under the age of 18 who have no spouse or cohabitant and who live with their parents or with the parent who is granted a residence permit.</p> <p>Section 44 regulates family reunification between a Norwegian child and the child's mother or father. An applicant who is the mother or father of a Norwegian child (with citizenship) under the age of 18, for whom the applicant has parental responsibility and with whom the applicant lives permanently, is entitled to a residence permit in order to live with the child in Norway. This is on the condition that the applicant is not married to and will not be living with the child's other parent. A residence permit may nevertheless be refused if this would lead to the applicant being reunited with a spouse living in Norway who is already married to or cohabiting with another person here. The same applies if the applicant and the parent living in Norway are not married at the time of application but a bigamous relationship has previously existed between the applicant, the parent living in Norway and the latter's present spouse or cohabitant.</p> <p>Section 49 regulates other cases, for example when a child has a residence permit on humanitarian grounds (under NIA section 38). In the assessment of whether a residence permit should be granted under this section, weight may be given to considerations relating to immigration control. In cases affecting children, the best interests of the child shall be a fundamental consideration.</p> <p>4. Yes.</p> <p>In NIA section 43 and 44 the child has a right to family unification, in section 49 it is an individual assessment where the best interests of the child should be a fundamental consideration. According to NIAs preparatory</p>
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			<p>work, weight should be given to the child's need to be reunited based on his/her age. A younger child will have a greater need for family reunification, than a child close to the age of maturity. Furthermore, the preparatory work emphasizes that applications for family reunification should be dealt with in a positive, human and expeditious manner, in line with CRC section 10.</p> <p>5. As mentioned under question 3 and 4, the best interest of the child is assessed in cases that are regulated under NIA section 49. The best interests of the child must be a fundamental consideration, but weight may also be given to considerations relating to immigration control. Such considerations could be, as listed in NIA section 38 (4), possible consequences for the number of applications based on similar grounds, social consequences and the need of control. According to NIAs preparatory work a negative consequence of a liberal family reunification practice is that parents may use their children to get residence permits, by sending their children first as so-called anchor children. Therefore, the threshold should not be too low, but each case should be assessed based on the concrete situation, the child's needs and the situation in the homeland.</p> <p>6. In the assessment of whether a residence permit should be granted in cases affecting children, the best interests of the child must always be a fundamental consideration. However, weight may be given to considerations relating to immigration control. Whether the best interest has a prevailing impact against other considerations depends on the case. If the best interest of the child is compelling and evident, that consideration will have greater impact on how other considerations weigh in on a decision.</p>
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