

PROTECTION OF THE RIGHTS AND BEST INTERESTS OF THE CHILD IN PARENTAL SEPARATION PROCEEDINGS



Checklist for policy makers for the implementation
of Recommendation CM/Rec(2025)4

COUNCIL OF EUROPE



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French edition:

*Protection des droits et de l'intérêt supérieur
de l'enfant dans le cadre des procédures de
séparation des parents – Liste de contrôle pour
les décideurs politiques pour la mise en oeuvre
de la Recommandation CM/Rec(2025)4*

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Checklist for policy makers for the implementation of Recommendation CM/Rec(2025)4

The purpose of this checklist is to assist policy makers by proposing questions they may wish to consider when appraising their national framework concerning parental separation proceedings in the light of the standards set out in Recommendation CM/Rec(2025)4 of the Committee of Ministers to member States on the protection of the rights and best interests of the child in parental separation proceedings and the guidelines set out in its appendix.

Assessing the best interests of the child

1. Does national law and/or policy ensure that the assessment of the best interests of the individual child is carried out in parental separation proceedings, including alternative dispute resolution processes?
2. Are training courses, practical tools or guidelines on the best interests assessment of the child available to the competent authorities¹ to help them assess and give due consideration to the best interests of the child in parental separation proceedings and connected alternative dispute resolution processes? If so, do they provide guidance on:
 - ▶ the factors, set out in law or policy, to be considered in the best interest assessment;
 - ▶ the need to carefully balance all relevant factors in case of conflicting conclusions;
 - ▶ the specific situation of child relocation with one of his or her parents;

1. In line with Recommendation CM/Rec(2025)4, the expression “competent authority” refers to state authorities, such as courts of law and other judicial or administrative bodies, which are competent to make a legally binding decision about the arrangements concerning a child involved in parental separation proceedings. This should also include mediators and other professionals involved in alternative dispute resolution processes.

- ▶ the use of multidisciplinary and interagency services;
- ▶ the use of specific assessment tools;
- ▶ the approach to take in proceedings concerning young or very young children, children with specific needs or in situations where a decision is being taken in respect of more than one child.

3. What mechanisms exist to update training in this field (continuous professional development)?

Right to be heard

1. What kind of child-friendly mechanisms and procedures are in place in the context of parental separations proceedings to give every child a genuine and effective opportunity to express his or her views? What services are in place for a child who needs assistance to form and express his or her views or to ascertain a child's perspective on relevant issues?

2. Does a child have the right to be heard in parental separation proceedings irrespective of his or her age? If your national law prescribes an age limit below which a child is not considered to have a sufficient level of understanding to express his or her views, is this age limit subject to periodic review? Is removing it envisaged or otherwise leaving a margin of discretion to the competent national authorities to assess the child's level of understanding on a case-by-case basis?

3. Are the competent authorities and professionals involved in parental separation proceedings trained to assess the child's level of understanding?

4. What kind of settings are available so that a child can be heard in a child-friendly environment to prevent undue stress and discomfort? Do these settings use a multidisciplinary and interagency approach?

5. In parental separation proceedings involving a parent or a child with a disability or with special or additional needs or vulnerabilities, are appropriate arrangements in place to enable the meaningful participation of the child or parent in the proceedings (for example, facilitating accessibility and transport, provision of interpretation services, provision of relevant documents in a language which he or she can understand or access to specially trained legal representatives)?

Right to information and assistance

1. What information services are in place to ensure that a child involved in or affected by parental separation proceedings or an alternative dispute resolution process receives information on the proceedings (reasons for the proceedings, different stages, duration, his or her rights and role in the proceedings and the role of other actors, etc.) in a manner adapted to the child's age and maturity, in a language which he or she can understand and which is gender and culture sensitive?²
2. Can a child affected by parental separation proceedings benefit from independent support and, where appropriate, legal assistance? Can the child also benefit from legal representation separate from that of his or her parents, in accordance with the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, where needed?
3. Can the child be assisted by a person of trust, of his or her choice, whenever possible, throughout the procedure (for example a social worker or psychologist)?³
4. Where the protection of the child's best interests requires it, notably in cases where there are conflicting views between the parents concerning their child, is a special guardian *ad litem* or a separate legal representative appointed to represent the child's views and interests in court proceedings?
5. Is legal aid available to the child and parents involved in the proceedings? How is access to free legal aid facilitated for the child, where needed?
6. What independent non-judicial complaints mechanism, such as an ombudsperson for children, is made accessible to the child to report interference with his or her rights in parental separation proceedings or to complain about misconduct by service providers or professionals working with him or her?

2. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), IV.A.1.2.

3. The person of trust should be able to advise and support the child, facilitate his or her comprehension of the proceedings, provide reliable and relevant information, ascertain his or her wish to exercise the right to be heard, accompany him or her during the hearing and, where appropriate, during the appeal proceedings. The child should be able to contact this person directly at any reasonable time for information and advice.

Conduct of parental separation proceedings

Before proceedings

1. Quels sont les services mis en place pour informer et soutenir les parents dans l'exercice de leurs responsabilités envers leur enfant et pour leur aider à conclure un accord amiable qui respecte les intérêts supérieurs de l'enfant?
What services are in place to inform and support the parents in the exercise of their responsibilities towards their child and to help them reach an amicable agreement that respects the best interests of the child?
2. Quelles sont les mécanismes en place pour que les professionnels puissent signaler des cas de violence contre les enfants? Des obstacles à la déclaration de tels cas ont-ils été supprimés, conformément aux normes établies dans la Recommandation CM/Rec(2023)8 du Comité des Ministres aux États membres sur le renforcement des systèmes de signalement de la violence contre les enfants?
What are the mechanisms in place for professionals to report cases of violence against children? Have any barriers to reporting such cases been removed, in accordance with the standards laid down in Recommendation CM/Rec(2023)8 of the Committee of Ministers to member States on strengthening reporting systems on violence against children?

During proceedings

3. Dans la mesure du possible, les autorités compétentes peuvent-elles solliciter l'appui de services multidisciplinaires et/ou inter-agences fournis par des professionnels formés à l'identification de la mesure d'intervention la plus appropriée pour les familles en conflit?
Where appropriate, can the competent authorities call on multidisciplinary and/or interagency services provided by professionals trained in identifying the most appropriate intervention with families in conflict?
4. Quelles sont les mécanismes de gestion des cas et les mesures en place pour permettre l'identification rapide des situations de conflit élevé?
What case-management mechanisms and measures are in place to enable the timely identification of high-conflict situations?

Emergency and interim measures

5. Dans des situations de risque imminent pour la santé ou la sécurité de l'enfant, notamment dans des situations de conflit élevé, votre droit national prévoit-il des procédures urgentes et accélérées pour obtenir des décisions d'urgence ou des mesures protectrices provisoires afin de protéger les droits et les intérêts supérieurs de l'enfant? Comment de telles procédures sont-elles rendues adaptées à l'enfant?
In situations of imminent risk to the health or safety of the child, especially in high-conflict situations, does your national law provide for urgent referral and accelerated procedures to obtain emergency decisions or interim protective measures to safeguard the child's rights and best interests? How are such procedures made child-friendly?

Alternative dispute resolution processes

6. Des procédures alternatives de résolution des conflits sont-elles disponibles pour les situations de séparation parentale? Quelles mesures sont prises pour promouvoir ces procédures alternatives avec les parents avant le début des procédures de séparation parentale? Votre droit national et/ou votre politique prévoient-ils un recours à la résolution alternative des conflits à tout moment, y compris lorsque des procédures judiciaires ont déjà été initiées?
Are there alternative dispute resolution processes available for parental separation situations? What means are used to promote these alternative processes with parents prior to the commencement of parental separation proceedings being initiated? Does your national law and/or policy provide for recourse to alternative dispute resolution at any time, including when legal proceedings have already been initiated?
7. Votre droit national et/ou votre politique garantissent-ils à l'enfant le droit d'être entendu et de participer aux procédures alternatives de résolution des conflits?
Does your national law and/or policy ensure the child's right to be heard and to participate in alternative dispute resolution processes?

8. How does your national law allow those involved in alternative dispute resolution to activate multidisciplinary and/or interagency services of professionals trained in assessing the best interests of the child and hearing the child?
9. Are the conditions and requirements for the registration of alternative dispute resolution agreements regulated by law? Is there a possibility of review and appropriate oversight by a competent authority to ensure that such agreement gives due consideration to the rights and best interests of the child and is fair to all participants?
10. Are codes of good practice or codes of conduct for alternative dispute resolution in place and available to ensure that professional standards are respected at all times?

Decision, implementation and review

11. How are relevant professionals trained on how to communicate the decision to children having regard to their age and level of maturity?
12. Does your national law provide for decisions concerning a child in the context of parental separation proceedings to be subject to effective administrative or judicial oversight and, in case of change of circumstances, to review?
13. Does your national law provide for specific measures in the event of non-compliance by a party with a decision concerning a child? What safeguards are in place to protect the rights and best interests of the child? To enforce a decision, does your national legislation provide for such measures to be taken with due regard to the best interests of the child?
14. Where the best interests assessment indicates that unrestricted contact may be contrary to the child's best interests, what appropriate services (such as supervised direct contact with the parent concerned) are available and accessible to the child and the parents?

Relocation

1. In the event of a parent intending to relocate with the child, how does your national law provide for an obligation to notify in a timely manner the other parent or other holders of parental responsibility, including persons with an enforceable right to personal relations and direct contact with the child?
2. What kind of safeguards are in place to enable the relocated child to maintain a meaningful relationship with the other parent, family members or other persons significant to the child (visitation rights, videoconference, holiday arrangements)?

Data protection

1. What measures are in place to protect data relating to the child and other persons involved in parental separation proceedings and alternative dispute processes? At the same time, how is it ensured that the personal data are shared between the relevant competent authorities and professional service providers where this is in the best interests of the child?
2. What safeguards are in place to ensure that children involved in parental separation proceedings cannot be identified or identifiable in media coverage?

Recommendation CM/Rec(2025)4, accompanied by its explanatory memorandum, aims to improve the protection of the rights and best interests of the child in the context of parental separation proceedings. It contains principles that member States of the Council of Europe are invited to follow in the course of these proceedings.

When parents separate, even with appropriate support, authorities are often faced with decisions that have a significant impact on children and those close to them. The consequences of such decisions can be life changing and reach well beyond childhood.

This recommendation provides national authorities with guidance for considering all circumstances that may be relevant when assessing a child's best interests in proceedings relating to parental separation. It also ensures that the substantial and procedural rights of children affected by such proceedings, including the right to be informed and to be heard, are fully implemented, and the principles of the rule of law, non-discrimination and the timeliness of proceedings are respected.

This practical implementation tool was specifically designed for policy makers to facilitate and optimise the implementation of the recommendation and the principles it contains in the designing of policies in the area of parental separation so that the rights and best interests of the child are adequately taken into account and protected.

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