Guide

Five steps to move towards a decision in the best interests of the child







DEPARTMENT OF CULTURE, YOUTH & MEDIA

vlaanderen.be/cjm

Adults working professionally or voluntarily with children and young people face situations in which they must make decisions every day. These situations can leave you feeling unsure. There is often doubt as to whether the right decision has been made.

Which school choice is best for a child or young person with autism? Do you opt for out-of-home placement in a troubling situation involving a young child? How do you handle the views of the child or young person dealing with their parents' divorce? As a youth worker, how do you deal with drug use among young people in a youth centre in a socially vulnerable neighbourhood?

Do you recognise these dilemmas? Then this roadmap on the best interests of the child is for you! It is a reflection tool that guides you as you weigh up different elements and perspectives. Using this roadmap ensures that you better understand the needs and rights of the child or young person involved. In short, you will make better decisions!

* All references to children and young people in the roadmap mean any person under eighteen years of age.

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1 ABOUT THE ROADMAP

The roadmap helps you make a quality decision that is in the best interests of the child or young person in specific situations.

The roadmap:

- supports you as a practitioner in weighing the best interests of the child or young person against the interests of other people involved when making a decision;
- emphasises the need to involve children and young people in decisions that affect them;
- is generic and therefore can be applied to all types of topics and within various work settings and organisations. The roadmap can be adapted to suit your specific operation or organisation when necessary;
- encourages reflection and dialogue and isn't a checklist.

Who can use the roadmap?

The roadmap is designed for **practitioners in Flanders** in various professional contexts (e.g. youth care, education, youth work and justice) who are involved in making decisions concerning a child, a young person, or a small group of children (e.g. siblings, a class group, a youth group in a youth organisation, etc.). The roadmap therefore applies to all decisions relating to people under the age of eighteen.

The roadmap can also serve as inspiration for policymakers working within a local, regional, Flemish, federal, or international policy context.

When can you use the roadmap?

You consider the best interests of the child when making decisions or taking measures concerning children and young people, such as school choice, living conditions, access to facilities (such as a hospital), or leisure activities.

The roadmap should preferably be used prior to each question, situation, and action. Nevertheless, you can still use the roadmap during a process to see whether adjustments can be made. After a decision has been made, the roadmap gives you the opportunity to conduct an in-depth evaluation and to look back on the path you have taken with children and young people and how you would like to approach future decisions (differently) based on that experience. For instance, you can use the roadmap during supervision or intervision sessions with colleagues or other practitioners.



TIP

The more attention you pay to reflection and preparation prior to the decision-making process, the greater the chance of making a quality decision that is in the child's best interests. So always take enough time and space to reflect beforehand on how you want to proceed with the different steps.

Why should you use the roadmap?

When using the roadmap:

- you work on the realisation of the rights of children and young people.
- you avoid arbitrary choices, and instead, make choices that are not based solely on what you think is best for the child or young person.
- you take into account the many different elements that play a role in the lives of children and young people, and as such, often have a much broader view of their living environment.
- you receive direct input from the child or young person and have the opportunity to gather feedback on your practice and any assumptions you may have. This will ensure that you continue to critically examine your basic attitude as a practitioner.
- you think about a sustainable and stable living and educational situation for the child or young person today, tomorrow, and in the future.

2

THE BEST INTERESTS OF THE CHILD

What is the principle of the best interests of the child?

Article 3 of the Convention on the Rights of the Child states that **the best interests of the child shall be a primary consideration** in all actions concerning children and young people. The principle of the best interests of the child is a right and therefore not optional.

"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."

Art. 3(1) of the Convention on the Rights of the Child

Decisions in the child or young person's best interests can be about **various issues**.

Where will the child or young person go to school? Where will the child or young person live: at home with the parents or in a youth care facility? Are we going to inform the child or young person about the parents' situation: how much information do we share about what topics?

The best interests of children or young people are a first consideration and must always be taken into account when working with children and young people. This means you start from **the living environment and perspective of the child or young person**. Other interests are also taken into consideration, but the position of the child or young person is given priority.

You can use the roadmap as a **guide** in day-to-day situations. It is also a good idea to make sure it is formally embedded in your working methods or organisational policies for certain specific situations.

To whom does it apply?

The principle of the best interests of the child applies to all people below the age of eighteen. This can be:

- a child or a young person (individual);
- a group of children and/or young people (e.g. children living within the same household, young people in migration);
- children and/or young people in general (e.g. children or young people in Flanders).

By whom should it be guaranteed?

The principle of the best interests of the child must be applied by:

- governments;
- judicial or administrative authorities;
- public entities;
- civil society entities, the private sector, and practitioners working with and for children and young people.

Parents and people with parental responsibility are not explicitly stated in Article 3 (paragraph 1). The Convention on the Rights of the Child states that the best interests of the child are "their primary concern" (see, inter alia, Articles 9, 18, and 20 of the Convention on the Rights of the Child).

3 USING THE ROADMAP

The roadmap contains **preconditions and reflection questions** for a high-quality decision-making process that is in the best interests of the child or young person.

The roadmap consists of **five steps** with **additional questions in each case**, which you go through prior to each decision-making process It is necessary to go through all the steps in the predetermined order. You will not always have obvious answers to the questions, or the answers may change over time. If you return to an earlier step, you will have to go through all the subsequent steps again.

The different components of the roadmap are:

Step 1: The preconditions

Step 2: Involving the child or young person

Step 3: The situation and the question

Step 4: The analysis and the weighing

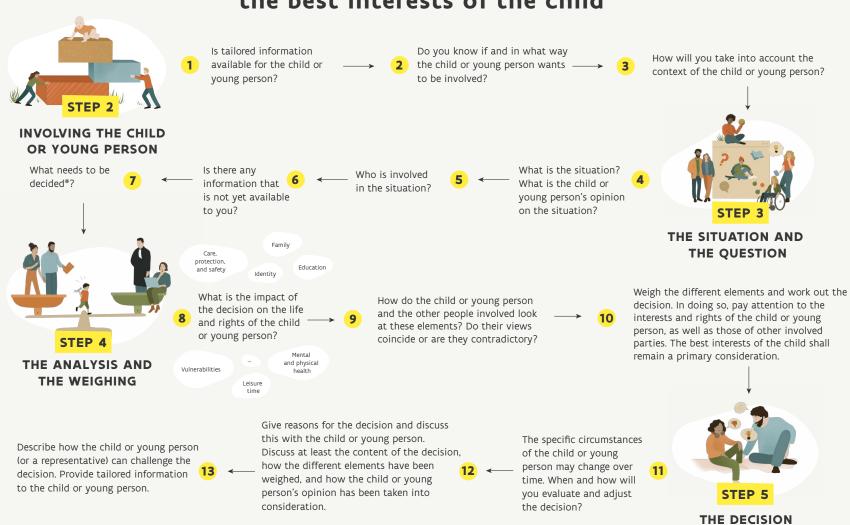
Step 5: The decision



THE PRECONDITIONS

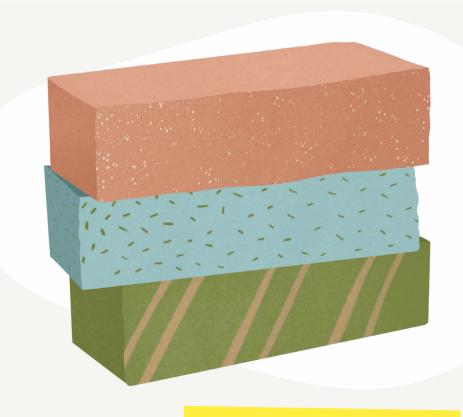
Adopt a basic open and participatory attitude
Provide experienced and authentic actors.
Provide a safe and child-friendly environment .
Enable multidisciplinary cooperation.
Consider information exchange beforehand.
Give priority to processes involving children and

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young people.

* There can also be multiple decisions.



STEP 1

THE PRECONDITIONS

Step 1

The preconditions

Adopt a basic open and participatory attitude

All children or young people have the right to express their **opinions**. That opinion should be taken into account. Children and young people are therefore allowed to **discuss**, **brainstorm**, **and participate**, whether at home, at school, in the neighbourhood, or in court proceedings. This requires an open and listening attitude in which you look for solutions together with the child or young person.

Provide experienced and authentic actors

Assessing the needs and experiences of various children and young people requires the perspective of an experienced person. Being **experienced** in working with children or young person or having knowledge of child, adolescent, and developmental psychology, and relevant human and social sciences are key.

The process also requires authenticity; where trust and reliability are of primary importance.



POINTS OF FOCUS

- Provide specific training for practitioners working directly with children or young people or making decisions regarding children or young people.
- Be flexible when working with children and young people. Some colleagues may be more familiar with working with young children or feel more comfortable to do so. In these cases, make sure opportunities are available to discuss and address this within your team.
- Invest sufficiently in monitoring, feedback, and assessment to improve knowledge about your own practice and decisions.

Provide a safe and child-friendly environment for the child or young person

Always carry out decision-making processes in an environment that is child-friendly and safe. This means that you tailor the environment and methods to the capacities of children and young people. And that you provide **sufficient time and space** so that the child or young person can prepare themselves and has the opportunity and self-confidence to express their views. It is best to also take into account the fact that different children and young people have **different needs** in terms of support and methods.

Enable multidisciplinary cooperation

You need to consider the consequences each potential solution may have for the child or the young person, taking into account individual characteristics and previous experiences. This requires a personal connection with the child or young person in question, but also a broad view on a child or young person's living circumstances. This broad view on a situation cannot always be guaranteed by one person. Therefore, it is necessary to consider how and when to cooperate in a multidisciplinary manner so that various perspectives (legal, psychological, pedagogical, etc.) can be taken into account. Of course, this is not possible in all situations and takes time and effort.

Most decisions have such a big impact on the child or young person's life that it is best not to make them alone. By using the 'four eyes principle', the practitioner ensures that whenever a measure is implemented or a decision is taken, a second person (the child, the young person, a parent or person with parental responsibility, and/or a practitioner) is involved to watch the process.

If you follow the roadmap, this happens automatically because you consider how you will involve the child or young person and take them through the different steps.

Consider information exchange beforehand

Make sure that information is exchanged in an adequate and correct manner when taking measures and making decisions in the best interests of the child using a multidisciplinary approach and the 'four eyes principle'. Regulations are in place that stipulate who is bound by **professional secrecy or duty of discretion**. Some information is confidential and cannot be shared with just anyone at any time. You must discuss with the child or young person, preferably always beforehand, which information can be discussed during the decision-making process.



REFLECTION

Ask yourself the following questions:

- Am I bound by professional secrecy or duty of discretion?
- How do I handle my professional secrecy or duty of discretion in this particular situation?
- What should I take into consideration (legally or otherwise) when talking about the child or young person to other people involved?
- How do I make sure I do not damage the child or young person's trust?



TIP

The Steunpunt Mens en Samenleving (SAM) (Centre of Expertise for People and Society) supports practitioners with regard to their professional secrecy or duty of discretion. Within youth work, an agreement on acting with ethical integrity has been put in place that supports you with any questions you may have about your own actions as a youth worker.

In addition, the non-profit organisation 'Uit De Marge' developed a code of conduct for youth welfare workers. In the context of education, special rules have also been laid down with regard to official and professional secrecy. This roadmap is targeted at a large variety of sectors. If your specific sector is not listed here, please do your own research in order to find out what specific (legal) rules apply to you and who can offer relevant support in your sector.

Give priority to processes involving children and young people

Processes or procedures involving children or young people should be given priority and completed as soon as possible. A delayed decision can have the opposite effect on the development and welfare of the child or young person. A longer procedure also means that the child or young person has to wait longer, which often leads to great uncertainty and a lack of clarity. It may also prevent the child or young person from taking full advantage of opportunities that are beneficial for their personal development and growth.



INVOLVING THE CHILD OR YOUNG PERSON

Step 2

Involving the child or young person

The Convention on the Rights of the Child requires you to involve a child or young person in determining what is in their best interests. Involving children and young people in decisions that affect them is a child and young person's right, formally enshrined in Article 12 of the Convention, among others.

1. Is tailored information available for the child or young person?

Make sure the child or young person knows what to expect from the process, what the situation and the procedure are, what rights they have, to what extent you will take their views into consideration, and what complaint mechanisms are in place. Provide the child or young person with sufficient tailored information and make clear agreements on this. Access to correct information can strengthen the child or young person and make them more resilient. Therefore, it is important that you provide information directly to the child or young person.



POINTS OF FOCUS

- Provide the information immediately or as soon as possible.
- Keep in mind that a child or young person has a different perception of time than an adult. The child or young person may feel overwhelmed by a large amount of information. You may have to split the information into a larger number of shorter sessions. If necessary, repeat the information given on a later occasion.
- It should be clear to the child or young person which information is confidential and which information you are obliged to share with parents or people with parental responsibility and other people involved. This information should also be provided without delay or as soon as possible.

Children and young people have the right to be informed about their rights (Art. 42, Convention on the Rights of the Child). The right to information is a prerequisite for the access and effectiveness of all children and young people's rights. Without adequate and tailored information about their rights, children and young people cannot make informed decisions or receive appropriate assistance.

Information should be tailored in such a way that it is appropriate for the child or young person's age, maturity, language, gender, and culture.



TIPS

- Ensure that general information is adapted to the specific situation of the child or young person.
- Provide the child or young person with all necessary information, even if it may only be useful at a later stage.
- Preferably communicate the information in the language preferred by the child or young person. Language and cultural barriers are a major obstacle for a lot of children and young people in accessing their rights and procedures.
- Pay sufficient attention to the environment in which the information is provided. Where does the conversation take place? What is the information provider's position in the room? Where is the child or young person positioned? Who else is present?
- Test various methods of conveying information. Consider, for example, pictures, drawings, pictograms, and videos. Be aware that children and young people of various ages and with diverse vulnerabilities will react differently to different forms and methods of communication.

To make a quality decision that is in the best interests of the child, it is essential to inform them about:

the right of the child or young person to participate in assessing their best interests;

how the interests will be assessed and by whom;

how the views of the child or young person will be heard;

how much weight will be given to the views of the child or young person;

what other factors will be taken into account and what weight will be given to them;

how the child or young person can be supported to determine what is in their best



TIP

interests:

Go over the roadmap together with the child or young person and ask which steps are still unclear. Repeat the roadmap with the child or young person on various occasions.

any obligations of other actors to provide information throughout the different steps.

2. Do you know if and how the child or young person wants to be involved in this process? Ask the child or young person what support they need during the decision-making process. The child or young person can only fully assess this after tailored information has been given (see Question 1). Discuss with the child or young person when they can become involved and what impact this will have. Provide sufficient space at each step of the roadmap to coordinate with and give feedback on the child or young person. Perhaps the child or young person wants to be very closely involved in some steps, but not in others. Listen to the concerns of the child or young person, take them seriously, and do not make promises you cannot keep.





POINTS OF FOCUS

- Guarantee the (physical, psychological and sexual) integrity of children and young people involved.
- Again, it is important to establish the boundaries of the confidential relationship and to thoroughly discuss the obligation of secrecy. It is important that the child or young person knows and understands the extent to which you are allowed to or must reveal something about the information you receive.
- In court decisions, the child or young person must be given appropriate legal representation. This is particularly important in administrative or judicial procedures when there is a potential conflict between the child or young person and the other parties in the decision. In this case, you must coordinate with the legal representative on how you will involve the child or young person. This should also be coordinated with the child or young person themselves.
- It can be a challenge to involve (very) young children throughout the process. Try to find creative and more playful ways to also involve (very) young children, together with the parents, the people with parental responsibility, and/or legal representatives.



TIPS

- Make arrangements at suitable times so that access to other rights such as education, leisure, and food are not compromised.
- Make sure the appropriate language is used during consultations. Avoid using difficult abbreviations and try to visualise the information from the conversation. Use an interpreter in the child or young person's language if necessary.
- Make sure the confidentiality towards adults is maintained at all times, especially when their interests conflict with those of the child or young person.
- Try to guarantee the continuity of the people involved and the contact people as much as possible. Ensure a proper transfer of information between actors if a change is required after all.

3. How will you take the child or young person's context into account during the decision-making process?

Or in other words, are you considering the various elements that co-determine the identity of the child or young person, such as gender, sexual orientation, skin colour, ethnicity, nationality, class, culture, religion, health, age, and residence status?

Involving children or young people means taking existing patterns of discrimination into account and must be inclusive at all times. Opportunities for participation should also be created for children and young people in vulnerable situations. As a practitioner, you must take account of and actively work on specific needs and any barriers they experience. These could be things like poverty, violence, a migrant background, gender identity, being less empowered or language-savvy, growing up in youth care or as a family carer, mental health issues, or a disability. You must make sure that everyone gets the opportunity to participate, without discrimination on any grounds and with consideration of cultural sensitivities.

Take sufficient precautionary measures to guarantee each child or young person as equal a process as possible. Owing to their particular vulnerability, some children or young people may feel that they do not know whom to trust or turn to for help or reliable information. Because of negative experiences with exclusionary mechanisms, they often have little trust in adults. Therefore, **gaining trust** and **creating a safe environment** is a major first step. To build a relationship of trust, you need **more time and resources** as well as **the right people**.



THE SITUATION AND THE QUESTION

Step 3

The situation and the question

4. What is the situation? What is the opinion of the child or young person on the situation? As already mentioned above, all children and young people have the right to freely express their views about the situation they are in and these views have to be taken into consideration. Secondly, you should consider the situation. What is going on? And possibly: what happened in the past? Even at this stage, it is important to know whether it is already clear how the child or young person experiences or assesses the situation. Has this already been discussed with the child or the young person? If so, why? If not, why not? If you have not spoken with the child or young person yet, schedule a moment to discuss this together.



5. Who is involved in the situation?

Once the situation and the view of the child or young person on it are clear, the next thing to examine is who else is involved in the situation in question. This may be adults in the personal network (e.g. parents, people with parental responsibility, family, and friends) or actors working with the child or young person in a professional or voluntary capacity (e.g. support workers, teachers, or youth workers). This step is completed once the people involved have been listed. It is important to specify the reason for each person's involvement to a sufficient extent.



POINT OF FOCUS

- Make sure you take the key people involved into account sufficiently throughout the next steps of the roadmap. Think about where and when you will involve them.
- Identifying the people involved can be easy sometimes and the list can soon grow long. Divide up the list by determining the reason for each person's involvement and their interests in realising the rights of the child or young person.
- In doing so, make an adequate assessment of how the people involved are perceived by the child or young person.
- In particular, give sufficient consideration to how you will involve parents or people with parental responsibility in the decision-making process.

6. Is there any information that is not yet available to you?

Now that the situation and the key people involved are clear, it is important to **consider** the available information. What information is already available? And what is not? Clearly distinguishing facts from opinions is critical. It is precisely by taking a closer look at the missing factual information that it becomes clear that perhaps too much is still unknown. You can look for the missing information if time permits. However, this is often impossible due to a lack of time and resources. In such cases, it is important to know which information is still unclear.





Identify the questions that still require clarification before coming to a decision.



7. What needs to be decided?*

Before proceeding to the analysis and weighing, it is essential to get a clear picture of **what needs** to be decided and what does not. It may help to formulate one or more short and unambiguous questions that will allow you to automatically reach the necessary depth during the analysis and weighing. Make sure the question(s) is/are clear to the child or young person as well as to the other people involved.



POINTS OF FOCUS

- Make sure you do not formulate the question in such a way that the answer is already clear. Avoid leading questions.
- The question should be sufficiently concrete and concern the child or young person and the people involved in the situation.



* There can also be multiple decisions.



THE ANALYSIS AND THE WEIGHING

Step 4

The analysis and the weighing

8. What is the impact of the decision on the life and rights of the child or young person? In this step, you will consider the extent to which the decision on the life of the child or young person. You should ask what the child or young person thinks about each question. What impact does the child or young person think this will have on their life? And why?



TIP

Use the grid form attached to this roadmap to visualise these different perspectives.



The following 7 questions are always covered:

- 1 Care, protection, and safety: what impact does the decision have on the care, protection, and safety of the child or young person?
- **2 Identity:** what role do characteristics of the child or young person's identity (e.g. sexuality, culture, religion, etc.) play in making the decision?
- **Family, relatives, and network:** does the decision potentially affect the maintenance of family ties and, in particular, family life? If so, which family ties? And how are they affected? Is there an impact on the contact with other key people in the child or young person's network?
- **4 Vulnerabilities:** how are possible vulnerabilities (e.g. disability, homelessness, abuse, etc.) taken into account in the decision?
- **5** Education: does the decision have an impact on access to education?
- **6 Mental health**: does the decision have an impact on the child or young person's emotional, psychological, physical, and social well-being?
- **7 Leisure:** what impact does the decision have on the child or young person's leisure time activities and recreational opportunities?

Are there any other questions that matter? At the very least, the questions above should be asked whenever a decision is made regarding the child or young person. Depending on the situation, you will have to ask other questions about the child or young person's life.

9. How do the child or young person and the other people involved look at these elements? Do their views coincide or are they contradictory?

The different arguments for or against the decision or action are mapped during this step. This will provide you with insight into the perspectives of the child or young person and the other people involved, such as parents and people with parental responsibility, as well as practitioners and legislators. This makes the choice for a particular decision structured and reasoned. Above all, make sure to ask this question to gather arguments for and against that are as complete and accurate as possible. Wait until the next question to weigh the elements and give reasons for the decision to be made.



TIP

Use the grid form attached to this roadmap to visualise these different perspectives. The aim is to get as complete a visual picture as possible of all the arguments for and against.



POINTS OF FOCUS

- State arguments in an understandable and clear manner using full sentences, rather than summary phrases. The clearer an argument is stated, the clearer the weight you will ascribe to it later.
- Try to distinguish between facts and opinions in the arguments as much as possible.

10. Weigh the different elements and work out the decision. In doing so, pay attention to the interests and rights of the child or young person, as well as those of other involved parties. The best interests of the child does remain a primary consideration.

You identified the arguments for and against in the previous step. Now, the aim is to assign a weight to the elements of the decision(s) based on these arguments. Double-check to make sure you have not overlooked any arguments. Review the answer to <u>Question 7</u> again: 'What needs to be decided?'. Clarify and repeat the decisions to be made to the child or young person and the other people involved. Look at the list of arguments and examine what decisions may result from them. Weigh every possible decision, while always considering the potential consequences for the child or young person and their living environment. Finally, examine which arguments support the decision and whether this causes certain arguments to become irrelevant.



Are there any other differences of opinion? If so, about what and between whom? What follow-up steps are needed to take this into consideration? It will not always be possible to reach a consensus on all issues. It is especially important to consider all perspectives and voices (from Question 9) when making a decision. This way, you ensure that all voices are taken into account in the decision-making process.

Have you made a decision? Double-check to ensure that the decision results in the best possible outcome for the child or young person. In concrete terms this means that the decision should have as little negative impact as possible on the child or young person's life and rights.



TIP

Want to find out which rights could be affected by the decision? Then take a look at the different rights in the <u>Convention on the Rights of the Child</u>.





THE DECISION

Step 5

The decision

11. The specific circumstances of the child or young person may change over time. When and how will you evaluate and adjust the decision?

The decision-making process is a unique activity, one in which you take the specific prevailing circumstances of the child or young person into account. These circumstances are not static and may change over time. It is therefore important to determine when and how you will evaluate and adjust the decision. Accordingly, the roadmap should also be interpreted as a process that takes place repeatedly. However, it is important that you also keep the continuity in mind and that the decision does not so often change that it has a negative impact on the child or young person's life and rights.



12. Give reasons for the decision and discuss this with the child or young person. Discuss at least the content of the decision, how the different elements have been weighed, and how the child or young person's opinion has been taken into consideration.

Discuss directly with the child or young person what decision has been made. The child or young person, and in some cases the representative, will know after this discussion what factors, elements and circumstances determine the decision and when the decision will be reviewed or adjusted.

During this step, it is critical that you thoroughly ensure the child or young person has truly understood the decision. You can do this by asking the child or young person to repeat it in their own words.



REFLECTION

Possible questions to ask after reasons have been given for the decision:

- Do you agree with what I just said?
- Is there anything in the decision you disagree with? If so, what and why?
- Was there anything that surprised you in this decision? Why?

13. Describe how the child or young person (or a representative) can challenge the decision. Provide tailored information to the child or young person.

You have discussed the decision with the child or young person. Perhaps the child or young person already disagrees with the decision made. On the other hand, maybe the real impact will only become clear at a later stage. That is why it is important to describe the final step: how the child or young person can challenge the decision. Are any mechanisms in place to review or appeal the decision? This often involves legal procedures. Nevertheless, it is useful to reflect in other contexts as well whether there are ways for the child or young person to challenge a decision. You can gain insight into the extent to which the child or young person agrees with the decision(s) by asking the reflection questions mentioned under Question 12.

Also provide tailored information about the appeal and complaint mechanisms and discuss this directly with the child or young person whenever possible.



TIP

If it is impossible to put such a procedure in place within your organisation, then make sure the child or young person knows that they can always contact the complaints hotline of the Flemish Office of the Children's Rights Commissioner.

On 23 May 2013, the UN Committee on the Rights of the Child issued a General Comment on the right of the child to have his or her best interests be a primary consideration. On the occasion of the 25th anniversary of the Convention on the Rights of the Child (2014), the Flemish Department of Culture, Youth and Media (DCYM) organised a European Conference on the Best Interests of the Child in collaboration with the FPS Justice and the French Community. In 2019, DCYM issued the <u>Dutch translation of the General Commentary</u>. In the same year, KeKi, commissioned by DCYM, examined how and in what way the principle of the best interests of the child is applied in the daily practice of practitioners in Flanders. This roadmap is the result of this process and is available via <u>DCYM's website</u> and <u>KeKi's</u> website.

The roadmap is a practice-oriented translation of the General Comment. Insights from literature, research, other tools on the best interests of the child, and the 'method of moral deliberation' were also integrated into the roadmap.

HAVE YOU STARTED USING THE ROADMAP?

Be sure to let us know your experiences in using the roadmap! You can do so by sending an email to info@keki.be.

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COLOPHON

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CONTRACTOR

Kenniscentrum Kinderrechten vzw (KeKi) – Children's Rights Knowledge Centre

info@keki.be | www.keki.be

- f www.facebook.com/KeKivzw
- twitter.com/kekivzw

AUTHOR

Ellen Van Vooren, Children's Rights Knowledge Centre Coordinator

FINAL EDITING

Joost Van Haelst, Flemish Department for Culture, Youth, and Media

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Flore Deman

RESPONSIBLE PUBLISHER

Luc Delrue Flemish Department Culture, Youth, and Media Arenbergstraat 9 1000 Brussel

- ∡ jkp@vlaanderen.be
- https://www.facebook.com/deptCJM/

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