

MANUAL AND PROJECT REPORT

# Dublin for Guardians

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# Foreword

Between June 2013 and January 2015, Caritas International, France Terre d'Asile and Nidos carried out the European Project "Dublin Support for Guardians". The aim of the project was to offer practical assistance to guardians and representatives within the European Union (EU). This assistance focused on the various ways in which an unaccompanied minor is confronted with the Dublin III Regulation.

The background of the project is experience – mainly in the daily practice of Nidos - with practical issues regarding the Dublin III Regulation. Nidos is the national guardianship organization for unaccompanied minors in the Netherlands. In individual cases Nidos is appointed as the legal guardian by the juvenile court. Employees act on case level as guardians that actually assist the unaccompanied minors in their daily life. They are educated social workers with a bachelor degree, additionally trained to assist the target group of unaccompanied minors.

At the end of 2009, Nidos was confronted with many unaccompanied minors that stated to have received inadequate treatment in some other EU Member States. For example, minors claimed that they had been abused, that they were living on the streets or that they did not succeed in applying for asylum.

Nidos took this signal as a serious appeal for help and decided to examine the situation in other EU Member States.

This research was further motivated by Nidos' obligation to transfer guardianship to another guardian in another EU Member State in case an unaccompanied minor leaves the country (thus for example via a transfer under the Dublin III Regulation).

To gain insight into the situation, Nidos sent short questionnaires to other EU Member States about several subjects, such as the way guardianship is organized in another EU Member State, the type of accommodation for unaccompanied minors, the possibilities for medical care, etc. The aim was to provide guardians with information in individual cases to either 1) organize an adequate transfer under the Dublin Regulation or 2) try to avoid a transfer in case it seemed that this would lead to a situation contrary to the best interests of the child or to article 3 of the European Convention for Human Rights.

Anticipatory to the reinforcement of the Dublin III Regulation, Nidos took the initiative for the abovementioned European Project in order to share relevant information with guardians in other EU Member States.

Via this way, Nidos and its partners in the project Caritas International and France Terre D'Asile want to thank persons who helped – and are currently still assisting - with providing advice and assistance or connecting Nidos with other organizations within the EU.

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# Introduction

On 01-01-2014 the Dublin III Regulation 604/2013 came into force. The Regulation's goal is "*establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*".<sup>1</sup> This Regulation replaces the Dublin II Regulation 343/2003.

Specifically, the report provides an overview of the situation of unaccompanied minors who are faced with the Dublin Regulation in any way. In connection to this we can roughly distinguish two kinds of situations. On the one hand it deals with unaccompanied minors<sup>2</sup> who have no family and/or relatives in another EU Member State, whereby the question arises, which Member State is responsible for the application for international protection of the minor. On the other hand it deals with the unaccompanied minor who does have family and/or relatives in another EU Member State, whereby the question arises whether, for that reason, that other Member State is responsible for the application for international protection of the minor.

The position and rights of unaccompanied minors in the Dublin III Regulation have, compared to the Dublin II Regulation, been significantly extended and strengthened. Through an appeal to the Dublin II Regulation unaccompanied minors could be reunited with their parents or legal guardian if they are in another EU Member State. In the current Regulation the unaccompanied minor has the opportunity to be (re)united also with brothers or sisters, uncles or aunts and grandparents if they are in another EU Member State. The [first chapter](#) of this report will deal in more detail with the changes, opportunities and rights that unaccompanied minors have on the basis of this regulation.

In collaboration with Caritas International and France Terre D'Asile, Nidos has executed a project that deals with the way in which the various Member States apply the Dublin III Regulation. In this context attention has been paid to both aforementioned groups of unaccompanied

minors. The topics that received special attention are listed in [chapter two](#).

The earlier mentioned organisations visited various Member States. During these working visits conversations were held with relevant authorities, representatives of unaccompanied minors, lawyers, NGO's and immigration judges. The results of these conversations have been registered in country reports that contain a concise description of the situation in the Member State concerned. These country reports can be read in [chapter three](#).

Another purpose of the working visits was promoting a helpdesk for guardians within Europe. During the project the helpdesk tried to offer support to guardians and representatives if they encountered the Dublin III Regulation in their representation/guidance of an unaccompanied minor. It specifically concerned situations in which there was a possible reunification of an unaccompanied minor with a family member or relative in another EU Member State, or the question whether that was in the best interest of the minor and how this could be examined. The starting point in these activities was that it is in the best interest of the unaccompanied minor that a process is established in which the care and relevant points of attention concerning the development of a child, can be transferred from one professional to

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<sup>1</sup> Ro 604/2013

Art 2 under j Ro 604/2013: 2 "Unaccompanied minor means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States."

another, who is (or will be) in charge of the child. [Chapter four](#) shows an overview of the questions that the helpdesk received as well as the answers that were given.

In November 2014, an expert meeting took place with experts who work in the various EU Member States. This meeting took place in Brussels. Based on the experience with the Dublin Project, specific themes were translated into a programme for this meeting. Several experts gave input to the expert meeting. The meeting's conclusions and experiences are described in [chapter five](#).

This report will finally conclude with an overview of the conclusions and recommendations to strengthen the proper application of the Dublin III Regulation in practice.

# CHAPTER 1:

## The Dublin III Regulation and unaccompanied minors

The introduction describes that, compared to Dublin II, Dublin III offers more opportunities and rights for unaccompanied minors. It also states that it is important in the application of the Dublin Regulation in the case of unaccompanied minors, to make a distinction between two groups of minors. On the one hand there are minors who have *no* family members or relatives in other EU Member States. The question may arise what member state is responsible for processing the application for international protection. This may occur when an unaccompanied minor has already made an application for international protection to another EU Member State. On the other hand there is the group unaccompanied minors who *do* have family members and/or relatives in another EU Member State. In connection to this the question may arise whether it is in the best interest of the unaccompanied minor to transfer him or her to a member state in which a family member or relative is legally present.

This chapter shows what the relevant legal framework is of both groups of unaccompanied minors. Attention will also be given to relevant jurisprudence as well as the influence of the Implementing Regulation (118/2014), which went into effect on 31-01-2014.

It holds true for both groups of unaccompanied minors that the Dublin Regulation has given the best interest of the child a stronger foundation. In this context, reference is made to consideration thirteen and fourteen of the preamble of the Dublin III Regulation and to article 6 of the Regulation "Guarantees for minors". A number of elements are mentioned here in order to enable authorities to put the best interest of the child first. For example, taking into account the minor's points of view, paying attention to risks concerning human trafficking and considering the minor's wellbeing and development. Another new element is the tracing requirement to track down the minor's family members and/or relatives in other EU Member States and to determine the EU Member State responsible (this will hereinafter be called the tracing requirement). Finally it is pointed out that the competent authorities processing applications of unaccompanied minors received suitable education for such processing.

### Unaccompanied minors without family members and/or Relatives within the EU

The responsibility criterion, which is relevant in the question which EU Member State carries the responsibility for handling an asylum application of the unaccompanied minor who does not have family members and/or relatives in another EU Member State, is article 8 paragraph 4 of the Dublin III Regulation. That article states: *"In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interest of the minor."*

This responsibility criterion is identical to article 6 paragraph 2 of the Dublin II Regulation. In connection to this it is relevant to refer to a ruling of the Court of Justice of the European Union (now: CJEU) of 06 June 2013, C-648/11. This ruling answers preliminary questions of the Court of Appeal of England and Wales and specifically the question of how the article must be read in light of the situation that an unaccompanied minor has applied for international protection in more than one EU Member State. The Court of Appeal's question was: *"In Ro 343/2003, where an*

*applicant for asylum is an unaccompanied minor with no member of his or her family legally present in another Member State has lodged claims for asylum in more than one Member State, which Member State does the second paragraph of Article 6 make responsible for determining the application for asylum?"*

The CJEU answered this question as follows: *"The second paragraph of Article 6 of Council Regulation (EC) No 343/2003 (...) lodged in one of the Member States by a third-country national must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible'."*

The ruling also contains the following key points:

- It concerns requests for taking back;
- The best interest of the child is a primary consideration;
- A consideration of the child's best interest should take place;
- The best interest of the child is made generic in terminology to such an extent that it is never in the best interest of the child to be forced to be transferred to the first EU Member State.

After the ruling of the CJEU a discussion arose among the authorities of the various EU Member States about how to deal with unaccompanied minors who have already received a final decision to their application for international protection. That discussion was caused by specifically two paragraphs of the mentioned ruling of the CJEU. These state in paragraph 63: *"Furthermore, such an interpretation of the second paragraph of Article 6 of Regulation No 343/2003, which designates as responsible the Member State in which the minor is present after having lodged an application there, does not, contrary to the Netherlands government's contention in its written observations, mean that an*

*unaccompanied minor whose application for asylum is substantively rejected in one Member State can subsequently compel another Member State to examine an application for asylum;" and in paragraph 64: It is clear from Article 25 of Directive 2005/85 that, in addition to cases in which an application is not examined in accordance with Regulation 343/2003, Member States are not required to examine whether the applicant is a refugee where an application is considered inadmissible because, inter alia, the asylum applicant has lodged an identical application after a final decision has been taken against him."*

These paragraphs in principle answer the question as to how the application of an unaccompanied minor can be handled if an unaccompanied minor has already received a final decision to an application for international protection in another EU member state. However, the ruling and legal ground concerned do not offer a decisive answer to the question whether the unaccompanied minor may in fact be transferred to another EU member state. In practice it has been noticed that the authorities of member states within the EU, sometimes transfer unaccompanied minors in case of a final decision on an application for international protection and that authorities sometimes opt not to do this.

### **Unaccompanied minors who have family members and/or relatives within the EU**

Regarding unaccompanied minors who have family members and/or relatives in another EU Member State, several responsibility criteria in the Regulation are relevant. It concerns: article 8 paragraph 1: *"Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interest of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State*

*where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present."*

Article 8 paragraph 2 states: *"Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interest of the minor."*

Finally, article 8 paragraph 3 states: *"Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interest of the unaccompanied minor."*

There are some important elements in the previous responsibility criteria:

"Legally present": This term is not explained in chapter two ("Definitions") of the Dublin Regulation. The manner in which authorities put this concept into operation was topic of conversation during the working visits. Individual examination: idem previous point.

Overall it is worth noting that in determining the responsibility of an EU Member State "the best interest of the child" is a decisive factor, specifically the question whether reunification of a child with its family members and/or relatives is in its best interest. This theme was also a topic of conversation during all the working visits.

### **The position of the representative**

As will later be shown from this report, the interpretation of duties of the representative of unaccompanied minors is done in very different ways within the EU Member States. Nevertheless, the Regulation does offer a fairly clear overview of reference points for interpretation of those duties. First of all the Dublin III Regulation shows *that* a representative must be appointed for an unaccompanied minor. Next it follows from the Dublin III

Regulation that such a representative must possess the qualifications and expertise to ensure that the best interest of the child is taken into account in the execution of the Regulation. Finally the Regulation shows that a representative has access to the documents concerning application included in the file of the minor. All this has been registered in the guarantees with regard to minors to which a reference was made earlier and that have been registered in article 6(2) of the Dublin III Regulation. That article states: *"Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors."*

It is relevant to point out that article 6 paragraph 2 of the Dublin III Regulation quoted above has an addition that can be found in the Implementing Regulation (118/2014). This Implementing Regulation serves as supplement to the application of the already existing Implementing Regulation 1560/2003, which was applicable to the Dublin II Regulation and to the current Dublin III Regulation.

In the Implementing Regulation 1560/2003 there are two additional provisions with regard to unaccompanied minors. Regarding the role and position of the representative it should be remarked that Implementing Regulation 118/2014 gives the following addition: consideration seven (...) *"The authorities carrying out the process of establishing the Member State responsible for examining the application of an unaccompanied minor shall involve the representative referred to in Article 6(2) of Regulation (EU) No 604/2013 in this process to the greatest extent possible."*

### Other relevant provisions concerning unaccompanied minors

The Dublin III Regulation requires EU Member States to inform unaccompanied minors of the application of the Dublin Regulation through a brochure for unaccompanied minors. This follows from article 4 paragraph 3. This brochure specifically deals with the following topics:

- a. The goals of the Regulation and the effects of making an application in another member state;
- b. The criteria for determining the responsible member state;
- c. The personal interview (more about this later) and the opportunity to provide information about the presence of family members, relatives or other family relationships in the member states;
- d. The opportunity to appeal a transfer decision;
- e. The fact that the competent authorities of member states could exchange information about him;
- f. The right to access to the details concerning a person.

How EU Member States have set up their information provision process was a topic of conversation during the working visits.

Finally, the Dublin III Regulation requires the authorities of member states to conduct a personal interview with the minor, its object being that the responsible member state can be determined more easily. It also intends to ensure that the applicant for international protection understands the written information about the Regulation. The Regulation mentions several criteria to which this personal interview must adhere:

- The personal interview takes place in a *timely* manner and in any case before a decision is taken to transfer the applicant to the responsible member state;
- The personal interview will be held in a language that the visitor understands or can reasonably be assumed to understand and communicate in;
- The personal interview takes place under such circumstances that a suitable level of confidentiality is guaranteed;
- The member state that performs the

personal interview draws up a written summary with at least the most important information that the applicant provided during the interview. The member state ensures that the applicant and/or legal advisor or other counsel representing the applicant, has timely access to the summary.

The aforementioned Implementing Regulation Ro 118/2014 further requires member states in consideration 7 that a representative should be present at the personal interview with an unaccompanied minor.

The manner in which authorities from different EU Member States handle the requirement to holding a personal interview, was also topic of conversation during the working visits.

## CHAPTER 2: Methodology

### Topics list for interviews

The previous chapter includes the relevant legal framework that can be applied to determine responsibility when an unaccompanied minor makes an application for international protection. The legal framework provides a clear overview of the relevant topics of conversation during the interviews. Summed up these are:

- The representative – who or what (organization) is this in each EU Member State and what expertise and qualifications does this representative have in order to ensure that the best interest of the child is taken into account during the execution of the Regulation (article 6 paragraph 2);
- The tracing requirement (article 6 paragraph 4);
- Suitable training regarding the specific needs of minors for staff members who handle the applications of minors (article 6 paragraph 4);
- The interpretation of article 8 paragraph 4 (which EU Member State is responsible if an unaccompanied minors does *not* have family members and/or relatives in another EU Member State);
- Putting into operation of the term “legally present” (article 8 paragraph 1-3);
- Interpretation of the term “individual examination” (article 8 paragraph 2);
- The manner in which the competent authorities collaborate with the representative;
- The question whether there is a specific brochure for unaccompanied minors (article 4);
- The manner in which the personal interview has a place in the procedure (article 5).

### Assignment resulting from the dublin iii regulation

At a more overarching level an attempt was made to gain an insight into the way in which both authorities and representatives handle the “assignment” that results from the Dublin III Regulation. The Dublin III Regulation puts a strong emphasis on the importance of unity of family life. It is known from experience that in general it is in the best interests of children that they grow up, or as the case may be, develop themselves near family members and/or relatives. All this makes clear that a reunification is in the biggest interest of a minor. Despite that there could still be grounds not to proceed with a reunification of a minor with family members and/or relatives. This may for example be the case when it involves a risky situation, for example because a potential relative or family member cannot offer a safe education situation to a minor. The Dublin III Regulation adequately adjusts to these potentially risky situations. This is done by always adding to the responsibility considerations that the member state is responsible where the family member or relative is legally present, *if this is in the best interest of the child*.

It requires from both the authorities and the representatives to gain an insight in the potential situation that an unaccompanied minor would encounter when reunited with a family member and/or relative. This is the only way an answer can be given to the aforementioned question: is (re)unification of a child with its family members and/or relatives in the best interest of the child or not. Authorities have an explicit responsibility in this now that they should take decisions about the question whether they do or do not send a take-charge request to the authorities of another member state or whether authorities will

accept an incoming take-charge request. At the same time representatives also have an explicit responsibility now that they are held to ensure, as a result of article 6 paragraph 2 of the Dublin III Regulation, that during the execution of the procedures followed within the framework of the Regulation the best interests of the child are taken into account.

Gaining an insight into the aforementioned potential education situation with family members and/or relatives requires both authorities and representatives that they look *beyond the borders of their own member state* and investigate. After all, the main concern is knowing what the interests of a minor are, considering for example his social emotional development and subsequently how this fits with the situation of a family member and/or relative in another EU Member State. Finally, the question is addressed how to bundle this information so that a definitive answer can be given to the question whether or not reunification is in the best interest of the child. During working visits an attempt has been made to gain insight into this working procedure.

### **Best interest of the child**

In this context it should finally be remarked that an actual putting into operation of both "the best interest of the child" and an "adequate education situation" does not currently exist, at least not in the sense of unambiguous definitions and criteria that are accepted by everyone (authorities, representatives but also lawyers and the judicial system). There are however several developments that attempt to explain the subjects mentioned in further detail. Some examples of this:

- General Comment number 14 of the Children's Rights Committee which concerns a more detailed explanation of article 3 IVRK;
- Jurisprudence of the ECtHR (e.g. *Jeunesse v The Netherlands*) or of the CJEU (e.g. *MA & Others v UK*);
- The report of the Fundamental Rights Agency (FRA) "Guardianship for children deprived of parental care – a handbook to reinforce guardianship systems to

cater for the specific needs of child victims of trafficking" (FRA, 2014).

Furthermore, it is worth noting that the European Asylum Support Office (EASO) recently, in December 2014, organized a meeting for authorities of EU Member States and several NGO's. Prior to this meeting EASO distributed a questionnaire among the EU Member States about how authorities handle weighing the best interest of the child. The results of this meeting will be published on EASO's website ([www.easo.europa.eu](http://www.easo.europa.eu)).

Finally, each EU Member State has an existing structure – albeit that it is clear there are considerable differences between the EU Member States – for appointing representatives to unaccompanied minors. There are already representatives who have their working methods and methods to investigate and represent the best interest of a child.

### **Promoting support for guardians & representatives**

Apart from gaining insight into the actual situation in the different EU Member States, Nidos has tried from the moment the Dublin III Regulation went into effect, therefore as of 01-01-2014, by means of a helpdesk, to offer support to guardians and representatives in executing the procedures resulting from the Dublin III Regulation. Since several years Nidos has had special attention for individual unaccompanied minors who in any way come into contact with the Dublin III Regulation. This has led to Nidos currently having a fairly broad network of similar organisations within the EU as well as getting an insight into the actual situation concerning for example guardianship, access to medical facilities and the reception conditions in other EU member states. With regard to this, reference has to be made to the European Network of Guardianship Institutions (ENGI) where Nidos has built up a network of relevant organizations for guardianship, in six countries now. Nidos has intended to share the available knowledge and contacts with guardians

and representatives when they need support in addressing the question how the best interest of the child relates to any reunification with family members and/or relatives in another EU Member State. The helpdesk has been promoted during the working visits to the several European Member States. An information sheet about the helpdesk was also distributed Europe-wide through a mailing group consisting of NGO's, policy makers and lawyers. Finally, several presentations were given about the project and the helpdesk in the past year, for example at EASO-meetings, at a conference of the Council of Baltic Sea States in Riga and at the annual conference of the FRA in Rome.

Examples of concrete case studies that were brought to the attention of the helpdesk as well as the advice that was given, can be found in chapter 4.

## CHAPTER 3: Country reports

In the following pages, a short description of the relevant information in EU Member States can be found. Member States that have been subject to a more detailed research and a field visit, have more detailed and lengthier descriptions. The content of these reports follow the order of the relevant articles of the Dublin III Regulation. An attempt is made to give a short explanation about the working process with regard to determining the EU Member State responsible for an unaccompanied minor.

In this respect it has to be noted that attention is giving to three types of situations:

1. A situation where an unaccompanied minor is present in a Member State and has a family member or relative in another EU Member State;
2. A situation where authorities/ representatives deal with an unaccompanied minor in another EU Member State but who has a relative or family member in the EU Member State;
3. A situation where an unaccompanied minor has no relatives or family members in other EU Member State but lodged an application for international protection in another EU Member States.

Subsequently, the country reports will conclude with an advice, which is called "care to care". This covers the situation where a guardian of an unaccompanied minor wants to transfer relevant information about the unaccompanied minor to a guardian in another European Member State before an unaccompanied minor is transferred to that European Member State.

For more extensive information about guardianship systems in other European Member States please refer to the reports that were produced in the previous mentioned ENGI network. These reports can be found at the website [www.engi.eu](http://www.engi.eu). Finally, please note that contact details placed in the country descriptions have been placed there with the approval of the contact. The contact details are dated at the time of finalization of the report, in January 2015.



## AUSTRIA

### **Unaccompanied minors in Austria (article 2(j))**

The Austrian authorities consider all minors who arrive in the Member State without their parent(s) or legal guardian as an unaccompanied minor.

### **The representative of unaccompanied minors in Austria (article 2(k))**

An unaccompanied minor who arrives in Austria, may make and lodge his application for international protection at an Initial Reception Centre in Austria. At this centre a legal representative will be appointed. There are two NGOs who work at the reception centre and who are present there. They are appointed by the Ministry of Interior. They are appointed alternately to an unaccompanied minor. A correction can be made if this means that two members of the same family have a different legal representative. It concerns the NGO "Diakonie Flüchtlingsdienst" and the NGO "Verein Menschenrechte." Employees of this NGOs who are representatives of unaccompanied minors have a Masters Degree in Law.

In Austria, if someone asks for asylum, the authorities check if there is another country responsible. If the asylum authorities say that Austria is responsible for the asylum application, the minor will be transferred to a local authority (special facility for unaccompanied minors). Guardianship for an unaccompanied minor cannot be appointed to a guardian until after six months. This guardianship is appointed by the Court to the Youth Welfare Authorities. They are established regionally at the municipalities (Magistrate) and district commissions (Bezirkshauptmannschaften).

### **Unaccompanied minors and the right to information (article 4)**

The authorities who initially come in contact with unaccompanied minors are the Police and the above mentioned NGO. The Police have specially trained officers who communicate with unaccompanied minors and explain the Dublin III Regulation to the unaccompanied minor. Every written report that is produced with regard to the procedure, is sent to the representative of the unaccompanied minor.

### **Unaccompanied minors and the personal interview (article 5)**

The personal interview with an unaccompanied minor at the admissibility stage of the asylum procedure is held at the mentioned Initial Reception Centres East in Traiskirchen or the Initial Reception Centre West in Thalham. The application for international protection may be inadmissible if the responsible Member State under the Dublin Regulation is identified for example in case an unaccompanied minor has a relative or family member in another European Member State. The personal interview takes normally about 30 minutes to one hour. This personal interview is held by a caseworker of the Federal Office for Immigration and Asylum. A representative is always present at this interview.

### **Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in another European Member State**

The starting point for the Austrian authorities is that the best interest of the child is the primordial consideration throughout the asylum procedure. In order to trace the relative or family members the Federal Office initiates tracing in Austria by searching through all relevant databases on grounds of the information provided by the unaccompanied minor. Furthermore – if applicable to the circumstances of the individual case, the

Federal Office may conduct a tracing via the Austrian embassy in another European Member state. The Austrian authorities have liaison-officials in various Member States inter alia Hungary as well as in Italy or also in third countries who can also assist in a tracing.

The best interest of the child is always respected according to the Austrian Authorities since this principle is discounted in the national procedures and policies. There is no exhaustive definition of the best interest of the child in place allowing to provide an assessment of the individual case.

The Austrian Authorities involve the representatives of the unaccompanied minors in the sense that they are present at the hearings of the unaccompanied minors and are able to react on written reports that are produced in the Dublin Procedure.

The Austrian Authorities consider that in case an unaccompanied minor has a relative or family member in another European Member State, they can send a take charge request in accordance with Regulation 604/2013 to the other Dublin Member State. The Authorities of the receiving Member State as well as the Federal Office for Immigration and Asylum examine if a (re)unification is in the best interest of the child.

#### **Unaccompanied minors in other European Member State with a relative or family member in Austria**

If the Austrian Authorities receive a request from another European Member State to take charge of an unaccompanied minor because this minor has a relative or family member in Austria, the Federal Office assessed the individual circumstances of the case. a. A careful check of the present family ties is made for example by interviewing the relatives and/or family members residing in Austria. The Austrian Authorities consider that the examination if a (re)unification is in the best interest of the child is a responsibility of the requesting European Member State along with the requested Member State.

The Austrian Authorities do not have agreements with organizations to assess the situation at a family member but consider this to be a responsibility of the requesting European Member State. Unaccompanied minors without relatives or family members in other European Member States

In line with the ECJ judgement C-648/11 the Federal Office does not transfer unaccompanied minors who lodged an application in Austria to the Member State where the unaccompanied minor previously lodged an application for international protection. There are no exceptions with respect to this. In case it turns out after an age assessment that a minor is actually an adult and the person had stayed in another European Member State before, the Austrian Authorities will transfer this person to the first European Member State.

#### **Care to care**

As mentioned in the definition of an unaccompanied minor, a representative will be appointed to the unaccompanied minor in case he or she is (re)unified with relatives (other than parents) or family members. It is described before that, in practice, the Youth Welfare Authorities acts as the guardian of an unaccompanied minor and that this system is not organized on a national level but on the level of the municipality. This means that in case a guardian in one European Member State wants to transfer the actual care to the receiving guardian, he/she has to find out who the responsible municipality is going to be in order to get in contact with the responsible Youth Welfare Authorities.

**RELEVANT CONTACT DETAILS IN AUSTRIA ARE**

Diakonie Flüchtlingsdienst  
Steinergasse 3/12  
1170 Wien  
Tel.: 0043.1.4026754  
Fax: 0043.1.4026754  
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*An NGO with a particular knowledge on unaccompanied minors and relevant organizations who work with unaccompanied minors throughout Austria, is*

Asylkoordination Österreich  
Burggasse 81/7  
A-1070 Wien  
Tel.: 0043.1.5321291  
Fax: 0043.1.53212920  
Email: asylkoordination@asyl.at

*Furthermore, guardians or representatives are advised to ask the Austrian Authorities via their own authorities to which municipality an unaccompanied minor is sent upon arrival in Austria. With insights in these details, it would be possible to search for the (future) competent and responsible Youth Welfare Department to transfer relevant information to.*



## BELGIUM

### Unaccompanied minors

All minors who are citizens from a country that is not a member of the European Economic Area (EEA) and who are not accompanied by parents or other legal representatives and who ask for asylum or who do not meet the conditions for entry or residency on the Belgian territory are considered to be unaccompanied minors. Since November 2014, minors who are a national from a country that is a member of the EEA or Switzerland can under certain specified conditions be considered as European unaccompanied minors. The minors have to be identified as an unaccompanied minor by the national guardianship service.

### The representative

The Dienst Voogdij is the national guardianship service and falls within the jurisdiction of the ministry of Justice. The service is responsible for the identification of unaccompanied minors, the assignment of guardians, the selection of guardians, and the monitoring and coordination of the work of the guardian.

Guardians can be either private persons, the so-called “volunteer-guardians” (most of them) or employed by an NGO, the so-called “employee-guardians”. There are several NGO’s with whom the guardianship service has an agreement, for example Caritas International and the Flemish Red Cross. The private persons or “volunteer-guardians” are selected by the guardianship service. All guardians get a special training from the guardianship service. There is some degree of collaboration between the volunteer and employee guardians that will be extended in the future (helpdesk for the volunteer guardians and a traineeship for the new volunteer guardians).

The work of guardians is overseen by the guardianship service on a federal level and the local justice (Justice de paix) of the community where the minor resides. Guardians are obliged to send a report about each minor to these legal entities every 6 months and every year, an evaluation is supposed to be organized by the guardianship service.

The guardian is the legal representative of the minor. The best interest and rights of the minor remain the focus of attention throughout the mission of the guardian. There is regular contact between the minor and his or her guardian and the guardian makes sure that all their rights are ensured. These main rights include education, health care, material aid and housing, the presence of a translator, legal representation. It is the guardian’s job, assisted by a lawyer, to decide together with the minor, which is the best procedure to ensure the possibility for the minor to obtain a permit of residence in Belgium. Minors who are unable to meet the conditions of the asylum law, can, through their guardian, apply for a specific procedure which allows the Foreigner’s Office in Belgium to determine a sustainable solution for each minor.

### The right to information (article 4)

There are several persons/organizations that may be in contact with the minor, before he or she is identified as UMA by the guardianship service. It could be the Service for Immigration (when the minor asks for asylum), police services, the guardianship service or an NGO. The first person who is in contact with the minor fills in a form which is called “Fiche Niet-Begeleide Minderjarige Vreemdelingen” (in English: “Form for Unaccompanied

Minor”). In this form several questions are asked about: identity/documents, motives to travel to Belgium, presence of family members in Belgium and European Member States. This form has to be sent to both the Guardianship Service as well as to the Service for Immigration.

In practice, the information about the Dublin III Regulation and its possibilities is being given by the guardian (so after the assignment of a guardian by the guardianship service). There is no information brochure yet which can be handed out to the unaccompanied minor.

### **The personal interview (article 5)**

When the unaccompanied minor has asked for asylum and a guardian is assigned by the Guardianship Service, the Service for Immigration will invite the unaccompanied minor and the guardian for the personal interview. This interview can only take place in the presence of the representative of the unaccompanied minor and, if necessary, a translator. An employee of the Service for Immigration is responsible to give information about the Dublin III Regulation and to collect information about the presence of family members in other EU Member States.

### **Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in another EU Member State**

In case an unaccompanied minor has a relative or family member in another EU Member State, the Belgium authorities try to collect as much information as possible. This is done via the previously mentioned “Form for Unaccompanied Minor”; the information obtained from the personal interview and from the representative. Relevant information covers the factual details of the family member or relative in the other EU Member State, such as the name, date of birth, type of family relationship and the address. With this information, the first step for the Belgium Authorities is to send an “Exchange

Information form” (Annex VIII of the Commission Implementing Regulation no 118/2014) to the other EU Member States. If it turns out that a relative or family member is indeed present in the other EU Member State, the Belgium authorities will ask the other Member State to take over the unaccompanied minor. It has to be noted that this can only be the case if it turns out that a (re)unification of the unaccompanied with his family member or relative is in the best interest of the child. The Belgium Authorities find in principle that it is in the best interest of the child that he/she is (re)unified with a family member or relative.

### **Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in Belgium**

In case an unaccompanied minor is present in another EU Member State but has a relative or family member that is legally present in Belgium, the Belgium Authorities would in principle accept the responsibility for the unaccompanied minor. It has to be noted that the Belgium Authorities will require information from the other EU Member State about the existence of family links. If family links are not proven with documents or plausible statements, the Belgium Authorities will reject a take-over request.

With regard to the individual assessment mentioned in article 8(2) of the Dublin III Regulation, the Belgium Authorities will invite a family member to their office to have a conversation about the capacity of the family member to take care of the unaccompanied minor.

### **Unaccompanied minors without relatives or family members in other EU Member States**

In response to the judgment of the Court of Justice (MA & Ors V UK) from 6 June 2013, the Belgium Authorities do not transfer unaccompanied minors to other EU Member States. The only exception is if an unaccompanied minor has a relative

or family member who is legally present in another EU Member State and it is in the best interest of the unaccompanied minor to be with this family member or relative.

### Care to care

If an unaccompanied minor is transferred to Belgium from another EU Member State on the basis of the Dublin Regulation, the guardian cannot transfer relevant information to the receiving guardian. The reason for this is that a guardian will only be appointed to an unaccompanied minor after he or /she arrives in Belgium. However, the Guardianship Service advises to send an email to their service, sharing the contact details of the guardian in the sending country. The Guardianship Service can communicate this information to the guardian that will be assigned. The Guardianship Services has stated that it is also possible to transfer specific relevant information to them, but only in case if there is a consent from the unaccompanied minor to send this information.

#### **CONTACT:**

**Dienst Voogdij**  
Waterloolaan 115  
1000 Brussel  
Tel.: 0032.78.154324  
Fax: 0032.25427083  
Email: voogdij@just.fgov.be

*The guardianship organizations:*

**Caritas International**  
Liefdadigheidsstraat 43  
1210 Brussel  
Tel.: 0032.2.2293611  
Fax: 0032.2.2293636  
Email: tuteur-voogd@caritasint.be

**Flemish Red Cross**  
Motstraat 40  
2800 Mechelen  
Tel: 0032.15.443322  
Fax: 0032.15.443311  
Email: info@rodekruis.be



## FINLAND

### **Unaccompanied minors (art 2(h))**

The Finnish authorities consider all minors that arrive in Finland without their parents or a legal guardian, as an unaccompanied minor. Minors arriving with relatives (for example an uncle) are also regarded as an unaccompanied minor unless a relative can prove that he/she was a legal guardian in the country of origin.

### **The representative (art 2(j))**

Unaccompanied minors are upon arrival placed in a first reception centre. This first reception has a list of guardians who can be appointed as a guardian for an unaccompanied minor. It is the responsibility of the head of this first reception to ask for appointment of a guardian from this list. In this regard, the head of the reception gives a concrete name from the list. Guardianship is appointed by a juvenile judge. In Finland guardianship for unaccompanied minors is practiced by volunteers who receive a small amount of payment from the Finnish Immigration Authorities. The background of the guardians varies. Minimum conditions to be a guardian are that a person is between the age of eighteen and sixty-five and a guardian must prove that he/she has no criminal record. The university of Helsinki has developed a short training module for guardians, which contains information on relevant immigration laws and conventions (like the Children's Rights Convention) and an introductory in the psychological development of children. Participation in this course is not compulsory.

The Finnish authorities consider the guardian to be the representative in the sense of the Dublin Regulation.

### **The right to information**

An unaccompanied minor that arrives in Finland, applies for asylum immediately upon arrival. This is done by the Alien Police or Border Guard. This Alien Police or Border Guard has the responsibility to have a conversation with the unaccompanied minor about the meaning of an asylum application. Furthermore, they are the responsible body to give explanation to an unaccompanied minor about the Dublin Regulation, its possible consequences and the possibilities for an unaccompanied minor to be (re)united with a relative or family member in other EU Member States.

With regard to an information brochure: Finland is currently working on an information brochure which can be handed out to an unaccompanied minor who needs to be informed about the Dublin Regulation. At this moment the Finnish Authorities do not have translations of the brochure in other languages.

### **The personal interview**

In Finland, the Alien Police or Border Guard is responsible for conducting the personal interview with an unaccompanied minor. During this interview the representative of the unaccompanied minor is always present. The written report is shared with the unaccompanied minor.

### **Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in another EU Member State**

According to the Finnish authorities, the starting point is that an unaccompanied minor is (re)united with relatives or family members because this is considered (most of the time) in the best interest of the

child. The whole process of determining the responsible EU Member State is subordinated to this starting point. This is how art 6(1) of the Regulation is complied with.

Determining the EU Member State responsible, the first step in the Finnish procedure, is to identify the family links and to establish the family tie(s) through standardized information exchange. Certain conditions apply with respect to identify family links, namely:

1. The unaccompanied minor must provide information about his family relations before another EU Member State has accepted a request;
2. An unaccompanied minor has not yet received a first instance decision on a previous request for international protection in another EU Member State;
3. The time limits must be respected.

The Finnish authorities try to conduct a tracing via the “information exchange standard form”. The Finnish authorities cannot conduct a tracing via an international organization like the Red Cross because this is something that only the unaccompanied minor can ask for. The Finnish authorities can however refer the unaccompanied minor to the Red Cross.

The actual assessment of the child’s best interest includes several actors, namely:

1. The unaccompanied minor and his/her guardian and their own assessment;
2. The opinion of the legal representative<sup>3</sup>;
3. A statement of a social worker from the reception facility on the child’s well-being and its social development. It has to be noted that this is not done in all cases but if it seemed necessary in individual cases.

The Finnish authorities take several elements into account when finally deciding on the child’s best interest, namely:

1. The starting point is that it is in the best interest of the child to be with relatives

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<sup>3</sup> In Finland a legal representative is not appointed to every unaccompanied minor. It is the responsibility of the guardian whether to appoint a legal representative or not. A legal representative in Finland can be a NGO or lawyer.

- or family members unless there is information that proves the contrary;
2. The closeness of the family link is important to the Finnish authorities; the threshold to not reunite is much higher in case it concerns a situation of an unaccompanied minor with parents in other EU Member States than if it concerns an unaccompanied minor with other relatives, for example an uncle or aunt;
3. The minor’s views and the views of the guardian (and legal representative) are taken into count according to his or her age and maturity;
4. The minor’s safety and security is according to the Finnish authorities of the utmost importance; in case there are credible signs of abuse or serious negligence then it is not always in the best interest of the child to be reunited;
5. The social development of the child and possible special individual circumstances of the child;
6. the information that the Finnish authorities receive from other resources, like other EU Member States.

The Finnish authorities assume that after they send a take-charge request to another EU Member State, that this EU Member State will also make an assessment on the best interest of the child and the capacity to take care of the minor before accepting or refusing and that this assessment is based on their information about the situation of the relative or family member.

### **Unaccompanied minors in other EU Member State with a relative or family member in Finland**

In case an unaccompanied minor resides in another EU Member State and this unaccompanied minor has a family member or relative in Finland, the Finnish authorities expect from the requesting EU Member State that an assessment of the child’s best interest takes place in that EU Member State, before that EU Member State has send a take-charge request to Finland.

The Finnish Authorities do make a best interest of the child assessment when they receive a request and the relative or family

member reside in Finland. A problematic part with regard to this is that the Finnish authorities need to obtain a consent from the person residing in Finland to do the necessary checks for a proper assessment. In a basic situation the checks include a person's criminal record and aliens registration records.

With regard to the individual examination (mentioned in article 8-2 of the Dublin III Regulation) a statement of the municipal social authorities on the health and personal situation will also be required. In case the family relationship is proven and it is in the best interest of the minor, the Finnish authorities see no reason to reject an incoming take-charge request.

### **Unaccompanied minors without relatives or family member in other EU Member States**

After the judgment of the Court of Justice (MA & Ors V UK) Finland identified four groups of minors who will still be transferred to the first EU Member States, it concerns:

1. The unaccompanied minors who have received a refugee status or subsidiary protection in the other EU Member State;
2. The unaccompanied minor who is registered as an adult in another EU Member State. In this case the person will first be heard about the information received from the other EU Member State and he/she is given the possibility to explain/provide evidence concerning his age before his age is changed in the aliens register;
3. In case medical age assessment proves him to be an adult;
4. The unaccompanied minor is rejected on a previous request for international protection in another EU Member State.

Overall: Finland does not transfer unaccompanied minors to Greece.

### **Care to care**

Minors who arrive in Finland based of the Dublin III Regulation will first be placed in a group home for unaccompanied minors. In

most of the cases this is the Espoo Group Home near to Helsinki. This is also the case in situations where an unaccompanied minor has a relative or family member in Finland. Before a minor can move to private accommodation there is a structured procedure in the reception facility that must be followed. It includes appointment of a guardian, an initial interview, health check and then an investigation of the suitability of the private accommodation. The child's own views are heard and taken into account according to its age and maturity. The guardians investigate the private accommodation and will give a written statement about the matter. The reception facility staff will meet the family as well and assess its suitability. The final decision will be made by the head of the reception facility. This is an administrative decision, which can also be appealed.

Based on this, guardians are advised to pro-actively approach the authorities and ask if an unaccompanied minor is indeed placed in the Espoo Group Home. With this information, a guardian could continue the search on who to approach for making an assessment in advance.

#### **CONTACT**

##### **Espoo Group and Family Group Home**

Director: Mikko Välsalo

P.O. Box 94212

02070 Espoo

Fax: 00358.9.81622357

*NGO for legal advice for asylum seekers  
(incl. unaccompanied minors)*

##### **Refugee Advice Centre (in Finnish:**

**Pakolaisneuvonta Ry)**

Kaisaniemenkatu 4A, 6.krs

00100 Helsinki

Tel.: 00358.75.7575100

Fax: 00358.757575120

Email: pan@pakolaisneuvonta.fi



## GERMANY

### **Unaccompanied minors (article 2(j))**

The German authorities consider all minors who arrive in Germany without their parent(s) or legal guardian as unaccompanied minors.

### **The representative (article 2(k))**

There is no national system of guardianship in Germany. Upon arrival of an unaccompanied minor to Germany a guardian is appointed by the Guardianship Court (Vormundschaftsgericht). In practice the Jugendamt coordinates which guardian is appointed/ it depends on the state and the capacity of service providers at that moment who this guardian will be: Jugendamt employees, NGOs or individual guardians. The Jugendamt has 95% of the guardianship cases (Amtvormundschaft). Besides these, there are guardianship organizations (Vereinvormundschaft), private and independent professional guardians (Einzelvormundschaft). Furthermore, in some Bundesländer juvenile judges consider that if the parents of an unaccompanied minor are still alive (but not in Germany) that no guardianship has to be appointed since this would mean that one interferes in the parental responsibility of the parents.

### **The right to information (article 4)**

The authorities who first deal with an unaccompanied minor in Germany are the Border Police. They are responsible for referring the unaccompanied minor to the competent authorities (the "BAMF": Bundesamt für Migration und Flüchtlinge). The BAMF has the first interview with the unaccompanied minor. A representative, if appointed, is present at this interview. At this moment, the BAMF has not yet finished the information brochure for unaccompanied minors. Some lawyers in Germany have stated that it sometimes

happens that the old information brochure (about the Dublin II Regulation) is handed out to the unaccompanied minor.

### **The personal interview (article 5)**

As mentioned, the BAMF is responsible for the personal interview with an unaccompanied minor. This interview is held in the presence of the representative of the unaccompanied minor and a translator. A written report is sent afterwards to the representative.

### **Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in another EU Member State**

The starting point for the German authorities is that it is in the best interest of a child to be (re)unified with his/her relative or family member. The German authorities did not succeed in making arrangements with an organization to conduct a tracing as mentioned in article 6(4) of the Dublin III Regulation. It is therefore up to the unaccompanied minor and/or his representative to produce information about the presence of relatives or family members in other EU Member States. The German authorities would depend on the views of an unaccompanied minor if they send a take-charge request to another EU Member State in case the unaccompanied minor has a relative or family member in another EU Member State. They will also involve the views of the representative of an unaccompanied minor with respect to this. It has to be noted that the German authorities stated that in general they have the impression that representatives of unaccompanied minors not seem to be aware of the Dublin III Regulation and its possibilities. They believe that due to this in practice, it does not happen often that they are requested to

send a take-charge request to another EU Member State.

The German authorities consider that it is up to the other Member State (where a family member or relative is legally present) to examine the situation of the relative or family member state further and to advise on what would be the best interest of the child.

### **Unaccompanied minors in other EU Member States with a relative or family member in Germany**

The German authorities would in principle be willing to accept incoming take-charge requests from other EU Member States in case it concerns an unaccompanied minor in another European Member State that has a relative or family member who is legally present in Germany. They might require documents or declarations, which proves the relationship between the unaccompanied minor and the relative or family member.

The German authorities have no arrangements nor possibilities to ask an organization or person to assess the situation at a relative or family member on their capability to take care of the unaccompanied minor. Therefore the German authorities would invite a relative or family member to the office to have an interview on the situation of the family member or relative.

### **Unaccompanied minors without relatives or family members in other EU Member States**

The German authorities transfer unaccompanied minors only to other EU Member States, if the unaccompanied minor has a relative or family member there and a (re)unification is in the best interest of the child.

### **Care to care**

There is no national guardianship organization in Germany and in some Bundesländer a guardian is not appointed if the unaccompanied minor still has parents in the country of origin. It is

advised that a guardian first examines whether the relative or family member of an unaccompanied minor in Germany has a resident permit or not. If the relative or family member has a pending procedure for international protection, it is recommended to seek contact with the staff of the accommodation where that family member resides.

In case the relative or family member already has a resident permit and housing, it is recommended to examine what the exact address is of the family member or relative. Clarity about this makes it easy to find out the competent Jugendamt<sup>4</sup> where questions about the role of guardianship can be asked.

For both situations it is important to take into account that it is very likely that an unaccompanied minor will first be placed in a so-called "Clearing Stelle" (a temporary accommodation for children). This is done by a social worker of the accommodation or by an employee of the concerned Jugendamt. It is always worthwhile to approach the BUMF (an NGO with a specific focus on unaccompanied minors) and ask if they can find out to which clearing stelle an unaccompanied will be placed.

Since the situation regarding guardianship and social service is rather complex to understand, it is also advised to seek contact with NGOs who have relevant information about the situation of unaccompanied minors in Germany.

#### **CONTACT**

**Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (B-UMF)**  
Paulsenstr. 55-56  
12163 Berlin  
Tel.: 0049.30.82097430  
Fax: 0049.30.82097439  
Email: info@b-umf.de

#### **UNHCR**

Frankenstrasse 210  
90461 Nürnberg  
Tel.: 0049.911442100  
Fax: 0049.911442180

<sup>4</sup> Jugendamts are in every city and are easily tracked down via searching the internet.



## GREECE

### Unaccompanied minors

An unaccompanied minor is a person below the age of 18, who arrives in Greece unaccompanied by an adult responsible for him/her according to the Greek legislation or practice and will remain so as long as the minor is not effectively taken into the care of such a person, or a minor who is left unaccompanied after he/she has entered in Greece.

### The representative

The representative of a minor is the temporary or permanent guardian of the minor or the person appointed by the competent Public Prosecutor for Minors or, in the absence of the latter, by the First Instance Public Prosecutor to ensure the minor's best interests.

The Public Prosecutor for minors is the temporary guardian for all unaccompanied minors, until the appointment of the permanent guardian. It is the duty of the prosecutor to ask the court to appoint a permanent guardian for the unaccompanied minor. However, it appears that, due to the absence of a well-functioning guardianship system, this is not always done. Therefore in reality, the prosecutor for minors will remain the guardian during the stay of an unaccompanied minor in Greece.

Unaccompanied minors can visit the office of the prosecutor of minors on Monday and Wednesday morning. It has to be noted that some promising activities are taking place by Greek NGOs trying to build a guardianship system for unaccompanied minors together with the authorities of Greece.

### The right to information

A small number of unaccompanied minors that arrive in Greece, are brought to the so-called First Reception Service. This is a temporary accommodation for asylum

seekers and unaccompanied minors with an average duration of fifteen to twenty days. Procedures at the First Reception Service include<sup>5</sup>: a) identity and nationality verification, b) registration, c) medical examination and providing necessary care and psychosocial support, d) providing proper information about obligations and rights and e) identifying vulnerable groups. The authorities that work in this reception, are responsible for informing an unaccompanied minor about the Dublin Regulation, its possible consequences and its possibilities about (re)unification with relatives or family members.

In case an unaccompanied minor did not reach the first reception service, he will be informed about the above mentioned subjects by the Asylum Service when he/she applies for asylum.

### The personal interview

The personal interview with an unaccompanied minor takes place in the First Reception Centre or with the Asylum Service when an unaccompanied minor applies for asylum. This personal interview is surrounded with several criteria which are laid down in article 17 of Government Gazette (No. 146) first volume from 14 June 2013 and with number 113/2013<sup>6</sup>. According to the Asylum Service there is, as yet, no procedure that guarantees that this personal interview is laid down in a written report and consequently, it will not be shared with a representative.

<sup>5</sup> The actual text on the tasks of the First Reception Service can be found in law 3907 art. 7. This law can be found on [www.refworld.org](http://www.refworld.org).

<sup>6</sup> An English translation of this Government Gazette can also be found also via [www.refworld.org](http://www.refworld.org)

### **Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in another EU Member State**

The starting point of the procedure, in case of an unaccompanied minor with a relative or family member in another EU Member State, is that Greek authorities consider (re)unification with this relative or family member to be in the best interest of the child. In order to trace the family member in another EU Member State, they search for relevant information via the Eurodac database. In case a relative or family member is not found through this channel, the Greek authorities have agreements with the Greek Red Cross about referring the minor to the Red Cross in order to conduct a tracing. With regard to this, the Greek Red Cross has handed out information brochures in many languages to the Greek authorities.

The Greek authorities ask an unaccompanied minor about their views on his/her situation and whether the unaccompanied minor wants to be reunited with his or her relative or family member. Furthermore, the Greek authorities take into account the elements that are mentioned in art. 6(3) of the Dublin III Regulation.

All the documents that are produced in the procedure, are send to the Prosecutor of Minors or the guardian or representative (if appointed). The Greek authorities have to ask permission from the Prosecutor in case they want to transfer an unaccompanied minor to a relative or family member.

As mentioned, the Greek authorities consider that the starting point of a process ought to be for an unaccompanied minor to be (re)unified with a relative or family member. The Greek authorities find that the best interest determination should also be done in the other EU Member States. With regard to this, the Greek authorities, trust that the assessment will be done properly by the other EU Member States.

### **Unaccompanied minors in other EU Member State with a relative or family member in Greece**

During the field visit to Greece there we no experiences with unaccompanied minors coming to Greece on the basis of the Dublin III Regulation. Possibly, this has to do with the MSS V Belgium and Greece judgment.

### **Unaccompanied minors without relatives or family members in other EU Member States**

Since the judgment of the Court of Justice (648/11), Greece does not transfer unaccompanied minors to other EU Member States. The application for international protection is examined by the Greek authorities.

### **Care to care**

As mentioned at the definition of unaccompanied minors, Greece considers minors coming to Greece without parents, legal representative or guardian as unaccompanied minors. This means that in case an unaccompanied minor is transferred to Greece on the basis of the Dublin Regulation, because the unaccompanied minor has a relative, brother, sister or family member in Greece, a representative has to be appointed. It is also explained that initiatives concerning guardianship are going on in Greece. However, at this stage it is the Prosecutor for minors who is responsible for the guardianship for unaccompanied minors. This prosecutor works at the administrative court in Athens.

#### **CONTACT**

##### **First Instance Court**

##### **Public Prosecutor**

10 Evelpidon Street, building 16 in Athens

Fax: 0030.210.8827713

*A list of contact details of the relevant NGOs as well as international organizations are enclosed as appendix.*



## HUNGARY<sup>7</sup>

### Unaccompanied minors (article 2(j))

In Hungary all minors who arrive without parents or their legal guardian are regarded as unaccompanied minors.

### The representative (article 2(k))

A guardian is appointed by the juvenile judge in Hungary. There is no national system of guardianship in Hungary. Guardianship is assigned to a department for guardianship of the municipality where the unaccompanied minor stays in Hungary. Guardians are social workers. It takes up to eight months before a guardian is appointed.

### THE RIGHT TO INFORMATION (article 4)

In Hungary the Border Police has the first contact with an unaccompanied minor. The task of the Border Police is to examine the age of an unaccompanied minor. In case an unaccompanied alien appears to be a minor, he will be brought to a facility for unaccompanied minors.

According to the guardianship agency an information brochure is not handed out to an unaccompanied minor. It is not clear if the Hungarian Authorities have an information brochure as mentioned in article 4 of the Dublin III Regulation. An NGO stated that there is no information brochure, currently.

### The personal interview (article 5)

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<sup>7</sup> There have been attempts to make an appointment with the Hungarian Immigration authorities to talk about the implementation of the Dublin III Regulation. However, a meeting was not realized. It is therefore that the information about the practice with regard to the Dublin III Regulation is based on information from, the director of the main guardianship organization for unaccompanied minors in Hungary (the fifth district for guardianship of the Budapest municipality. This department also coordinates the work of other districts that carry out guardianship for unaccompanied minors).

It is the responsibility of the Border Police and the Immigration Authorities to have a personal interview with an unaccompanied minor about the presence of relatives or family members in other EU Member States.

It is not common practice that a representative is present at this interview nor that a written report is sent to the guardian afterwards. This is probably because a guardian is not yet appointed when the interviews take place.

### Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in another EU Member State

It is not clear how the actual process with regard to the Dublin III Regulation takes place for guardians in Hungary. The director of the guardianship department we talked to, stated that he expects that the Dublin III Regulation and its possibilities are not familiar to the guardians. He furthermore stated that he does know that it happens quite often that an unaccompanied minor disappears in case he/she has a relative or family member in another EU Member State. He therefore assumes that unaccompanied minors are not tended to wait for a Dublin Procedure and travel illegally to other EU Member States.

### Unaccompanied minors in other EU Member State with a relative or family member in Hungary

It is not clear how the Hungarian Authorities would examine the situation of a relative or family member from an unaccompanied minor who is present in another EU Member State. The previously mentioned guardianship department in Budapest would however be willing to

be approached in cases where guardians in another Member State assist an unaccompanied minor with relatives or family members in Hungary. In such cases they would be willing to conduct an assessment and advise the guardian, at his request.

### **Unaccompanied minors without relatives or family members in other EU Member States**

The Hungarian Authorities don't transfer unaccompanied minors to other EU Member States since the judgment of the Court of Justice (CJEU) MA & Ors V UK of 6 June 2013.

### **Care to care**

Guardianship is appointed to a department of a municipality in Hungary. It cannot be said in advance who the actual guardian would be in case an unaccompanied minor is transferred to Hungary. However, given the role of the guardianship department of the fifth district of the municipality of Budapest, a guardian can turn to this department to transfer relevant information about an unaccompanied minor coming to Hungary. This department also declared to be willing to assist in case a guardian in another EU Member State is seeking for someone to assess the situation at a relative or family member and to advise in this matter.

#### **CONTACT**

**5th District Guardianship Office**  
**Of Government Office of Capital City**  
Budapest  
Public Guardianship Authority  
H-1051 Budapest  
Jozsef nádor tér 10  
Tel.: 0036.1.7959654  
Email: gyarmugy@05kh.bfkh.gov.hu



## THE NETHERLANDS

### Unaccompanied minors (article 2(h))

In the Netherlands all minors who arrive without parents or their legal guardian are considered to be unaccompanied minors.

### The representative (article 2(k))

Nidos is the national (family)guardianship organization for unaccompanied minors in the Netherlands. Nidos is responsible, inter alia, for minors who arrive in the Netherlands without their parents or legal guardian. It asks for guardianship of unaccompanied minors at the juvenile court, immediately upon arrival of an unaccompanied minor in the Netherlands. An employee of Nidos that assists an unaccompanied minor directly is called “youth protector.” All youth protectors have a Bachelor Degree in Social Work.

### The right to information (article 4)

An unaccompanied minor who arrives in the Netherlands, is send or brought<sup>8</sup> to the so-called Application Centre in Ter Apel (a small village in the north of the Netherlands). In this Application Centre one can apply for asylum. There is specific and trained staff from the Dutch Immigration Authorities who are in contact with unaccompanied minors. This staff will inform the minor about the Dublin Regulation and its possibilities. The Dutch Authorities wrote an information brochure which is called: *“Children asking for asylum international protection – information for unaccompanied children who are applying for international protection pursuant to article 4 of the Regulation (EU) No 604/2013”*.

<sup>8</sup> This depends on the age. Minors above the age of fourteen years are send or brought to the centre immediately upon arrival in the Netherlands. Minors under the age of fourteen years are brought to a foster family and will be brought to the application centre after a couple of weeks.

### The personal interview (article 5)

The personal interview takes place at the same day as an unaccompanied minor arrives at the Application Centre in Ter Apel. During this interview the Dutch Immigration Service hands out the information brochure for unaccompanied minors (which is mentioned in the previous topic). A trained staff member of the Dutch Immigration Service conducts the interview with the unaccompanied minor in presence of a staff member of Nidos (legal guardian). Afterwards, a written report is send to both the legal guardian as well as to the lawyer of the unaccompanied minor. It is the responsibility of the legal guardian and/ or the lawyer to explain the content of this interview to the unaccompanied minor.

### Determining the Member State responsible for an unaccompanied minor in case the unaccompanied minor has a relative or family member in another EU Member State

The starting point for the Dutch Immigration Service is that it is in the best interest of the child to be (re)unified with a relative or family member in another EU Member state. In case an unaccompanied minor has stated in the personal interview that he/she has a relative or family member in another EU Member State, the Dutch Immigration Service will conduct a tracing. With regard to this it has to be noted that the Dutch Immigration Service didn't succeed in making workable agreements with organizations to assist with a tracing. The reason for this is that the (concerned) organization will only conduct a tracing if a person expresses explicitly that he wants to do a tracing.

In case the Dutch Authorities want to trace a relative or family member, they will send an information request to the EU Member States where a relative or family member might be or apply the procedure

mentioned under article 6(5) of the Dublin III Regulation.

In order to determine the responsible EU Member State, the Dutch Immigration Service takes into account the elements mentioned in article 6(1-3).

In practice, the department of the Dutch Immigration Service is in close contact with Nidos as the legal guardian. In individual cases Nidos is asked if it is in the best interest of a child to be reunited with a relative or family member. In case the guardian states it is in the best interest of the child to be reunited the Dutch Immigration Service will adopt this opinion. In case a guardian finds a (re)unification not in the best interest of the child, it appears, in practice, that the Dutch Immigration Service will not send a take-charge request to another EU Member State.

The Dutch Immigration Service consider that in case they do send a take-charge request to another EU Member State, that it is the responsibility of the other EU Member State to also examine if a (re)unification is in the best interest of the child.

#### **Unaccompanied minors in other EU Member States with a relative or family member in the Netherlands**

In case another EU Member State sends a take-charge request to the Netherlands because an unaccompanied minor has a family member (like a parent or sibling) in the Netherlands, the Dutch Immigration Service will accept this take-over request *after* they first checked the credibility of the family relationship. The Dutch Authorities can for example look at previous interviews with the family member in the Netherlands or ask for documents or conduct a DNA test. In case there is no doubt about the family relationship, the Dutch Immigration Service will accept a take-charge request. In case it concerns a (re)unification of an unaccompanied minor with a sibling, the Dutch Immigration Service will inform Nidos about the forthcoming (re)unification so that Nidos can prepare the arrival of the minor to the Netherlands.

If an unaccompanied minor in another EU Member State has an aunt, uncle or grandparents in the Netherlands, the procedure will be the same (checking the family relationship). Furthermore, it is laid down in the Dutch Alien Policy that in those kind of cases, the Dutch Authorities will approach the Dutch Child Protection Board. The Child Protection Board will pay a visit to the family member in order to assess the living situation and regard whether the relative is capable of taking care of the unaccompanied minor. After this, the Child Protection Board will give an advice to the Dutch Immigration Service. In practice this advice is taken over by the Dutch Immigration Service. In such cases Nidos will be informed by the Dutch Immigration Service about the forthcoming arrival of an unaccompanied minor to the Netherlands.

#### **Unaccompanied minors without relatives or family members in other EU Member States**

The Dutch Immigration Service does not transfer unaccompanied minors to EU Member States where an unaccompanied minor was before. They only do this if there is reason to believe that a transfer is in the best interest of the child.

#### **Care to care**

In case a guardian or representative wants to pass on relevant information about the care of an unaccompanied minor coming to the Netherlands, he or she can approach the head office of Nidos directly to transmit the information. Nidos can also be approached in case a guardian/representative is looking for someone to assess the educational situation at a family member of an unaccompanied minor.

**CONTACT****Nidos**

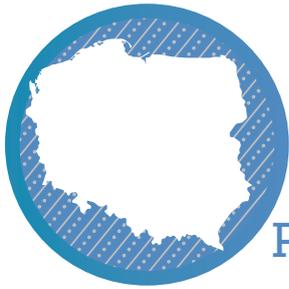
Nidos head office  
Germa Lourens  
Maliebaan 99  
3581 CH Utrecht  
Tel. 0031.30.2391200  
Fax: 0031.30.2391290  
Email: g.lourens@nidos.nl

**Child Protection Board<sup>9</sup>:**

Child Protection Board Head office  
Turfmarkt 147  
2511 DP Den Haag  
Tel.: 0031.30.8882400

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<sup>9</sup> This national organization is responsible for the individual assessment which is mentioned in art. 8(2) of the Dublin III Regulation.



## POLAND

### **Unaccompanied minors (article 2(h))**

The Polish authorities (Office for Foreigners) consider all minors who arrive without their parents or legal guardian as unaccompanied minors.

### **The representative (article 2(j))**

In Poland not all unaccompanied minors apply for asylum. At this point, there are no exact figures of the amount of unaccompanied minors who do not apply for asylum. These minors will not be appointed a legal representative, contrary to those minors who do apply for asylum. Furthermore, in some municipalities in Poland, juvenile judges consider that if the parents of a minor are still alive, it would be unethical to appoint a guardian to the unaccompanied minors, because this would mean that this guardian would intervene in the parental responsibility of the parents. As a consequence, there is a group of unaccompanied minors in Poland who are not assisted by a legal representative nor by a guardian.

Unaccompanied minors who do apply for asylum will be appointed a legal representative. These legal representatives work mostly for NGO's and have a Masters' degree in law. Their task is to promote the interests of the minor in the immigration procedures. A guardian – in case one is appointed – has the parental responsibility over an unaccompanied minor. The background of guardians varies in Poland. Sometimes it is a social worker, sometimes a law student of the University of Warsaw and it may also be a volunteer. There is no national guardianship system. Guardianship is established by the juvenile judge.

### **The right to information (article 4)**

When an unaccompanied minor enters Poland, he or she will first have an

interview with the Polish Border Guard. This Police Border Guard has trained staff who are able to interview a minor. It is the responsibility of the Polish Border Guard to inform an unaccompanied minor about the Dublin III Regulation and its possibilities in case a minor has relatives and/or family members in another European Member State.

There is a leaflet concerning the Dublin III Regulation (attachment XI of the regulation no 118/2014) dedicated to minors already available and Polish Border Guard provide the unaccompanied minors with this brochure.

### **The personal interview (article 5)**

The personal interview takes place at arrival of an unaccompanied minor as it is a part of the asylum application. Then, during the asylum interview questions concerning family relations are asked once again. The asylum interview is held by the employees of the Office for Foreigners who deal with unaccompanied minors and are trained to interview unaccompanied minors. During the interview a representative is always present. A written report is send to the representative after the interview.

### **Determining the EU Member State responsible in case an unaccompanied minor has a relative or family member in another EU Member State**

The starting point for the Office for Foreigners are two elements: 1) it is in general in the best interest of a minor to be (re)unified with a relative or family member and 2) the basis for the Dublin Regulation is that EU Member States work together based on mutual trust.

In case an unaccompanied minor states that he has a relative or family member in another EU Member State, the Polish authorities will examine if a tracing is necessary. With regard to this, the

Office for Foreigners has an agreement with the Polish Red Cross to conduct a tracing within Europe. For this purpose, a form is filled in by the concerned officer of the Office for Foreigners and after consent of the minor this form is sent to the Red Cross. According to the Polish Authorities it is however more common that relevant information is brought under their attention via the asylum application form (which contains information about the unaccompanied minor as well as their relatives or family members in other EU Member States). After this, the Office for Foreigners apply the procedure mentioned under article 6(5) of the Dublin III Regulation<sup>10</sup>.

If the Office for Foreigners receives a response from the EU Member State about the residence of relatives and/or family member, this information will be used by the Office for Foreigners as a basis for a take charge request. With regard to determining the best interest of the child, the Polish authorities will regard the views of the minor as most important. The Office for Foreigners furthermore asks the opinion of the representative (guardian) of the unaccompanied minor. This cooperation focuses on examining the capacity of the relative or family member to take care of the unaccompanied minor. After as much as possible information is collected, the Office for Foreigners will send a take-charge request to another EU Member State.

#### **Unaccompanied minors in another EU Member State with a relative or family member in Poland**

As mentioned the starting point for the Office for Foreigners is that it is in the best interest of a child to be (re)unified with relatives or family members where this is possible. In case the Office for Foreigners receives an incoming take-charge request from another EU Member State to take over an unaccompanied minor based on article 8(1-3) they will especially examine the family links. This is done by checking

the documents that might be provided by the minor or his relatives (birth certificates, family register, declarations), reviewing asylum interviews from the past of the relatives or family members or in case there is doubt: via a DNA-test.

There are no particular agreements with (child protection) organizations in order to assess the actual situation at the relatives or family members. It is pointed out that this is a problem currently.

#### **Unaccompanied minors without a relative or family member in another EU Member State**

The Office for Foreigners does not transfer unaccompanied minors who applied for asylum in Poland to other EU Member States since the judgment of the Court of Justice (MA & Ors V UK) unless an unaccompanied minor has a relative or family member in the other European Member State and a (re)unification is in the best interest of the child. At the moment, they are waiting for establishing new wording of article 8.4 of the Dublin III Regulation, negotiations are in process.

#### **Care to care**

The legal representative or guardian for an unaccompanied minor is first established after an unaccompanied minor arrives in Poland. Until 2012, the accommodation for unaccompanied minors was centrally organized in Warsaw. This is currently not the case anymore. Unaccompanied minors are accommodated spread around Poland. This makes it difficult for a guardian in another EU Member State to get in touch with the relevant (future) guardian or social service before a possible transfer of an unaccompanied minor to Poland. An extra complicating factor is the fact that some juvenile judges in Poland consider that the appointment of guardianship will imply a violation of the parental rights of the parents of an unaccompanied minor in case they are still alive. A second complicating factor is the fact that not every unaccompanied minor applies for asylum

<sup>10</sup> Annex VIII of the Commission Implementing Regulation no 118/2014. This is the information exchange form.

in Poland and that as a consequence a representative is not always appointed.

It is advised to a guardian to contact the first competent authority that would be in contact with an unaccompanied minor. This is the Police Border Guard. They are also responsible for determining to which municipality or place an unaccompanied minor is brought after the minor arrives in Poland. It is worthwhile to approach the Border Guard in order to find out in advance with whom a guardian could seek contact to assess the situation of an unaccompanied minor or to transfer relevant information to. According to the Office of Foreigners, unit Dublin, they could also be approached in advance about relevant information concerning an unaccompanied minor.

## **CONTACT**

### **Polish Border Guard Headquarters Aliens Department**

Niepodległości Avenue 100  
02-514 Warsaw  
Tel.: 0048.225004937  
Fax: 0048.225004747  
Email: dublin@strazgraniczna.pl

### **Office for Foreigners (unit Dublin)**

Koszykowa St. 16  
Warsaw  
Contact person: malgorzata.  
stelmaszewska@udsc.gov.pl

*Relevant NGOs who act as legal  
representatives:*

### **Association for Legal Intervention (Polish: Stowarzyszenie Interwencji Prawnej)**

Ul. Siedmiogrodzka 5/51  
01-204 Warsaw  
Tel.: 0048.226215165  
Email: interwencja@interwencjaprawna.pl

### **Helsinki Foundation for Human Rights (In Polish: Helsinka Fundacja Praw Czlowieka)**

Zgoda 11 Street  
00-018 Warsaw  
Tel.: 0048.225564440  
Fax: 0048.225564450  
Email: hfhr@hfhrpol.waw.pl



## SWEDEN

### Unaccompanied minor (art 2(h))

The Swedish authorities (Migrationsverket – Migration Board) consider all minors that arrive in Sweden without their parent(s) or legal guardian, as an unaccompanied minor. Also minors that arrive with relatives (like an uncle or aunt) are considered to be an unaccompanied minor, unless this family member can prove that he/she was the legal guardian over the child in another EU Member State.

It has to be noted that in case an unaccompanied minor arrives for example with an uncle who is in the Dublin procedure, a child will also be in the Dublin procedure. However, in some cases a representative or guardian might be appointed in accordance with national law. This is for example the case if the unaccompanied minor is accompanied by an older sibling.

### The representative (art 2(k))

The Swedish authorities consider the guardian *and* the legal representative of an unaccompanied minor as the representative in the sense of the Dublin Regulation. Since the Dublin III Regulation a representative is also appointed. The guardianship system in Sweden is divided in two groups: first a *guardian* is appointed for the period the unaccompanied minor is in the Dublin or Asylum procedure. When a procedure is finalized and an unaccompanied minor is granted a permit, the guardianship measure is taken over by a so-called *custodian*.

In Sweden, guardianship is organized on a municipality level. Guardians are volunteers with different backgrounds. They receive a small amount of money for their efforts from the department of Social Services of the municipality. In order to become a guardian, the Social Services department conduct a screening as well as a check if there is no criminal record. The department

of Social Services of the municipality is responsible for the appointment a guardian. It is possible for a guardian to follow a course on how to assist an unaccompanied minor. However, this is not compulsory.

### Right to information (art 4)

All unaccompanied minors arriving in Sweden, apply for asylum. In Sweden this is possible at six offices of the Swedish Migration Board. The first interview that takes place as part of the asylum application, is with someone from the Swedish Migration Board. This first interview covers two subjects, namely providing information to an unaccompanied minor about what an asylum request is as well as providing the unaccompanied minor with information about the Dublin Regulation, its possible consequences and the possibilities for an unaccompanied minor to be (re)united with a relative or family member in another European Member State or in Sweden.

The common information leaflet for unaccompanied minors is available in ten languages and is handed out to the unaccompanied minor.

### The personal interview

As mentioned, the Swedish authorities are the responsible authorities to conduct the personal interview with an unaccompanied minor. The written report about the personal interview is send to the accommodation where an unaccompanied minor resides. It is up to the guardian of an unaccompanied minor to ask for the report of the interview and to explain the content of the written report to the unaccompanied minor.

### **Determining the EU Member State responsible in case an unaccompanied minor has a relative or family member in another EU Member State**

The Swedish authorities are the body responsible for the determination of the child's best interest and the EU Member State responsible. The starting point for the Swedish authorities is that (re)unification with a relative or family member is in the child's best interest. The first step in this process is to look for the family members or relatives in other EU Member States. The family tracing is initiated based on information provided by the minor in the interview. In case the relative or family member is found, the Swedish Migration Board will send a take-charge request to that EU Member State.

In Sweden the principle of free evidence assessment is used. This means that all evidence is taken into account. Via interviews the child and its guardian can give his or her view on his/her own situation. The Swedish authorities expect from the guardian of an unaccompanied minor that he/she pro-actively approaches the Migration Board in order to give his/her own view on the situation.

According to the Swedish Migration Board, the determination of the best interest of the child is a matter of shared "burden". First the Swedish Authorities make an assessment whether it is in the best interest of the child to be (re)united with a relative or family member. Subsequently, they send a take-charge request. The receiving EU Member State then has to make an assessment on whether it is in the best interest of the child to be (re)united with a relative or family member legally present on its territory.

### **Unaccompanied minors in other EU Member States with a relative or family member in Sweden**

In case an unaccompanied minor in another EU Member State has a relative or family member in Sweden that wants to come to Sweden based on the Dublin Regulation, the Swedish Migration Boards

expects from the requesting EU Member State that an assessment of the child's best interest has been made before sending a request to Sweden. The role of the Migration Board in this respect is to determine if there is indeed a family link. With respect to this, the Migration Board may ask for documents in order to further proven the family link. However, it has to be pointed out that this rarely happens. If the documentation and files on the family members are adequate, the Migration Board will accept a request. The Migration Board does not conduct a child's best interest determination before accepting (or refusing) a take-charge request. This is the case if it concerns an unaccompanied minor with a family member in Sweden. However, in case it concerns a situation where an unaccompanied minor has relatives in Sweden, the Migration Board will contact the Social Services. The aim is that they (SS) find out if the relative in Sweden is capable in taking care of the minor. Based on the advice of Social Service, the Migration Board will reject or accept a request from another EU Member State.

### **Unaccompanied minors without a relative or family member in another EU Member State**

The Dublin procedure is used in cases where the minor's application for asylum received a final rejection in the first member state. In cases where the minor's application did not receive a final rejection in the first member state, Sweden will assume responsibility for examining the application for international protection. In cases where the applicant has been granted international protection in another member state, the case will be handled in accordance with national law (since the Dublin III Regulation is not applicable then).

### **Care to care**

Sweden has a system of temporary guardianship, which is arranged on a local level. An unaccompanied minor is in first instance assisted by a guardian. After an asylum procedure finalized, a minor is transferred to a municipality where the

unaccompanied minor will be appointed a custodian.

With regard to transfers that take place within the framework of the Dublin III Regulation, it is important to note that an unaccompanied minor who enters Sweden after being transferred under the Dublin III Regulation because the minor has a relative or family member in Sweden, will be placed in an "arrival centre". Sweden has several of these arrival centres. The decision in which arrival centre exactly a minor is placed after arriving in Sweden is not known beforehand. With regard to this, it can be stated that transferring the care from the "sending" guardian to a new guardian is problematic.

However, guardians are advised to try to find out to which municipality an unaccompanied will be transferred to upon arrival to Sweden. With regard to this it is important that the guardian knows if the relative or family member of the unaccompanied minor resides with a permit, whether he or she owns accommodation somewhere in Sweden or resides in a reception centre with a pending procedure for international protection.

In the first case, a guardian might approach the Sveriges Kommuner och Landsting (in English: Swedish Association of Local Authorities and Regions (SALAR)). This is an overarching association for the municipalities in Sweden, which also covers the departments for Social Services. Through contacting SALAR a guardian might come in contact with the relevant Social Service department before an actual transfer of an unaccompanied minor to Sweden takes place.

In the second case, if a relative or family member of an unaccompanied minor resides in an accommodation meant for asylum seekers, a guardian is advised to contact the staff of this accommodation. The competent authority to appoint accommodation for asylum seekers is the Swedish Migration Board.

#### **CONTACT**

##### **SALAR office in Stockholm**

Hornsgatan 20  
Stockholm  
Tel.: 0046.8.4527000  
Email: info@skl.se

##### **Zebrowski Juridik (guardian and lawyer for UMA's)**

Kyrkogårdsgatan 8 B  
753 12 Uppsala  
Tel: 0046.18.12 84 40  
Fax: 0046.018.50 75 05  
Email: juridik@yahoo.se

## OTHER EU MEMBER STATES

In the following pages information will be provided about EU Member States that were not visited in the project but where the practice with regard to “care-to-care” is familiar for Nidos. The information per country is therefore exclusively focussed on that subject. Where relevant, the framework of guardianship is explained shortly.



### BULGARIA

In Bulgaria there is no national system for guardianship for unaccompanied minors.

Upon arrival of an unaccompanied minor, the minor will be appointed a legal representative. This is done by the Agency for Social Support, Child Protection Unit. If an unaccompanied minor is together with an adult brother or sister or other relative like a grandmother, grandfather, uncle or aunt, this person may be appointed by the court as a guardian.

If there are no relatives, an accompanied minor is accommodated in an institution for children. In those situations, the head of the institution would be appointed as the guardian.

The State Agency for Refugees with the Council of Ministers is the competent body for, inter alia, the registration and accommodation for asylum seekers in Bulgaria.

If a guardian in another EU Member State assists an unaccompanied minor with a family member or relative in Bulgaria, the following is advised. It is best to contact the State Agency for requests for assessment of the situation at a family member or relative as well as to be referred further to the qualified person/organization to conduct an assessment.

### CONTACT:

State Agency for Refugees with the Council of Ministers  
“Social Affairs and Adaptation”  
Directorate  
114-B, Maria Luiza Blvd  
Serdika District, 1233 Sofia  
Email: sar@saref.government.bg



### CYPRUS

Cyprus considers all minors without a parent(s) or legal guardian as unaccompanied minors.

Under art.10 of the Refugee Law 6(I)/2000, the guardian for all unaccompanied minors in the Republic of Cyprus is the Director of the Social Welfare Services, which fall under the Ministry of Labour, Welfare and Social Insurance. Due to practical reasons, “acting” (practical) guardians are the officers of the welfare services who handle files of unaccompanied minors, respectively for the minors whose files they have been assigned to. For instance, at Home For Hope centers, one officer is assigned the files of all minors residing there and she is the “acting guardian” for them. Nevertheless, for serious decisions (e.g. reunification, travel procedures) consultation with and approval by the Director is necessary.

The Social Welfare Services (SWS) of Cyprus is a governmental department operating under the Ministry of Labour, Welfare and Social Insurance. The Social Welfare Services’ mission is to “safeguard social cohesion and social solidarity; to provide social protection, achieve social inclusion and promote equal opportunities for all citizens in the Republic of Cyprus; to combat poverty and social exclusion and to promote the interests of individuals, families and communities”. It has a wide remit of work and legal obligations, among which the guardianship of unaccompanied minors. The guardians of unaccompanied children are also responsible for national children whose physical and psychological integrity is at

risk, therefore there is one unified system of guardianship in Cyprus. The SWS must act on behalf of the minors and must put the legal apparatus of protection, care and welfare into practice<sup>11</sup>.

With regard to the accommodation for unaccompanied minors: legally, this is regulated by the colonial Children Law of 1956<sup>12</sup>. There are a number of options provided, such as foster care, hostels [i.e. children's shelters] "or other".

In practice, unaccompanied minors are accommodated in specialised children shelters. According to the law, shelters for teenagers must be gender-specific. Apart from the previous mentioned reception centre Hope for Children (in Nicosia, accommodating up to 24 male unaccompanied minors, who are referred to Hope for the Children by the social welfare services), there are two more such centres in Larnaca District (one for boys and one for girls), which however, are operated in full by the government. Occasionally, if all specialised shelters are full, unaccompanied minors might be accommodated in other governmental centres for children. Please note, that governmental shelters, although specialised on accommodating unaccompanied minors, do not offer the wide range of legal and psychological support of Hope for the Children, since this is not demanded by law. Also, a number of unaccompanied minors are placed with foster families. To foster a child the family needs to communicate their intention to the SWS and after screening they are assigned a child. A monthly stipend is provided to the family to cover for the child's needs. The foster families are chosen based on their ability to take up a child and on factors such as religion, country of origin, language that coincides with that of the child. However, with regards to foster families, SWS admit that they are usually hard to find, while one is aware of cases where foster families have subjected

<sup>11</sup> For the exact tasks of a guardian reference is made to: <http://www.corestandardsforguardians.com/p/1/171>

<sup>12</sup> The text is available in English: [http://www.cylaw.org/nomoi/enop/non-ind/0\\_352/full.html](http://www.cylaw.org/nomoi/enop/non-ind/0_352/full.html)

minors (both nationals and unaccompanied minors) to mal-treatment. Thus, this is not the preferred accommodation.

For all processes relevant to asylum, the responsible authority is the Asylum Service, which operates under the Ministry of Interior. Within the Asylum Service there is a Dublin Unit, which is mainly operated by a single officer, at the moment. The Asylum Service has only taken over this task in January 2002. Up to then, asylum applications were handled by UNHCR Cyprus.

#### **Advice for guardians**

Legally speaking, the appropriate authority for one to contact would be the social welfare services. Due to workload and other practical difficulties however, this is not always easy. Usually, the Asylum Service is in a position to contact corresponding authorities in other EU Member States, while the social welfare services get in touch with the corresponding authorities in other European Member States through the International Social Services organisation. Also, there usually is good communication between these two governmental departments and they may refer cases and/or information to each other.

#### **CONTACT**

##### **HFC – UNCRC Policy Center Headquarters**

75 Limassol Avenue  
Office 201, 2nd Floor  
2121 Nicosia, Cyprus  
Tel.: 00357.22.103234  
Fax: 00357.22.104021

##### **Social Welfare Services, Ministry of Labour, Welfare and Social Insurance, Republic of Cyprus**

Regarding unaccompanied minors:  
Ms. Marina Efthymiadou  
Tel.: 0035.722406652  
Email: [mefthymiadou@sws.mlsi.gov.cy](mailto:mefthymiadou@sws.mlsi.gov.cy)  
Ms Maria Panayi  
Tel.: 0035.722406653  
Email: [mariapanayi@sws.mlsi.gov.cy](mailto:mariapanayi@sws.mlsi.gov.cy)

**Asylum Service, Ministry of Interior,  
Republic of Cyprus**  
70, Arch Mkariou III Avenue  
Afemia House  
1077, Nicosia, Cyprus  
Tel: 00357.22.445265  
Fax: 00357.22.302310  
For Dublin transfers specifically



#### **CZECH REPUBLIC**

All minors who arrive in the Czech Republic without parents or legal guardian are considered to be unaccompanied minors. Upon arrival in the country, an unaccompanied minor will first be received by the Police. The Police inform the Ministry of Interior about the arrival. The Ministry of Interior then has the first interview with the unaccompanied minor. After that a social worker from the Municipal Office in Prague 6 (Social-Legal protection of the Child Department) will transfer the minor to a facility for children/foreigners in Prague.

The guardianship is organized centrally at Organizace Pro Pomoc Uprchlíkům (OPU). This is an NGO based in Prague.

It is advised to contact OPU in case a guardian in another EU Member State assists an unaccompanied minor with a relative or family member in the Czech Republic. The OPU has an employee who acts as the guardian. They could advise on how to further deal with a case.

#### **CONTACT**

##### **OPU PRAHA**

Kovárska 4  
Prague 9, 19000  
Tel.: 0042.284.683714  
Fax: 0042.233.371258  
Email: opu@opu.cz

*Information about the accommodation  
for unaccompanied minors in Czech  
Republic: [www.ddc.cz](http://www.ddc.cz)*

##### **Municipal District of Prague 6**

Cs. Armády 23, Prague 6  
Postal Code 16052  
Tel.: 0042.220.189111  
Fax: 0042.220.189111  
Email: [podatelna@praha6.cz](mailto:podatelna@praha6.cz)



#### **DENMARK**

In Denmark the Red Cross is responsible for the guardianship for unaccompanied minors.

This covers two tasks. On one hand it concerns the recruitment and training of volunteer guardians for unaccompanied minors. On the other hand employed staff of the Red Cross are sometimes the guardian for an unaccompanied minor. It depends on the complexity of a case if the Red Cross will appoint an employed staff member of their own organization or a volunteer. In cases where trafficking seems to be an element, (for example) an employed staff member will be appointed. It takes about four to eight weeks upon arrival of an unaccompanied minor to Denmark to appoint a guardian. In the time between, the Red Cross conducts further investigation on the child's situation.

In case an unaccompanied minor arrives in Denmark he or she will be placed in the first and temporary accommodation for unaccompanied minors. This is a Red Cross Reception called Centre Sjaelsmark. After a few weeks the minor will move to another accommodation centre. It cannot be said in advance to which accommodation a minor is brought to.

The Red Cross have indicated that in Dublin cases they can be approached with requests for assistance. It is therefore advised that in case a guardian has an unaccompanied minor with a family member or relative in Denmark to contact the Red Cross in order to be referred further to the competent authority or organization.

#### **CONTACT**

##### **Danish Red Cross**

Blegdamsvej 27  
2100 Kopenhagen  
Tel.: 0045.35.259200  
Fax: 0045.35259292  
Email: [info@rodekors.dk](mailto:info@rodekors.dk)



## ESTONIA

In Estonia two laws ensure that unaccompanied minors are provided with a

guardian. These are the Act on Granting International Protection to Aliens (art. 17) and the Family Law Act (art. 92). A court appoints guardianship. A guardianship authority proposes the appointment of a person as guardian. In Estonia the guardianship is covered by the Ministry of Social Affairs and supported by local authorities. As far as known, also relatives could be appointed as a legal guardian in Estonia.

Unaccompanied minors are centrally accommodated in the so-called Illuka Reception Centre.

The following is advised to guardians who assist an unaccompanied minor with a relative or family member in Estonia. Since the care for asylum seekers is arranged by the local authorities, it is advised to seek contact with the Child Protection Organization in Estonia: MTÜ Lastekaitse Liit. This organization has a very broad network in Estonia and is in the position to either advise or refer a guardian to the competent authority.

### CONTACT

#### MTÜ Lastekaitse Liit

Estonian Union of Child Welfare  
Endla 6-18 Tallinn 10142  
Tel.: 00372.6311128  
Fax: 00372.6311735  
Email: liit@lastekaitsellit.ee

#### Illuka Reception Center for Asylum Seekers

Illuka vald  
41010 Jaama küla Illuka vald  
Ida-Viru maakond  
Tel.: 00372.3354414  
Fax: 00372.3354411  
Email: ivv@ivv.ee



## FRANCE

In France, there is no specific guardianship system for unaccompanied minors.

Leaving aside the situation of the so-called "zone d'attente", where an *ad hoc* administrator must be appointed as soon as an unaccompanied minor arrives, unaccompanied minors do not immediately get a legal guardian when arriving on the French territory. They first go through an age assessment procedure and during this first step they do not have a legal guardian. Once recognized as unaccompanied minors after an age assessment procedure, they are protected by the territorial childhood protection services, which take care of all minors in danger, including unaccompanied minors, and go to a children's home or a foster family. In France, unaccompanied minors are mainly accommodated in children's homes. Once protected by the childhood protection service, unaccompanied minors still need a guardian, since the childhood protection service does not automatically become their guardian.

The juvenile court judge, the Prosecutor's office or the childhood protection service have to refer the case to the guardianship judge. When the minor has no family in France, the judge assigns guardianship to the territorial childhood protection services to which the unaccompanied minor has been entrusted.

In practice, it happens very often that either the judge is not informed about the situation, or as a result of backlogged courts, no guardian is appointed because the procedure requires a very long time. Therefore, in many cases, minors remain without legal representation for several months, even until coming of age. Though established by law, the procedure for the appointment of a legal representative can therefore fluctuate in its implementation relative to the specific case of unaccompanied minors.

There is an attempt that aims to overcome the absence of a legal representative, but only for the asylum application. In practice, if an unaccompanied minor wants to ask for asylum and does not have a legal guardian, an "ad hoc administrator" will

be appointed. This legal representative has a limited role. He/she only helps the minor during the asylum procedure. His/her appointment does not resolve the broader problem of the lack of a general guardian, competent for all aspects of the child's life<sup>13</sup>.



## IRELAND

Minors who arrive in Ireland without their parents, legal guardian or customary care providers are referred by Garda National Immigration Bureau (GNIB, immigration police) to the state's TUSLA Child and Family Agency (previously the Health Service Executive (HSE)). Following an initial child protection risk assessment, TUSLA child protection social workers bring any unaccompanied minor to a safe accommodation; either a children's residential home or a foster care placement for under 12's or children with exceptional vulnerabilities.

The TUSLA social workers are designated as having legal responsibility for the child and overall responsibility for the care, welfare and protection needs. This includes developing a statutory care plan in collaboration with the child, the child's carers and any other relevant party in the child's life. Health, education, socialization, spiritual and cultural needs as well as navigating through the asylum process if necessary, and preparations for leaving care are all included in the care planning process.

Irish legislation does not require every child received into state care to be brought to the attention of the judiciary. Only when a court ordered care order is made, is there the possibility of a Guardian ad Litem being appointed to a child by the court. They are appointed to represent a child's view in legal proceedings; to be the child's voice in the courtroom. Guardian ad Litem are not legally responsible for an unaccompanied minor and should not be confused with a guardian who is responsible for the child's care needs.

13 Source: France Terre D'Asile

It is advised for guardians in other EU Member States to contact TUSLA's Team for Separated Children in case they can assist an unaccompanied minor with a relative or family member in Ireland. TUSLA could be asked to make an assessment of the situation at a relative's or family member's home.

## CONTACT

**Principal Social Worker  
Separated Children Seeking Asylum**  
TUSLA Child and Family Agency  
Sir Patrick Dun's Hospital  
Lower Grand Canal Street  
Dublin 2, Ireland  
Tel.: 00353.1647 7000  
Email: info@tusla.ie

**Garda National Immigration Bureau  
(GNIB)**  
13/14 Burg Quay  
Dublin 2  
Tel.: 0353.1.6669130  
Email: gnib\_dv@garda.ie



## ITALY

In Italy all minors who arrive without their parents or legal guardian are considered as unaccompanied minors. There is no national and centralized guardianship system in Italy. Most of the time a volunteer is appointed as the legal guardian for an unaccompanied minor. In most cases this means that the mayor of a city where the minor arrived would be the guardian. The appointment of a guardian takes up to several months. It is also known from Italy that most of the minors don't apply for asylum but receive a permit based on the mere fact that they are under aged and without parental care. This permit is called "*minore eta*".

In Italy the system of accommodation is organized on a municipality level. In case a guardian in another EU Member State assists an unaccompanied minor with family members or relatives in Italy, the following is advised. First of all there is no national body to turn to for assistance. It is therefore recommended to find out

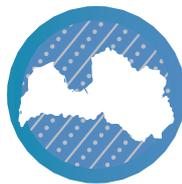
in which municipality a family member or relative resides. First the minor could be asked because he is most likely in contact with his family member or relative. It is also possible to ask the Immigration Service in a EU Member State via a request based on article 34 of the Dublin III Regulation (it follows from this article that information about the residence details can be acquired from the competent authorities). An answer would usually follow within four till six weeks.

After having traced the address of the resident, a guardian can look for an organization to get in touch with to find out more about the situation of this relative or family member in Italy. Formally, the Social Service Department of the relevant municipality has a role in this matter. It is however the experience of Nidos that it is extremely difficult to get in contact with them. It is therefore recommended to contact an NGO Save the Children. They have field workers throughout Italy and also a very extensive network that could advise further in individual cases.

#### CONTACT

##### Save the Children Italia Onlus

Via Volturmo 58  
00185 Roma  
Tel.: 0039.06.4807001  
Fax: 0039.06.4807003  
Email: info.italia@savethechildren.org



#### LATVIA

Very few unaccompanied minors enter and apply for asylum in Latvia.

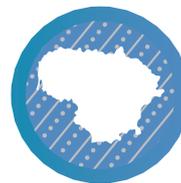
The State Border Guard provides accommodation in facilities for asylum seekers. During the asylum procedure of an unaccompanied minor he/she shall be represented by the Orphan's Court or a guardian appointed thereby or by the head of a child care institution. In Latvia a volunteer could be a guardian. However, it has to be noticed that in practice it is difficult for the Orphan's Court to find a guardian. Therefore most of the time the Orphan's Court act as the legal guardian. In some cases the Orphan's Court tries to appoint a relative of the child as its legal guardian.

If a guardian in another EU Member State assists an unaccompanied minor with a relative or family member in Latvia the following is advised. One could contact the State Border Guard since they have an overall view of the situation of unaccompanied minor and know best to whom to refer to with questions regarding an individual situation.

#### CONTACT

##### State Border Guard Central Board

Rudolfā 5, LV 1012  
Tel.: 00371.67075617  
Fax: 00371.67075600  
Email: kanceleja@rs.gov.lv



#### LITHUANIA

In Lithuania both the accommodation as well as the guardianship is with one organization.

This is the Refugee Reception Center (as a legal person). A social worker at the centre will be assigned to take care of an unaccompanied minor. The specific centre for unaccompanied minor is located in Rukla.

It is advised to seek contact with this organization in case a guardian in another EU Member State wants to learn more about the situation of unaccompanied minors in Lithuania and the question which would be the competent body to do an assessment of a relative or family member of an unaccompanied minor. Also the Red Cross is quite active in the field of asylum and may be approached.

#### CONTACT

##### The Refugee Reception Center

Karaliaus Mindaugo g. 18, Rukla  
LT-55283 Jonavos r., Lithuania  
Tel.: 00370.349.73377  
Tel.: 00370.657.86245 (the Center for unaccompanied minors)  
Email: centras@rppc.lt

##### Red Cross

Pebėgėliu reikalų skyrius  
Juozapaviciaus g. 10A,  
09311 Vilnius  
Tel.: 00370.85.2127322  
Fax: 00370.85.2619923



## LUXEMBOURG

Luxembourg's asylum legislation<sup>14</sup> provides for an unaccompanied minor seeking for asylum to be

appointed a guardian as soon as possible. Furthermore, an unaccompanied minor that is allowed entry into the country is appointed an *ad hoc* legal representative (*adminstrateur ad hoc*) as soon as possible. The representative assists the minor in all administrative and judicial proceedings related to the minor's stay in the airport waiting zone (*zone d'attente*). Upon arrival of an unaccompanied minor to Luxembourg either the Police Criminal Investigative Division or the Ministry of the Family and Integration informs either Caritas or the Red Cross. Caritas provides guardianship for unaccompanied minors above the age of sixteen years old. The Red Cross provides guardianship for unaccompanied minors below the age of sixteen. Both organizations also provide accommodation for unaccompanied minors.

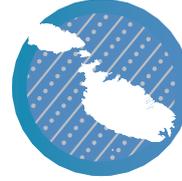
If a guardian in another EU Member State assists an unaccompanied minor with relatives or family members in Luxembourg the following is advised. Since both Caritas and the Red Cross have expertise in the field of unaccompanied minors in Luxembourg, it is best to contact either of these two organisations.

### CONTACT

#### Luxembourgish Red Cross – headquarters

44 Boulevard Joseph II  
L-1840 Luxembourg  
B.P. 404 – L-2014 Luxembourg  
Tel.: 00352.2755.2000  
Fax: 00352.2755.2001  
Email: info@croix-rouge.lu

**Caritas Luxembourg**  
29, Rue Michel Welter L  
2730 Luxembourg  
Tel.: 00352.402131  
Email: caritas@caritas.lu



## MALTA

In Malta all minors who enter the country are regarded as unaccompanied

minor if they are without parent(s) or legal representative. Guardianship for unaccompanied minors does not really exist in Maltese law. Unaccompanied minors are placed under the care and custody of the Family and Social Solidarity Minister by virtue of a Care Order issued not by the courts but by the Ministry itself following an establishing of minor age. This care and custody is implemented and monitored by the Children and Young Persons Advisory Board. This is an administrative panel of experts in child issues.

The Agency for the Welfare of Asylum Seekers (AWAS) is the reception agency, which also provides the social workers who, on a day-to-day basis, take care of the unaccompanied minor and implement the care plan monitored by the Board. A lawyer is not appointed for an unaccompanied minor. NGOs provide information on the asylum procedure and offer to support individual claims. This is not a formal arrangement and it's only possible when resources are available.

If a guardian in another EU Member State assists an unaccompanied minor with a family member or relative in Malta, the following is advised. It is first recommended to find out whether the family member or relative is accommodated in a facility under the responsibility of AWAS. If so, they could be approached to assess the situation of the family member or relative. In case a family member or relative is outside the facility of AWAS, because they are in possession of a permit and their own housing, it is recommended to contact NGOs in order to be assisted further on the necessary contacts.

<sup>14</sup> Article 12 of the Asylum Law of 2006

## CONTACT

### Ministry for the Family and Social Solidarity

Palazzo Ferreria  
Republic Street  
Valletta VLT 1101, Malta  
Tel.: 00356.25903062

### Agency for the Welfare of Asylum Seekers (AWAS)

Block C  
Belt is-Sebh, Floriana  
Tel.: 00356.25687239  
Email: foi-awas@gov.mt

### UNHCR Malta

72, Market Street  
FRN1080 Floriana, Malta  
Tel.: 00356.22489400  
Fax: 00356.21225550  
Email: mtava@unhcr.org

### Aditus Foundation (NGO)

149, Old Mint Street  
Valletta VLT1513, Malta  
Tel.: 00356.20106295  
Fax: 00356.20106296  
Email: info@aditus.org.mt

### Jesuit Refugee Service Malta (NGO)

50 Triq ix-Xorrox  
B'Kara, Malta  
Tel.: 00356.21442751



## NORWAY

All minors entering Norway without parent(s) or legal guardian are considered to be

unaccompanied minors, also in case a minor is accompanied by a relative who cannot prove he or she had legal responsibility for the minor before. When a minor arrives in Norway, he will first be registered by the Police Immigration Unit in Oslo ("*Politiets utlendingsenhet*"). The Police Immigration Unit sends a message to UDI, the Norwegian Directorate of Immigration. They will then send a request to the County Governor of Oslo and Akershus. The County Governor of Oslo has a responsibility for appointing a representative (this representative is a legal guardian) to an unaccompanied minor.

The representative that is on duty then, will be appointed as the representative of the minor. If the unaccompanied minor is transferred to another county in Norway, the new County Governor Department will assess if there should be a change of guardian for example because of long geographical distances.

If a guardian in another EU Member State assists an unaccompanied minor with a relative or family member in Norway, the following is advised. There are several organizations/bodies to turn to with a question for assessment of the safety at a relative or family member: the Norwegian Red Cross and Norwegian Organisation for Asylum Seekers (NOAS). It is also possible to contact the County Governor of Oslo and Akershus.

It depends on the status of a relative or family member which governmental body is responsible for an assessment. Overall the Child Welfare Service is responsible for an assessment of the child and whether it can be placed with parents or relatives. If the child's parents or relatives live in a reception center, the Norwegian Inspectorate for Immigration (UDI) will do that assessment. CPS will intervene if the delivered reports cause any concern.

It depends on several elements whether an unaccompanied minor is placed with a family member or relative immediately upon arrival in Norway. The County Governor of Oslo and Akershus will be approached by the UDI if there is a need to appoint a guardian (the County can also be approached by the CPS, reception centers or police). One could therefore contact the County Governor of Oslo and Akershus in case a guardian from another EU Member State wants to transfer relevant information. The Department of Guardianship can supply details on who is appointed as the child's guardian, if one has already been appointed or they can give one information on who to contact.

## CONTACT

### County Governor of Oslo and Akershus

Tordenskioldsgate 12  
8111 Dep, 0032 Oslo  
Tel.: 0047.22.03728  
Email:  
fmoapostmottak@fylkesmannen.no

### NOAS – Norwegian Organisation for Asylum Seekers

Torggata 22  
NO-01813 Oslo  
Tel.: 0047.22.365660  
Fax: 0047.22.365661  
Email: noas@noas.org

### Norwegian Red Cross

Hausmannsgate 7  
0186 Oslo  
Tel.: 0047.22.054000  
Fax: 0047.22.054040  
Email: post@redcross.no.com

### The Norwegian Inspectorate of Immigration (UDI)

Email: dublinema@udi.no



## PORTUGAL

In accordance to article 79 (1) of Asylum Law 26/2014, 5 May amending Law 27/2008, 30

June, “Without prejudice to the applicable guardianship measures in pursuance of minor guardianship legislation, minors who seek for or are beneficiaries of international protection **must be represented** by an organisation or a non-governmental organisation, or by any other legally prescribed form of representation.”

It should be underlined that Asylum Law 26/2014, 5 May amending Law 27/2008, 30 June refers to representation (*representação*) and not to guardianship or legal guardian.

Under Portuguese Civil Law there is the possibility to request the Family and Juvenile Courts for the appointment of a legal guardian to a minor when adequate parental care is not available (article 1921 and following of the Civil Code).

This procedure however does not provide the same guarantees as the procedure under special youth protection laws that will be described below (Law 147/99, 1<sup>st</sup> September on promotion rights and protection of children and youths at risk). Furthermore guardianship can only be upheld until the minor reaches the age of 18 and is not recognized by law as an urgent procedure, which in practice implies that the appointment will take several months. Therefore courts have tended to apply the special law under Law 147/99, 1<sup>st</sup> September of promotion and protection measures to UAM asylum seekers in Portugal.

Law 147/99 provides for several types of protection measures for unaccompanied minors but promotion and protection measures generally issued by the Minor’s Court regarding unaccompanied minor asylum seeker have been their placement in an institution (“*acolhimento em instituição*” - article 35, paragraph 1.f of Law 147/99) initially on a provisional basis (article 37 of the same law) and reviewed every six months).

This promotion and protection measure consists of “*placing the child or youth under the care of an entity that has installations and equipment available to receive them permanently and staff assuring the adequate assistance towards their needs and provide them conditions to allow for their education, well-being and full development*” (article 49 of Law 147/99).

This measure might be consolidated through a “promotion and protection agreement” (article 55 of Law 147/99) signed by all parties involved including the unaccompanied minor. The minor has a set of rights in this framework under article 58 and the implementation of the referred measure is done according to article 59 of the same law, as follows:

#### Article 58

*Rights of the child and youth in reception in institution*

*The child and youth at an institution have, especially, the following rights:*

a) *Maintain regularly and in private*

*personal contacts with family or persons with whom he/she has a special affective relationship, except in case of limitations imposed by judicial decision or by the protection commission.*

- b) Receive an education that assures the full development of his/her personality and potential, guaranteeing health care, school and professional training and the participation in cultural, sports and recreational activities.*
- c) Provide with privacy and autonomy environment in his/her personal life adequate to age and situation;*
- d) Receive pocket money;*
- e) Inviolability of correspondence;*
- f) Not to be transferred of the institution, except when that decision is of interest;*
- g) Contact, with guarantee of confidentiality, the protection commission, the Public Defender Office, the judge and his/her lawyer.*

#### *Article 59*

##### *Monitoring of the execution measures*

- 1. The Protection Commissions execute the measures in view of the promotion and protection agreement.*
- 2. The execution of the measure granted on the judicial process is directed and supervised by the court that decided upon its application.*
- 3. In terms of the previous number the court will designate the entity considered to be more adequate to monitor the implementation of the measure.*

In this framework representation of unaccompanied minors has been systematically attributed by Minor's Courts to CPR as the only NGO offering differentiated accommodation and assistance to UAM asylum seekers and refugees in Portugal.

In this framework, CPR has *de facto* guardianship, providing all the necessary support for the fulfilment of the needs felt by of the UAM, besides the legal assistance throughout asylum procedure (access to education, health, psychological support, family tracing etcetera).

CPR is responsible for organising a life project for the minor. This project includes psychosocial assistance and counselling, enrolment in the National Health Service, Portuguese language classes and access to the educational system or professional training. As in the case of adults, minors are attributed a weekly monetary support for additional expenses in terms of food, clothing, hygiene, a pass for public transport and support in terms of telecommunications.

Within CPR the chosen representative is the Director of the Reception Centre where the unaccompanied minor asylum seeker is lodged.

In case a guardian of an unaccompanied minor in another EU Member States seeks contact with relevant organizations/ persons in Portugal, the following is advised.

The Institute of Social Security coordinates the overall definition and implementation of policies aimed at the social protection of children in the community, families and institutions. They have teams working in courts specialised in insuring follow-up of protection measures/guardianship procedures, etcetera.

#### **CONTACT**

##### **Portugese Refugee Council (CPR) (Portugese: Conselho Potugues Para Os Refugiados)**

Quinta do Pombeiro, Casa Senhorial Norte  
Azinhaga do Pombeiro, s/n  
1900/793 Lisboa, Portugal  
Tel.: 00351.21.8314374  
Email: monica.farinha@cpr.pt



#### **ROMANIA**

In Romania minors are regarded as unaccompanied minors if they are without parents, legal guardian or a person responsible, before entering or left alone after they entered Romania. In accordance with Romanian law, a relative or sibling can be the legal guardian. However, in practice this has never happened because it is

considered to be in the best interest of a child to have as a representative a specialized person who knows the language and laws.

The representative of an unaccompanied minor is in the majority of cases an employee from the local branch of the National Authority for the Protection of Child Rights and Adoption. This is a specialized body in the Ministry of Labour. In rare cases the specialized personnel of approved NGOs can be the representative of an unaccompanied minor.

The Romanian authorities (Directorate for Asylum and Integration – General Inspectorate for Immigration) inform an unaccompanied minor about the Dublin III Regulation in accordance with article four and five of the Regulation. This interview is always held in the presence of the representative of the unaccompanied and with a translator. If the authorities find that there are indications that it is a Dublin case, then more questions on the topic will follow.

The Romanian authorities inform the representative of all actions that are taken on the basis of the Dublin III Regulation, for example about the time limits, the possibilities of the Dublin III Regulation and the continuation of a case.

With regard to the way that Romania deals with incoming take-charge requests, the Romanian authorities have an agreement with the previously mentioned National Authority for the Protection of Child Rights and Adoption in case they want to assess whether a relative or family member is able to take care of an unaccompanied minor. Based on this evaluation/assessment the Romanian authorities take a decision on whether they will accept the responsibility for an unaccompanied minor or not.

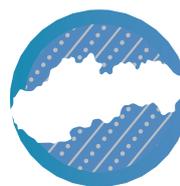
At this moment, Romania does not transfer unaccompanied minors to other EU Member States anymore, nor do they accept incoming take-charge requests from other EU Member States, except for the situation of reunification foreseen by article 8 of the Dublin III Regulation. The basis for this is the judgment of CJEU of 6 June 2013 (C-648/11).

Guardians/ representatives are advised to contact the Romanian authorities in case they assist an unaccompanied minor and want to learn more about a (possible) future in Romania. This applies to cases where an unaccompanied minor has a family member or relative in Romania. The Romanian authorities can contact the National Authority for Protection of Child Rights and Adoption. Also, if a guardian wants to transfer relevant information about the development of a child to Romania, it is advised to send it to the Romanian authorities. They know who the relevant person is to transfer the information to.

#### **CONTACT**

**Directorate for Asylum and Integration  
General Inspectorate for Immigration**  
Tudor Gociu Street 24A  
sector 4, Bucharest  
Tel.: 0040.21.4501701  
Fax: 0040.21.4501703  
Email: dublin.igi@mai.gov.ro

**National Authority for the Protection  
of Child Rights and Adoption**  
Bulevardul G-Rral Gheorghe Magheru 7  
Sector 1, Bucharest  
Tel.: 0040.21.3153633  
Fax: 0040.21.3127474  
Email: office@anpfdc.ro



#### **SLOVAKIA**

If a person arrives in Slovakia and claims to be an unaccompanied minor, he/she is handed to the care of the Office for

Labour, Social Affairs and Family (OLSAF) in the area where the minor has been found. The OLSAF request the responsible court for preliminary ruling to provide the child with temporary institutional care and to appoint a guardian.

The Dublin Unit of the Migration Office of the Ministry of Interior deals with Dublin Transfers. They would have to do an evaluation of the best interest of the child and, according to an NGO, they should do this in cooperation with the authorities for social and legal protection of children. Family reunification of unaccompanied minors is in general under the competence

of the Head office of Labour, Social Affairs and Family, department of social and legal protection of children.

If an unaccompanied minor is to be transferred to Slovakia under the basis of the Dublin III Regulation he would be united with his parents immediately. If it concerns a (re)unification with a sibling or relative, the unaccompanied minor would first be placed in an accommodation for unaccompanied minors (the children's home) and a guardian would be appointed to take care of further (re)unification.

#### CONTACT

**Head Office of Labour, Social Affairs and Family**

**Department of social and legal protection of children**

Spitalska 4-8

Bratislava 816 43

Tel.: 00421.2.20460000

Email: web@employment.gov.sk



#### SLOVENIA

Upon arrival of an unaccompanied minor to Slovenia, the police will register

the unaccompanied minor. They will also accommodate the minor. An unaccompanied minor is brought to the Asylum Centre (AC), the designated centre in these cases is CSW Postojna. The Police has to notify the Centre for Social Work (Ministry for Labour, Family and Social Affairs) on this. The latter immediately appoints the minor a legal guardian. In Slovenia volunteers act as guardians for unaccompanied minors, though it is known that not all unaccompanied minors are provided with a guardian. The guardian's task is to represent a minor in procedures and protect his/her rights and interests.

In case a guardian assists an unaccompanied minor with a family member or relative in Slovenia, it is advised to get in touch with the previous Centre for Social Work, since this is the competent body for appointing the guardianship for an unaccompanied minor.

#### CONTACT

**Ministry of Labour, Family, Social Affairs and Equal Opportunities**

Kotnikova 28

1000 Ljubljana, Slovenia

Tel.: 00386.1.3697700

Fax: 00386.1.3697832

Email: gp.mddsz@gov.si



#### SPAIN

Spain regards as unaccompanied minors all third-country nationals or stateless persons

below the age of eighteen, who arrive on the territory of Spain unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered Spain.

The guardianship for unaccompanied minors in Spain is organized on a municipality level. The Child Protection Service of the Autonomous Community or City where the minor resides is the competent authority to practice guardianship.

In case a guardian assists an unaccompanied minor with a family member or relative in Spain, the following is advised. It is, since the local Child Protection Service is the competent body for guardianship, best to examine in which municipality a family member or relative resides, and to find the competent Child Protection Service. There are seventeen communities and two cities in Spain with a local Child Protection Service. It can be found on the internet.

Furthermore, UNHCR is well informed about the situation of unaccompanied minors in Spain. It is therefore advised to also contact them.

#### CONTACT

UNHCR Spain

General Peron

28020 Madrid, Spain

Tel.: 0034.91.5563503

Fax: 0034.91.5551845

Email: spama@unhcr.org



### SWITZERLAND

In Switzerland guardianship for unaccompanied minors is organized on a cantonal

level. In the different cantons the practice of guardianship can differ from one municipality to the other. In Switzerland authorities, NGOs and private persons can act as a guardian.

In case a guardian seeks contact with a contact person in Switzerland the following is advised. The assessment would need to be carried out by the respective child protection authority (at a place where a family member of an unaccompanied minor lives, the child protection authorities are organized regionally). If the address of a family member is clear, the identification of the respective authority might be facilitated by SEM, SSI or OSAR. The assessment would need to be carried out – because of the federal structure of Switzerland at the cantonal or municipal level.

In case of a transfer the guardian should send the information to the SEM as the asylum application will be dealt with by the SEM. As long as transfers of unaccompanied minors are only carried out to reunite the minor with a family member or relative, there will be no other institution as the guardianship will be either replaced by the parental care or the guardianship will be given to the sibling or relative. In other cases (currently, this is not possible because of the MA judgment of the CJEU) the regional child protection authority would be responsible. There it might be best to either contact SSI and/or OSAR prior to the transfer in order to secure a smooth facilitation of the information transfer.

### CONTACT

State Secretariat for Migration (SEM)  
Quellenweg 6  
3003 Bern-Wabern  
Tel.: 0041.31.3251111  
Fax: 0041.31.3259379

Sweizerische Flüchtlingshilfe SFH (OSAR)  
Weyermannstrasse 10  
Postfach 8154  
3001 Bern  
Tel.: 0041.31.3707575  
Email: info@fluechtlingshilfe.ch

### Swiss Foundation of the International Social Service (SSI)

#### Headquarters, Geneva

9, rue du Valais  
Case Postale 1469  
1211 Genève 1  
Tel.: 0041.22.7316700  
Fax: 0042.22.7316765  
Internet: www.ssiss.ch  
Email: ssi@ssiss.ch



### UNITED KINGDOM

In the United Kingdom there is no guardianship regulation for unaccompanied minors

(although it is currently trialing a system of advocates for child victims of trafficking). The services for children (Children's Services) are present at each local authority. They must provide support under the Children Act. The Children's Services conduct a care assessment for every child under their care. It may decide to place a child (mostly under 16) in foster care with a family or place a child into semi-independent living arranged by the Children's Services.

Most of the times NGOs provide legal assistance for unaccompanied minors. Legal aid may also be available at the local authority.

It also has to be noted that the Home Office (the Immigration Service in UK) has agreements with a department of social workers in order to conduct individual assessments when needed. This is the case when another EU Member State requests the UK to take-charge of an unaccompanied minor with a relative in UK (art. 8(2) of the Dublin III Regulation).

If a guardian assists an unaccompanied minor with a family member or relative in the UK the following is advised. It is best to find out in which municipality a family member or relative resides in order to find the competent Children's Service of the municipality. Furthermore, it is advised for guardians to seek contact with the NGO The Refugee Council since they have expertise in assisting unaccompanied minors.

**CONTACT**

**The Refugee Council**

13-14 Katharine Street

Croydon, Surrey CRO 1NX

Tel.:0044.20.73461134

Email: [children@refugeecouncil.org.uk](mailto:children@refugeecouncil.org.uk)

## CHAPTER 4: Helpdesk Questions

It has been mentioned before that the project aimed to provide assistance to guardians and representatives within the EU in case they have a situation with an unaccompanied minor who has to deal with the Dublin III Regulation in any way. In this chapter examples are given of concrete case studies that were presented to the helpdesk for guardians. An appendix will display a complete overview of the questions.

### Interpretation of ruling cjeu c648/11, 6 june 2013

During the execution of the project, the helpdesk was approached multiple times with questions whether unaccompanied minors who had already received a final decision to an application for international protection in another EU Member State may or may not be transferred to that other EU member state. It was already pointed out in Chapter 1 that various EU Member States handle this matter differently. Find an example of a solicitor's question underneath:

*I have a separated minor, born 97, from Afghanistan. According to the decision here in MS A from October 2013, he has been denied asylum in MS B and therefore should be transferred there. MS B has accepted to take him back. His procedure there was not fair. The conditions were horrible and the procedure was summaric, hardly interviewed at all.*

*Since the European Union Court of Justice judgement in June 2013 I know some countries stopped completely with taking back or transferring minors, meanwhile MS A continues. Do you know if MS B still takes back Dublin minors? They accepted him the 4th of September 2013, but have they changed their mind now?*

*I would be grateful for a quick response. The client lives under hard conditions.*

In this case the Dublin helpdesk gave the solicitor in question information about what exactly are the differences of insight between both member states. With that information the solicitor could in consultation with the authorities or via an appeal at the courts attempt to change the minds of the authorities. It was also advised to bring the different interpretations of the ruling to the attention of a judge so that possibly a preliminary question could be asked to the CJEU.

### Mapping the best interest of the child

The helpdesk has been approached twice by the authorities of two member states. They asked, which factors should be taken into account in weighing the best interest of the child, specifically the question whether reception conditions of a family member and/or relative are in the best interest of the child. Find the answer that was later given per email underneath.

*Nidos has a method to work with unaccompanied minors. The basis for this method is a list of criteria to take into account when assessing the Best Interest of the Child. These criteria are a result of the research of Ms. Dr. Mr. Margrite Kalverboer (professor at the University of Groningen). She has pointed out several conditions for children to grow up in a healthy manner. I hereby enclose these criteria (BIC (Best Interest of the Child) Criteria (also in the appendix). In order to assess the best interest of the child you could look at the criteria. If many criteria are missing,*

*you could be pretty sure that a child cannot develop in a proper manner and conclude that a situation is contrary to the best interest of the child. The other way around: if many criteria are met, you know that an education situation is in the best interest of the child.*

*In the second enclosed file you'll find a scoring list for children to fill in. To interpret the outcome, you could visit the website: [www.sdqscore.org](http://www.sdqscore.org) to fill in the results of the list.*

*This information about the best interest of the child, could be used when you receive a request to take over a child based on article 8-1 or 8-2 of the Regulation. In the Netherlands, the Dutch authorities don't do this themselves. If it comes to an outgoing request Nidos assesses the best interest of the child. If a minor wants to come to the Netherlands because he has family members here, the individual assessment is done by the Dutch Child Protection Board (since Nidos is not yet a guardian for the child because he resides in another EU Member State).*

### **Lack of legal remedy**

As the project went on it turned out that in the execution of the Dublin III Regulation sometimes situations occur whereby a legal remedy is lacking. In particular this deals with two situations:

1. Authorities that receive a take-charge request from another member state, refuse to accept the request;
2. Authorities omit sending a take-charge request to another member state or omit taking actions to allow an unaccompanied minor to be reunited with a family member and/or relative.

A concrete practical example that was sent to the helpdesk by the authorities of a member state:

*On 8/11/2013 the alien minor X d.o.b 26/10/2000 applied for asylum along with his brother d.o.b. 21/2/1998. On 14/11/2013 a take charge request was send to Member State B under art. 6 od*

*Dublin II Regulation, since the applicants stated that they have a brother with residence permit in Member State B and that they would like to be reunited with him. Relevant documents and written consent of the brother residing in Member State B were also sent along with the take-charge request.*

*On 19/12/2013 Member State B rejects the take charge request stating that (exact quote) "We are of the opinion that the alien's brother living in XXXX does not fulfil the requirement of family members as defined in article 2(i) 3 of Dublin Regulation (EC) 343/2003.*

*Furthermore, the alien's brother living in XXXX cannot be seen as guardian for his two younger brothers in your country in spite of the fact that you have referred to him as their guardian. It is not possible for us to see how a 20 year old can be saddled with such responsibilities as required in article 15(3) of Dublin Regulation (EC) 343/2003. With reference to Article 15 of the Dublin Regulation, XXXXX is not responsible for examining the application for asylum."*

*On 20/12/2013 Member State A sends out a re-examination request stressing the fact that the father of the aliens is dead, the mother in the country of origin (Afghanistan) and that both are unaccompanied minors, with nobody to take care of them except their brother in Member State B.*

*On 15/4/2014 a final rejection of Member State B was send stating the following (exact quote):*

*We regret to inform you that XXXX does not accept responsibility for taking charge the above-mentioned persons. With reference to article 6 and 15 of the Dublin II Regulation, XXXX is not responsible for examining the application for international protection. We are of the opinion that the alien's brother living in XXXX does not fulfill the requirement set forth in article 6 and 15 of the Dublin II Regulation and article 12 of the Commission Regulation (EC) No 1560/2003."*

*The reaction the helpdesk send to the authorities, was in short that in such a case – as stated previously – there is no opportunity for the lawyer or*

*representative of a minor to appeal against the rejection. The helpdesk pointed out that this is a bottleneck in the execution of the Dublin III Regulation. The reason for this is that a rejection to take charge of the minor while the minor has a family member in that member state, could be in contradiction with EU law, in particular article 24 paragraph 2 of the Charter of Fundamental Rights of the European Union (now: the Charter). As a result of article 47 of the Charter there should in particular cases be an opportunity to appeal to a judge.*

### **Knowledge of the representative**

During the working visits as well as in promoting the project/helpdesk it appeared that there is still a lack of understanding the Dublin III Regulation and how to use it among representatives in the different EU member states. This sometimes results in reunifications of minors occurring very late or not occurring at all. An example of a question that makes this point was asked by an NGO employee.

*I would like some information about an unaccompanied minor that arrived here in Member State A.  
This young boy (11 years old) fled from Iraq to Member State A without his parents and siblings.  
He has an aunt in MS B who would love to care for him. The boy was placed in an institution and seems to have a "preliminary guardian".  
Now someone (someone working in the institution) has told the aunt that she better should not try a Dublin procedure to get the boy but instead directly ask the local authorities to appoint her as the fosterer of the boy and take him to Member State B on this basis. The only explanation she got was that this would take less time than the Dublin procedure. According to the person, otherwise first a legal guardian had to be appointed what would take about six to eight weeks. Only then this legal guardian could apply for asylum and only*

*then for a transfer to Member State B. Apart from the fact that in this scenario the aunt would have to apply for a visa at her local foreigners authority and that this is difficult, success is not assured and it is time consuming (!) I wonder whether this procedure is really correct. Waiting for your reply, I thank you for whatever clarification you can provide!*

The helpdesk presented this case to a lawyer in Member State B. The lawyer indicated that the procedure as it was described by the employee of the institution does not exist in his member state. The helpdesk then advised the person who asked the question to ensure fast appointment of a guardian who can apply for asylum on behalf of the minor so that a procedure for taking charge on grounds of the Dublin III regulation can be started.

### **Collaboration between authorities and representatives**

As described in chapter two of this report, it is relevant in the execution of the Dublin III Regulation that both authorities and member states collaborate and investigate across their own borders to find out whether the best interest of the child is served with a reunification on grounds of the Dublin III Regulation.

During the project, it turned out that as yet this procedure does not happen automatically and regularly leads to (re)unification not going well or even (re)unification not occurring at all. A case study to clarify that:

*A 6-year old girl is in Member State A. There she is received at an uncle and aunt. The education situation can be characterised as secure and safe and therefore appears at that moment to be in her best interest. The authorities of Member State A investigate the presence of other family members in other EU Member States. Thus they discover that the father of the girl is supposed to reside in Member State B. Both the representative and the authorities of Member State A are*

*therefore of the opinion that it should at least be investigated whether a reunification of the girl with her father would serve her best interest. The representative is informed by the uncle and aunt that the father is an alcoholic who also suffers from depressions. For that reason uncle and aunt do not support the view of the representative and the authorities. Despite that the representative and authorities do believe that an investigation should take place because a father is a very close family member who, moreover, never had been dismissed by a judge from parental duties.*

*The authorities of Member State A request Member State B to investigate the father with regard to the question whether the girl could be reunited with him. Member State B responds that they will do so. In addition Member State A asked Member State B to share the contact details with the guardian in Member State A. The authorities of Member State B refuse this on privacy grounds.*

*Member State B later responds that they have invited the father for an interview about the request of Member State A, the father however did not show up. Member State B is therefore of the opinion that a reunification of the girl with her father is not in her interest. They indicate that they would refuse a take-charge request, should Member State A proceed to that.*

*The representative of the girl writes to several NGOs and the Central authorities in Member State B for support in the matter. The Central authority however lets him know that they do not have any mandate to investigate in this case. Furthermore, none of the NGOs respond to the requests for support of the representative. In the end it is therefore decided to let the case rest.*

It is worth noting in this case that the authorities take a formal point of view (privacy) to not investigate the case further. The second point that can be noticed is that as long as there is no clear point of contact on the “representative side”

in the “receiving Member State”, it can be hard to get involvement to further investigate an education situation. While it is understandable, such a working method has far reaching consequences to a minor. There still is a parent of whom it is not established whether he can adequately perform his parenting duties and in this uncertainty a choice is made to not reunite a child.

### **Involvement of child in the procedure**

The helpdesk noticed that in multiple EU Member States there is a risk that unaccompanied minors do not wait for the procedure on grounds of the Dublin Regulation but by themselves try to find their way to family members and/or relatives. An NGO employee from a member state also known as a so called “transit country”, for example, remarked that – insofar as was known to her – no unaccompanied minor had ever gone to family members and/or relatives in another EU Member State because the unaccompanied minors always disappear from the member state before this happens. An additional, unnecessary remark was made that this leads to serious risks to the safety of a child. The employee gave the following case study as an example:

*A 10-year old boy from Afghanistan arrives in Member State A. He is placed in an accommodation centre for minors. As is regular practice in the member state concerned, a guardian is not appointed until several months afterwards. In the meantime the minor depends on the information he is given from the employees of the centre. He tells these employees that he has an uncle in Member State B. This information however is not used in the sense of actions taken by the centre. After two weeks the minor has disappeared. The employees of the centre suspect that he illegally travelled onwards to his uncle. He is reported to the police as missing. The boy was later found through the EURODAC system. In an interview with the authorities it turned out that he travelled to Member*

*State B in the loading space of a lorry. He spent several days there. During the journey the boy had no food and no drink. He further declared he had been very scared and stressed.*

### **Relevance of after-care and guidance after a transfer**

As previously referred to in this report and given explicit attention in the country reports, the helpdesk strives to ensure that an actual transfer of relevant information with regard to the care of a minor takes place prior to his or her transfer to another member state. It turned out that in practice this appears difficult to achieve while it is obvious in particular situations that the transfer of care is in the best interest of the minor. The case study underneath shows this:

*A 16-year old boy arrives in Member State A. He states that he has an uncle in Member State B. The guardian contacts this uncle and talks with him several times. There is agreement with the uncle to investigate whether the boy can be reunited with him under the Dublin Regulation. The uncle states that he would happily take care of his nephew. The guardian promises to communicate this with the authorities in Member State A and that it follows from the Regulation that an investigation will take place in which it is checked whether this uncle can in fact take care of his nephew. The guardian contacts the authorities. They, in turn, let him know that they will put in a take-charge request with Member State B. Several months later this request is honoured. The guardian asks the authorities of Member State A for the report of the investigation and also who will be the new guardian once the boy has been transferred to the uncle. The authorities however inform him that they have not seen any investigation. The guardian then contacts Member State B to request the report. In the meantime the uncle informs him that nobody ever visited him. He also*

*doesn't know that the claim agreement has been approved. The authorities of Member State B do not respond to the guardian in Member State A. The authorities of Member State A in the meantime indicate that they trust that Member State B has done their investigation, despite the uncle stating the opposite. In the end the authorities of Member State A would like to transfer the boy. The uncle and the boy both have a lot of questions. The uncle wonders whether he will be the guardian, whether he should apply for asylum for the minor, whether the minor should ask for a solicitor and how the finances are to be arranged. Due to all uncertainty, a transfer does not appear to be in the best interest of the minor at that time. Considering his age (16) it is however decided by the guardian to agree with a transfer, but an actual transfer of care cannot take place because it is unclear where that would have to be sent.*

In this case it is obvious that a transfer of care would be in the best interest of the minor and his uncle. The uncle has never taken care of his nephew and despite that declares himself prepared to take on this task. It is important that he will be well supported and informed in this, for instance by starting up and guiding this new living situation for the young person as smoothly as possible.

## CHAPTER 5:

# Expert meeting in Brussels

In November 2014, an expert meeting took place in the office of Caritas International and the European Parliament in Brussels. The target audience of this expert meeting consisted of academics, guardians and representatives, NGOs, immigration judges and the authorities of a number of member states. During this expert meeting, knowledge and experience were exchanged with regard to the execution of the Dublin Regulation, specifically concerning unaccompanied minors.

The expert meeting contained multiple topics that were discussed in a clear order. The programme of this meeting has been added as appendix.

### General introduction in the Dublin Regulation

Maria Hennessy of the Irish Refugee Council gave a presentation about the Dublin Regulation, its background and the new provisions in the Dublin III Regulation compared to the Dublin II Regulation.

### Unaccompanied minors from a developmental psychological perspective

Next, clinical psychologist Dr. V. Kouratovsky gave a lecture on unaccompanied minors from a developmental psychological perspective. Kouratovsky explained that unaccompanied minors have often had to deal with radical life changing disappointments (for example due to a risky flee to Europe, becoming separated from their home and loss of their own culture). These disappointments could potentially lead to a lot of stress for a minor. In this context Kouratovsky quoted research from a German-Dutch psychiatrist Hans Keilson<sup>15</sup>. This psychiatrist researched the wellbeing of 200 children who had remained in concentration camps during World War II. Keilson concluded that it wasn't so much the atrocities that influenced their wellbeing but the extent to

15 Keilson, H. (1978), Sequentielle Traumatisierung bei Kindern

which the children *felt welcome* after they had returned. Furthermore Kouratovsky explained that that conclusion is in line with recent neurological research on grounds of which it can be concluded that:

- Breaks, trauma's and disruption in the building up of the neural structures and networks are the result of radical breaks in or lack of familiar surroundings. These can be understood as a lack of envelopment<sup>16</sup> and leave one very vulnerable for stress;
- Reconnecting to and feeling welcome in familiar, stable and welcoming surroundings, with good enough stress buffering and enveloping capabilities and opportunities, can provide optimal recovery and development of self-regulation and is in the best interest of the child as well as for society in the longer term.

### European Committee about the Dublin Regulation

Edouard Schmidt, policy maker at the Department Asylum and Policy of the European Committee explained that negotiations were ongoing about an addition to the Dublin III Regulation, specifically regarding the interpretation of article 8 paragraph 4 (see also chapter one). He further discussed the provisions regarding unaccompanied minors in the Dublin III Regulation.

16 "Envelopment" is a guiding buffer against stress. This is a concept introduced by Victor Kouratovsky in developmental psychology. A number of publications about this concept could be found at [www.expatpsy.nl](http://www.expatpsy.nl) (also available in English).

## Determining the best interest of the child

Germa Lourens of Nidos, in charge of the Dublin helpdesk, held a talk about determining the best interest of the child in relation to the presence of family members and/or relatives in other member states. The presentation has been included as an appendix. This presentation paid attention to the 'assignment' that results from the Dublin III Regulation (see also chapter two), namely that it requires from both authorities and representatives to be prepared to look beyond the borders of their own country to gain insight into the actual education situation of family members and/or relatives to find out whether reunification is in the best interest of a child. The lecture explained that such an attitude is not yet fully established. One reason for this appears to be caused by the fact that there is no fixed definition/ explanation of *the best interest of the child*. Additionally, there are currently existing practices with representatives of unaccompanied minors and methods to guide those minors. What is also not fully established yet, is for representatives within the EU to look each other up to share their thoughts on the best interest of the child. All this was substantiated with practical examples.

### Panel of experts (Nadine Finch (Barrister in UK), Kaj Swanljung (Employee of the unit Dublin of Finland) and Wil Eikelboom (Immigration lawyer in the Netherlands))

A panel of three experts focused on the question whose opinion is the deciding factor regarding decisions whether or not to reunite a child with family members and/or relatives in other EU member states. According to the judgment of Wil Eikelboom (solicitor), the opinion of the guardian should be the decisive factor in decisions regarding the question whether a minor should be reunited with relatives. His finds a guardian best placed to do so, being an expert in the field of development of the child. He does indicate that, based on his experience in Dublin cases, a representative often has not been

appointed or cannot be found in another member state due to which he concludes that the most desirable solution (the guardian taking decisions) does not appear to be achievable at the moment.

Swanljung's opinion is that the authorities must have a decisive role in particular cases. He points out that the efforts regarding determining the best interests of the child have been "entrusted" to the authorities in member states and that member states are equipped to collect relevant information regarding the best interest of the child, whereby the point of view of a representative is consulted. Nadine Finch stated that the decision on who should be responsible for determining a child's best interests should take into account:

1. 1) The need to predicate any decision on a holistic assessment of the child's needs and rights;
2. 2) This is best arrived at by an information gathering exercise involving a multi-agency group of professionals with the child's legal guardian playing a pivotal role to:
  - a. Ensure that the process works;
  - b. Enable the child's view to be heard, when he or she may not have the legal capacity to speak up for him or herself.

She concluded that it remains unclear how the various Member States are supposed to co-operate in order to achieve this best interests assessment when relevant information and evidence is likely to be held by two or more Member States and that relevant courts in different Member States will probably have to be involved unless these issues are clarified.

### Lack of effective legal remedy

Judge John Bouwman concluded the expert meeting with a speech about there being no effective legal remedy available in a number of specific situations. This concerns situations in which authorities refuse for whatever reason to collaborate in reuniting an unaccompanied minor with its family members and/or relatives, or situations in which authorities refuse a take charge request to take over or back an unaccompanied minor while the minor

family members and/or relatives are living in the other member state (see appendix). Bouwman argued under reference to points 13, 14 and 16 of the Preamble of the Dublin III Regulation that the best interest of the child, the right to family life, have a strong emphasis in the Dublin III Regulation and that the presence of family members and/or relatives of the unaccompanied minor must become a binding responsibility criterion in the Dublin III Regulation. Next, he explained that article 27 of the Dublin III Regulation sees to the right to an effective legal remedy in cases where a *transfer decision* has expired. There is however *no* legal remedy if authorities *omit* taking a transfer decision. In light of article 24 together with article 47 of the Charter of Fundamental Rights of the European Union, Bouwman finally made the suggestion to therefore expand the existing article 27 of the Dublin III Regulation<sup>17</sup>:

*“The applicant or another person as referred to in article 18(1) (C) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision or the failure to issue a transfer decision, before a court or tribunal.”*

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17 The Meijers Committee has in the meantime issued an advice to the LIBE Committee of the European Parliament that contains the same point. This advice can be found on the website of the Meijers Committee:

<http://www.commissie-meijers.nl/assets/commissiemeijers/CM1415%20Note%20on%20the%20proposal%20of%20the%20European%20Commission%20of%2026%20June%202014%20to%20amend%20the%20Dublin%20III%20Regulation.pdf>

# Conclusions and recommendations

This report focuses on unaccompanied minors and the Dublin Regulation. In the first chapter a distinction is made between two groups of unaccompanied minors. On one hand unaccompanied minors who enter Europe and have no relative(s) and/or family member(s) in another EU Member State. On the other hand, unaccompanied minors who enter the EU and do have relative(s) and/or family member(s) in another EU Member State. For both types of minors the question can be raised which Member State is responsible for the request for international protection of the unaccompanied minor. The Dublin III Regulation is the relevant regulation, which clarifies this matter.

With regard to unaccompanied minors in the EU that do not have relative(s) and/or family member(s) in another EU Member State, it is stated in the first chapter that currently there is no consensus between the authorities of EU Member States regarding the following issue. First – and as a background – reference is made to a judgment from the European Court of Justice of the European Union (CJEU). This is judgment C648/11 of 06 June 2013. This judgment came in response to preliminary questions from the Court of Appeal of England and Wales. Subject was a question about the second paragraph of article 6 of the Dublin II Regulation. The Court of Justice ruled that it follows from the best interest of the child principle that the European Member State responsible for the request for international protection of an unaccompanied minor is the one where the unaccompanied minor currently resides.

The next question then was how to deal with the unaccompanied minor who already had received a final decision on a previous request for international protection in another EU Member State. The European Member States deal differently with this matter. Some Member States still transfer unaccompanied minors to the first EU Member State while others do not. In practice this has led and still leads to a [lack of legal certainty](#) for unaccompanied minors and to an [inability to act from the side of legal representatives or](#)

[guardians](#). This could be concluded from the questions received by Dublin Helpdesk.

The Dublin Helpdesk provided representatives (that had questions about this matter) with information about the actual views of the various EU Member States, for a better understanding of the procedures followed there and to provide adequate information to unaccompanied minors. Furthermore, reference was made to article 6 of the Dublin III Regulation. In order to determine which EU Member State is responsible for an unaccompanied minor, reference can be made to [article 6 where it is stated that the best interest of the child is the first consideration in all procedures relating to the Dublin Regulation and the specific elements mentioned in paragraph 3](#). It is explicitly noted that, regarding this, EU Member States have to work intensely together. So, this means that the mere fact that an unaccompanied minor is rejected in one EU Member State, is not enough to justify a transfer decision to that EU Member State. This may raise questions such as: what happened in the procedure in the other EU Member State? Could the unaccompanied minor make use of an interpreter? Was he able to make a statement in a proper way? What made the unaccompanied minor take off to another EU Member State and put himself in a dangerous situation? Furthermore, in order to understand the best interest of the child, it is necessary to understand the perspective of the

minor in the other EU Member State in case the minor is to be transferred to that EU Member State; would he be able to develop in a proper way? Is he going to be placed in accommodation? Will a guardian be appointed to him?

Finally, the Helpdesk advised to appeal against a transfer decision when this would be made based on article 8(4) and to propose to a judge to ask the CJEU a **preliminary question** about the explanation of article 8(4) of the Dublin III Regulation.

With regard to the unaccompanied minors who do have relative(s) or family members in other EU Member States several conclusions can be drawn and recommendations be given.

The **necessity of transnational cooperation** between guardians/representatives is a common thread in this report. First, it was explained that **the best interest of the child is a decisive criteria in order to determine the EU Member State responsible**. This is the case if an unaccompanied minor has relative(s) and/or family member(s) in another EU Member State provided that it is in the best interest of the child to be with this relative(s) and/or family member(s). To answer this question it is necessary to assess the situation of a child and its needs as well as the educational situation of the relative(s) and/or family member(s) in the other EU Member State. This requires from guardians/representatives and authorities within a Member State to work together as well as with their counterparts in the other EU Member State. The urgency to examine the actual situation after a possible transfer of an unaccompanied minor lies furthermore in the fact that in the experience of Nidos, sometimes transfers took place whereby minors ended up in situations **contrary to their best interest or even contrary to article 3 of the European Convention of Human Rights**.

Overall it has to be pointed out that the role of a representative is not only relevant in practice. **Also in the legislation the necessity of a representative is mentioned**. With regard to this reference is made to article 6(2) of the Dublin III

Regulation and to Implementing Regulation 118/2014.

The country reports show that **guardianship systems are not harmonized in the European Union**.

Despite the fact that every EU Member State has organized in some way a system of guardianship, it is clear that in practice it is **extremely difficult** to proactively contact a possible future guardian to collaborate on relevant issues regarding an unaccompanied minor and its relative(s) and/or family member(s).

Most of the times there are two reasons for this. In the first place, a guardian is **not appointed until arrival of an unaccompanied minor in a EU Member State**. In the second place, it is **difficult to oversee to which municipality or region an unaccompanied minor will be brought upon arrival**. This is relevant to know especially in EU Member States where guardianship is organized on a municipal or regional level and were organizations who could in principle assess the educational situation of a relative and/or family member do this **only if they have the mandate** to do so.

With respect to this context reference has been made to a system, which has already been in existence since the jurisdiction of the **"Hague Convention of 1996 on the International Protection of Children"**. The topic of this convention was the civil law protection of children at risk in cross-frontier situations and questions about parental responsibilities. To comply with this Convention every EU Member State has a so-called Central Authority responsible to collaborate with each other. This makes the cooperation between EU Member States easier to deal with.

As long as there is no similar system for guardianship, **we urge the EU to invest in developing guardianship systems and guardians' capacities in the EU**. Development will also imply that representatives/guardians are **trained in order to be able to fully comply with their tasks which follow from the Dublin III Regulation**. Finally, **finances should be made available in order to make it**

possible for EU Member States and organizations for child protection to set up well-functioning systems, provide training and enough trained staff to carry out the work they are responsible for.

Another element that needs attention is the situation where a final decision is made whether an unaccompanied minor ought to go to a relative or family member or not. **It does not follow from the Dublin III Regulation whose opinion is decisive in this matter.** The Dublin III Regulation provides in principle an adequate outline on how EU Member States ought to work together in assessing the child's best interest and the role of the representative in this matter. It is however not clear who is the one taking a final decision, authorities or representatives. Authorities are responsible to take appropriate actions following the Dublin III Regulation. At the same time it is practice in almost every Member State that guardians or representatives are appointed by a judge, and therefore are accountable for the wellbeing and development of an unaccompanied minor via a court decision. Expectations and responsibilities of both parties regarding this issue should be taken into consideration.

A final conclusion that has to be drawn relates to situations where it is decided **not to (re)unite an unaccompanied minor with a relative and/or family member in another EU Member State.** It is made clear in this report that decisions like this are not always the product of a carefully made examination of the best interest of the child. It often happens that information is lacking to even assess the child its best interest, tracing is not done because there are no agreements with organizations that do family tracing, no arrangements with persons/organizations to conduct an individual assessment as mentioned in article 8(4) of the Dublin III Regulation and time limits pass.

Nevertheless, even if a decision not to (re)unite a child is a product of extensive cooperation between authorities and representatives, it would still be possible that the unaccompanied minor or its relative/family member disagrees with that

decision. These kind of situations could in principle be **a violation of article 24 of the Charter for Fundamental Rights of the EU.** During the implementation of the project it has been signalled that in those cases the Dublin III Regulation **does not provide an effective legal remedy** while it follows from **article 47 of the Charter that one has a right to have an effective legal remedy.** It is therefore recommended that article 27 of the Dublin III Regulation is extended to cover not only transfer decisions but also decisions **to not transfer a person.**

# APPENDIX I

## List of NGOs in Greece

### Μη-Κυβερνητικές Οργανώσεις/Non-Governmental Organizations

#### 1.ΙΑΤΡΙΚΗ ΠΑΡΕΜΒΑΣΗ/Med.in

Διεύθυνση/Address: Μιχαλακοπούλου 99/99, Michalakopoulou Street

Τηλ./Tel: 210-7778770

E-mail: info@medin.gr

(Ιατροφαρμακευτική περίθαλψη- Ψυχοκοινωνική στήριξη/Medical treatment – psychosocial support)

#### 2.ΓΙΑΤΡΟΙ ΤΟΥ ΚΟΣΜΟΥ/Médecins du Monde

Διεύθυνση/Address: Σαπφούς 12/12, Sapphus Street

Τηλ./Tel.: 210-3213150

E-mail: info@mdmgreece.gr

(Ιατροφαρμακευτική περίθαλψη- Ψυχοκοινωνική στήριξη/Medical treatment – psychosocial support)

#### 3.ΗΛΙΑΚΤΙΔΑ/Iliaktida (ΜΥΤΙΛΗΝΗ/Mutilini-Lesvos)

Τηλ./Tel: 22510 15577

(Ψυχοκοινωνική στήριξη-Νομική συνδρομή σε αιτούντες - Φιλοξενία και εκμάθηση γλώσσας σε ασυνόδευτους ανήλικους / Psychosocial support- Legal aid to asylum seekers – Accommodation and Greek language lessons to unaccompanied minors)

#### 4.ΕΛΛΗΝΙΚΟ ΣΥΜΒΟΥΛΙΟ ΓΙΑ ΤΟΥΣ ΠΡΟΣΦΥΓΕΣ/Greek Council for Refugees

Διεύθυνση/Address: Σολωμού 25/25 Solomou Street

Τηλ./Tel:210-3800990

E-mail: gcr1@gcr.gr

(Νομική και κοινωνική συνδρομή-Ψυχοκοινωνική συμβουλευτική/ Legal and social aid - Psychosocial consulting)

#### 5.ΜΕΤΑ-ΔΡΑΣΗ/Met-Action

Διεύθυνση/Address: Θεσπρωτίας 8/8, Thesprotias Street

Τηλ./Tel.: 210-5201792

(Διερμηνεία – Νομική στήριξη – Συνοδεία ανηλίκων – Πιστοποίηση θυμάτων βασανιστηρίων – Εθελοντικός επαναπατρισμός/ Interpretation- Legal aid – Escorting unaccompanied minors – Certification of torture victims - Voluntary repatriation)

#### 6.ΕΚΠΟΣΠΟ ΝΟΣΤΟΣ/NOSTOS

Διεύθυνση/Address: Νοταρά 45 & Μετσόβου 30/45, Noatara & 30, Metsovou Street

Tel./Τηλ.: 210-5231966

E-mail: nostos@ath.forthnet.gr

(Συμβουλευτική και εργασιακή ένταξη –Κοινωνική ένταξη και προσωρινή φιλοξενία αιτούντων/ Consulting in labour issues – Social integration and temporary accommodation for asylum applicants)

#### 7.PRAKSIS

Διεύθυνση/Address: Στουρνάρη 57/57, Stournari Street

Τηλ./Tel.: 210-5205202

E-mail: info@praksis.gr

82 13704  
88 92066

(Πρωτοβάθμια ιατροφαρμακευτική φροντίδα – Υπηρεσίες δημόσιας υγείας – Ψυχολογική υποστήριξη – Κοινωνική υποστήριξη – Νομική συμβουλευτική – Εργασιακή συμβουλευτική – Στέγαση/ Medical care – Public Health Services – Psychological Support – Social support – Legal aid – Consulting on labour issues – Accommodation)

#### 8. ARSIS

Διεύθυνση/Address: Δερινγύ 28-30/28-30, Derigni Street

Τηλ./Tel.: 210-8259880

E-mail: arsisathina@gmail.com

(Ψυχοκοινωνική στήριξη – Νομική συμβουλευτική – Κοινωνικό-επαγγελματική ένταξη – Εκπαιδευτικά εργαστήρια – Ξενώνες και μονάδες προστασίας/ Psychosocial support – Legal consulting – Socio-professional integration- Educational workshops – Accommodation and protection units)

#### 9. ΣΥΛΛΟΓΟΣ ΜΕΡΙΜΝΗΣ ΑΝΗΛΙΚΩΝ/ Association for the Welfare of Minors

Διεύθυνση/Address: Ισαύρων 48/48, Isavron Street

Τηλ./Tel.: 210-3813290

E-mail: s.m.a.gr@hotmail.com

(Πρόσκαιρη διαμονή και υποστήριξη σε νέους 15-21-ετών - Επαγγελματικός προσανατολισμός, συμβουλευτική κατάρτισης -Νομική υποστήριξη σε νέους/ Temporary accommodation and support of young people 15-21 years of age – Professional orientation and educational consulting – Legal aid)

### Διεθνείς Οργανισμοί/International Organizations

#### 1. Υπατη Αρμοστεία του ΟΗΕ για τους Πρόσφυγες/United Nations High Commissioner for Refugees (UNHCR)

Διεύθυνση/Address: Ταγιαπιέρα 12/12, Tagiapiera Street

Τηλ./Tel.: 210-6726462/3

E-mail: [great@unhcr.org](mailto:great@unhcr.org)

Website: [www.unhcr.gr](http://www.unhcr.gr)

#### 2. ΔΙΕΘΝΗΣ ΕΠΙΤΡΟΠΗ ΕΡΥΘΡΟΥ ΣΤΑΥΡΟΥ/International Committee of the Red Cross

Διεύθυνση/Address: Πατησίων 46, 4ος όρ./46, Patission Street, 4th floor

Τηλ./Tel.: 210-8259002

(Family tracing)

#### 3. Διεθνής Οργανισμός Μετανάστευσης/International Organization for Migration

Διεύθυνση/Address: Δωδεκανήσου 6, Άλιμος/ 6, Dodekanisou Street, Alimos

Τηλ./Tel.: 210 9919040

E-mail: [iomathens@iom.int](mailto:iomathens@iom.int)

Website: [www.iom.int](http://www.iom.int)

1033

- ΚΙΒΕΤΟΣ ΤΟΥ ΚΟΣΜΟΥ ΣΗΜΟΒΟΡΟΥ 3 ΕΟΛΩΝΟΣ  
210 5141935
- ΣΚΑΠΙΤΑ ΚΑΠΟΔΙΕΤΡΙΟΥ 52 ΠΛ.ΒΑΘΗ 5206637
- ΟΙΚΟΥΜΕΝΙΚΟ 3295926
- ΑΙΤΗΜΑ - 9241677 ΜΕΙΝΤΑΜΗ 13-15  
ΔΙΕΘΝΗΣ ΑΝΩΣΙΑ → 210 3600628

## APPENDIX II

# List of conditions

### Family: current situation

#### Physical wellbeing

1. *Adequate physical care*

Adequate physical care refers to the care for the child's health and physical well-being by parents or care-providers. They offer the child a place to live, clothing to wear, enough food to eat and (some) personal belongings. There is a family income to provide for all this. In addition, the parents or care-providers are free of worries about providing for the child's physical well-being (Cicchetti & Lynch, 1995; Drake & Pandey, 1996; Junger et al., 2003; Loeber et al., 2001; Smith, 1995).

Art. 19, 20, 24, 26, 27, 32, 33, 34, 37, 39 UNCRC

2. *Safe direct physical environment*

A safe direct physical environment offers the child physical protection. This implies the absence of physical danger in the house or neighbourhood in which the child lives. There are no toxics or other threats in the house or neighbourhood. The child is not threatened by abuse of any kind (Cicchetti & Lynch, 1995; Loeber et al., 2001; Rutter et al., 1998).

Art. 19, 20, 23, 24, 26, 27, 32, 33, 34, 37, 39 UNCRC

#### Care and upbringing

3. *Affective atmosphere*

An affective atmosphere implies that the parents or care-providers of the child offer the child emotional protection, support and understanding. There are bonds of attachment between the parent(s) or care-giver(s) and the child. There is a relationship of mutual affection (Bowlby, 1969; Brown et al., 1986; Cicchetti & Lynch, 1995; Rutter, 1990; Smith, 1995; Van IJzendoorn, 2008; Wenar & Kerig, 2000).

Art. 9, 10, 19, 20, 27, 37 UNCRC

4. *Supportive, flexible childrearing structure*

A supportive, flexible childrearing structure encompasses several aspects like:

- enough daily routine in the child's life;
- encouragement, stimulation and instruction to the child and the requirement of realistic demands;
- rules, limits, instructions and insight into the arguments for these rules;
- control of the child's behaviour;
- enough space for the child's own wishes and thoughts, enough freedom to experiment and to negotiate over what is important to the child;
- no more responsibilities than the child is capable of handling (in this way the child learns the consequences of his behaviour within the limits which the parents or care-providers have set) (Junger et al., 2003; Loeber et al., 2001; Maccoby & Martin, 1983; Wenar & Kerig, 2000).

Art. 12, 13, 14, 16, 18, 27, 37 UNCRC

5. *Adequate example by parents*

The parents or care-providers offer the child the opportunity to incorporate their behaviour, values and cultural norms that are important, now and in the future (Junger et al., 2003; Loeber et al., 2001; Masten & Coatsworth, 1998; Wenar & Kerig, 2000).

Art. 9, 18, 19, 32, 33, 34, 37 UNCRC

6. *Interest*

The parents or care-providers show interest in the activities and interests of the child and in his perception of the world (Bouwmeester et al., 1998; De Wit et al., 2004; Loeber et al., 2001; Rispen, 1994; Sampson & Laub, 1993).

Art. 12, 13, 14, 17, 27, 31 UNCRC

### Family: future and past

7. *Continuity in upbringing conditions, future perspective*

The parents or care-providers care for the child and bring the child up

in a way that attachment bonds develop. Basic trust is to be continued by the availability of the parents or care-providers to the child. The child experiences a future perspective (Bowlby, 1969; Cicchetti & Lynch, 1995; Dozier, 2003; Junger et al., 2003; Loeber et al., 2001; Smith, 1995; Rutter et al., 1998; Sandler & Block, 1979; Schuengel et al., 2003; Van IJzendoorn, 2008).

Art. 7, 8, 9, 10, 11, 12, 18, 20, 27 UNCRC

**Societal conditions: current situation**

- 8. Safe wider physical environment  
The neighbourhood the child grows up in is safe, as well as the society the child lives in. Criminality, (civil) wars, natural disasters, infectious diseases etc. do not threaten the development of the child (De Wit et al., 2004; Leseman & Van der Aalsvoort, 2000; Sampson & Laub, 1993; Van der Aalsvoort & Stevens, 2000).  
Art. 11, 23, 24, 27, 32, 33, 34, 35, 36, 37, 38, 39 UNCRC
- 9. Respect  
The needs, wishes, feelings and desires of the child are taken seriously by the child's environment and the society the child lives in. There is no discrimination because of background, race or religion (Dozier, 2003; Hess, 1995; Junger et al., 2003; Spencer & Dornbusch, 1990).  
Art. 2, 5, 8, 12, 13, 14, 15, 16, 19, 23, 30, 37 UNCRC
- 10. Social network  
The child and his family have various sources of support in their environment upon which they can depend (Cicchetti & Lynch, 1995; Hetherington, 1993; Junger et al., 2003; Loeber et al., 2001; Masten & Coatsworth, 1998).  
Art. 20, 37, 31 UNCRC
- 11. Education  
The child receives a suitable education and has the opportunity to develop his personality and talents (e.g. sport or music) (Maughan et al., 1996; Rutter & Giller, 1983; Smith, 1995).  
Art. 17, 28, 29, 31 UNCRC

- 12. Contact with peers  
The child has opportunities to have contacts with other children in various situations suitable to his perception of the world and developmental age (Camarena et al., 1990; Conger & Galambos, 1997; Junger et al., 2003; Wenar & Kerig, 2000).  
Art. 19, 31 UNCRC
- 13. Adequate examples in society  
The child is in contact with children and adults who are examples for current and future behaviour and who mediate the adaptation of important societal values and norms (Junger et al., 2003; Loeber et al., 2001).  
Art. 17, 19, 31, 32, 33, 34, 36, 37 UNCRC

**Society: future and past**

- 14. Stability in life circumstances, future perspective  
The environment in which the child is brought up does not change suddenly and unexpectedly. There is continuity in life circumstances. Significant changes are prepared for and made comprehensible for the child. Persons with whom the child can identify and sources of support are constantly available to the child, as well as the possibility of developing relationships by means of a common language. Society offers the child opportunities and a future perspective (Cicchetti & Lynch, 1995; Dozier, 2003; Junger et al., 2003; Loeber et al., 2001; Sandler & Block, 1979; Schuengel, et al., 2003; Smith, 1995; Rutter, et al., 1998; Simmons et al., 1987; Stattin & Magnusson, 1990; Van IJzendoorn, 2008).  
Art. 8, 9, 10, 11, 20, 27, 30, 37, 38, 39 UNCRC

Zijlstra, A.E. (2012). In the best interest of the child? A study into a decision-support tool validating asylum-seeking children's rights from a behavioural scientific perspective. PhD Dissertation Rijksuniversiteit Groningen, p. 47-49.

## APPENDIX III

# Programme expert-meeting on Dublin

Expert meeting:

## Dublin III and unaccompanied minors

17 november 2014 Brussels

**Dear Sir or Madam,**

Last year the European Parliament accepted the Dublin III Regulation and early 2014 the Member States implemented the Regulation. Member State authorities, guardians, social workers and lawyers in all Member States have now worked with the new Regulation for almost one year, reuniting unaccompanied minors with family members. In this event experiences from practice with regard to this specific theme will be exchanged and brought back to the policy level.

Yours sincerely,

On behalf of hosting Member of the European Parliament **Judith Sargentini**

On behalf of hosting organisations Nidos, France Terre d'Asile and Caritas International

**Germa Lourens**

Coordinator "Dublin Support for Guardians"  
"Dublin Support for Guardians" is a project co-funded by the European Commission under the European Refugee Fund Community Actions

### Conference programme

**10.00** Registration

**Chair: Jan Murk**

**10.30** Word of welcome by Germa Lourens

**10.40** Introduction on the content of the day

**10.50** Presentation by Maria Hennessy on: General overview on the Regulation

**11.30** Presentation by Edouard Schmidt and Alexandra Cupsna-Catalin on the best interest of the child principle in the Regulation

**12.00** Presentation by Victor Kouratovsky on the development of unaccompanied minors

**13.00** Joint lunch

**Chair: Rebecca O'Donnell**

**15.00** Opening by hosting MEP Judith Sargentini and Tin Verstegen (director of Nidos)

**15.15** Presentation by Germa Lourens on determining the best interest of the child

**16.00** Panel discussion: whose opinion is decisive?  
Speakers are: Wil Eikelboom, Nadine Finch and Kaj Swanljung

**16.45** Presentation by John Bouwman on legal remedies and the Dublin Regulation

**17.30** Plenary discussion

**18.15** Closure of the day

**19.30** Diner (restaurant tbc)

## Speakers

**Jan Murk** is responsible for the project department of Nidos. He has a background as a policy scientist. He started his career in 2003 as an assistant to a Member of the European Parliament. Besides his work at Nidos, he has worked for several organizations in the fields of asylum, migration and development, with a special focus on children.

**Rebecca O'Donnell** is a lawyer and independent expert based in Brussels. Her work focuses on EU Justice and Home Affairs policy, working with a wide range of stakeholders on strategic advocacy initiatives and regional projects. Rebecca is also a co-founder of Child Circle, the recently established Brussels based NGO focusing on child protection in EU law and policy. Previously she worked with Save the Children EU Office, where her work focused on EU asylum and migration laws.

**Maria Hennessy** is a Legal Officer at the Irish Refugee Council Independent Law Centre. Prior to joining the Irish Refugee Council in August 2014, Maria was a Senior Legal Officer at the European Council on Refugees & Exiles. She led and developed ECRE's legal advocacy work in the field of asylum for more than four years as well as working specifically on developments concerning the recast Qualification Directive and the recast Dublin Regulation. Maria co-authored the Dublin Transnational Network 'the Dublin II Regulation: Lives on Hold' European comparative report. Maria studied law and environmental science at National University of Galway, Ireland and Leiden University and holds a Masters in Law and Development from the University of London.

**Alexandra Cuspan-Catalin** is a policy officer in unit B2 (Asylum and relations with EASO) of DG HOME of the European Commission, working mainly on the Asylum Procedure Directive and the Dublin Regulation.

**Edouard Schmidt** is a policy officer in unit B2 (Asylum and relations with EASO) of DG HOME of the European Commission, working mainly on the Dublin Regulation.

**Dr. Victor Kouratovsky** is a registered Clinical psychologist and a specialist child & adolescent psychologist. He has been working over 25 years with

unaccompanied minors. He often gives lectures and publishes on the subject of transcultural psychiatry.

**Gema Lourens** is youth protector at Nidos, the guardianship organization for unaccompanied minors and coordinator of the EC financed project: "Helpdesk for guardians".

**Wil Eikelboom** is a lawyer at Prakken d'Oliveira Human Rights Lawyers in Amsterdam, the Netherlands. He specialises in migration law and ECHR litigation and has represented a number of unaccompanied minors. Previously, he worked as legal officer at UNHCR, Geneva. He has conducted training for youth protectors to participate in court proceedings.

**Nadine Finch** is a barrister at Garden Court Chambers in London. She is also a child rights expert, who provides reports to the Family Court in immigration and international family law. In addition, she is an honorary research fellow at the University of Bristol and is presently working on issues relating to the best interests of and durable solutions for unaccompanied and separated and/or trafficked children and is part of the evaluation team for the trial of child trafficking advocates in England.

**Kaj Swanljung** is a Project Manager at the Finnish Immigration Service (Asylum Unit/Dublin Section). He has been working with applying the Dublin Regulation for around three years. He previously worked as a Senior Adviser and the Deputy Head of the Finnish Dublin Section and is currently managing an ERF-funded project "Dublin info centre" which focuses mainly on developing information exchange procedures established in Dublin III, including concerning unaccompanied minors.

**John Bouwman** is a senior judge in the District Court of Overijssel. As a judge, he has been involved in asylum law since 1996. Furthermore, he is a tutor at the training and study centre for the judiciary in the Netherlands and secretary of the International Association of Refugee Law Judges (IARLJ). John is temporarily affiliated with The Robert Schuman Centre for Advanced Studies in Florence, working on the Contention and Redial projects regarding the Return Directive.

## Practical information

The expert meeting takes place in two locations. In the morning we start at the premises of Caritas International. The address is: Liefdadigheidsstraat 43, 1210 Brussels.

The afternoon meeting will be held in the building of the European Parliament, the meeting room – especially relevant to Brussels-based visitors with their own registration - will be confirmed at a later stage. The address is: 60 Rue Wiertz in Brussels.

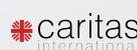
The hotel is the Leopold Hotel Brussels EU.

The address is: Rue de Luxembourg 35, B-1050 Brussels.

In case you have questions concerning travel, hotel or other practical matters, please send an email to Ms. Sharon de Winter: [s.winter@nidos.nl](mailto:s.winter@nidos.nl)

In case you have questions about the meeting or the Project, please contact Ms. Germa Lourens: [g.lourens@nidos.nl](mailto:g.lourens@nidos.nl)

Please use the entrance at the side of Place Luxembourg for registration purposes. Arrival at the entrance between 14.30 and 14.45 is appreciated, so we can start with the event at the scheduled time.



## APPENDIX IV

# Speech on “determining the best interest of the child”

### **Presentation on determining “the best interest of the child”**

Germa Lourens

#### **Sheet one: Title of the presentation and introduction**

I would like to start with giving a kind thank you to Ms. Sargentini for hosting this afternoon in the European Parliament. I am a guardian at Nidos and I deal with Dublin cases for several years now. On an individual case-by-case manner and obviously via the Dublin project. It is with great pleasure to see everybody today to talk further on this very important subject.

#### **Sheet two: two types of unaccompanied minors**

In today's conference we are focussing on unaccompanied minors who are dealing with the Dublin Regulation. In this respect, it is important to divide the group of unaccompanied minors in two: those with relatives or family members in other Member States and those without relatives or family members within the EU.

This conference and my presentation focuses much about those children with family members in other Member States. It will explore how the best interests' principle applies to situations where an unaccompanied child might be united with relatives or family members where this is possible.

#### **Sheet three – Representative of an unaccompanied minor**

In my presentation, I will also mention the term “representative” a lot. The definition for a representative is laid down in art. 2-k of the Regulation. The interpretation of the term, varies a lot in the different Member States. We saw that in some Member

States, a representative is a guardian, a volunteer, a lawyer or even a mayor.

#### **Sheet four - Unaccompanied minors with family members in other Member States**

During the morning programme we were intensively informed on the new set of guarantees for unaccompanied minors. In article 6 of the Dublin Regulation we can find specific guarantees for unaccompanied minors. Article 8 covers the criteria for determining the Member State responsible for an unaccompanied minor. The best interest of the child plays an important role in both of the mentioned articles.

Kouratovsky has argued this morning that it is crucial for both the child's survival and his development to be with relatives or family members. This underlines that the Recast Dublin Regulation has taken a very important step in respecting the best interest of the child. It furthermore makes it clear that the starting point ought to be that an unaccompanied minor is unified with his relatives or family members if they are somewhere across the European Union.

In practice, however, one is sometimes confronted with situations that require the most possible care and attention. Sometimes, authorities and representatives are faced with devilish dilemmas. I will try to illustrate this by means of concrete cases and from our findings through the working visits to the Member States.

#### **Sheet five - Essential question**

In the preamble of the Regulation it is stated that the best interest of the child is – based on article 3 of the CRC – a first consideration. Also in the criteria for determining the responsible Member State the best interest of the child is a decisive criteria. The texts of all three

articles about determining the responsibility of a Member State start the same and end the same: the Member State responsible is that (...), provided it is in the best interest of the child. This last comment suggests – as mentioned – that there could be situations where reunification with relatives or family members is not in the best interest of the child.

Essentially, the question is always the same: how do you determine the best interest of the child, what weighs heavily, what is less relevant and how do you come to a final conclusion?

#### **Sheet six – Best interest of the child: broad range of information**

This question is subject to lots of thinking and publishing. For example, we can look at the General Comments published by the Children’s Rights Committee, particularly GC no. 14, which is a further explanation of article 3 CRC. There is also the recently published handbook of the FRA named “Guardianship for Children deprived from parental care” with a specific chapter on unaccompanied minors and the Dublin Regulation. We can furthermore seek for explanation in judgments of the ECHR (for example *Jeunesse V the Netherlands*). Then we obviously have Immigration authorities who are in a process to involve the best interest of the child in their actions and decisions. With regard to this, it is worthwhile to mention that EASO just recently send a query among Member States to collect information about the current practice relating determining the best interest of the child and what challenges they face with regard to this. An upcoming event to discuss the results of this query is planned for December 2014. And finally we see on a national level of each Member State long histories and traditions, specific methods, special trained representatives like guardians, and sometimes volunteers, who are working with unaccompanied minors for many years now and have their own ways in determining the best interest of the child.

#### **Sheet seven – Challenge: bringing things together**

The challenging element in the Regulation, is the question how this can be brought together. This is urgent since firstly the best interest of the child is a decisive criteria in determining the Member State responsible. Secondly, situations do not only cover the situation in one and the same Member State. It goes a step further: what is the situation of a relative or family member in the other Member State and would that specific situation be in the best interest of the child? This asks from both authorities as well as representatives to look over the borders of their own countries.

#### **Sheet eight - current practice**

That this at the moment is a difficult situation to handle, is shown in practice. We learned in our field visits that involving this element is rather new and not yet very familiar to representatives. It is clear that the new Regulation and its possibilities for unaccompanied minors has not yet reached to the total awareness of representatives across the EU. This follows for example from a case between Member State A and Member State B: an 11-year old boy arrives in Member State A. A temporary guardian is appointed. This guardian is not entitled to ask for asylum for the minor. The guardian who can do this, will be appointed after a couple of months. The representative in the shelter states that it is best if the aunt in Member State B (where the boy wants to go) makes herself a guardian in Member State B in order to arrange travelling tickets for the minor to come to Member State B. This whole situation has a duration of several months. Then, a NGO approaches the Dublin helpdesk for guardians to ask if this is correct. The Dublin helpdesk learns from a lawyer working in Member State B that there is no procedure like the representative in MS A is talking about. The minor has to apply for asylum in order to be unified with his aunt in Member State B.

At the same time, it seems to be new for authorities to involve experts in the field on the subject, like representatives or guardians. This follows from another case: a 7-year old child. She lives with her aunt in Member State A. Father has disappeared and is last seen in Member State B. The authorities of Member State A start tracing the father via the authorities of Member State B. Last mentioned finds the father and is inviting him for a conversation on the question if the child should live with him in Member State B. However, father doesn't show up. The authorities of Member State B are reluctant to share information on his residence to the authorities of Member State A as well as to the guardian in Member State A, because of the privacy of the father.

There are concerns on the situation since the father is known as a psychiatric patient as well as an alcoholic. The guardian of Member State A writes several mails to different NGOs with the request for assistance. These emails all stay unanswered. Since there is no clarity (nor any conversation with father) and the concerns on the situation are too big, it is decided by Member State A that it is better to keep the child in Member State A.

#### **Sheet nine - Better safe than sorry - at what point?**

The reaction of Member State B in this case is in principle legitimate yet stagnating. If we compare this situation within the framework of the regular youth care (note: if the girl and father would have been in the same country), things would have probably been processed quite differently. In the regular youth care, cases start at the level of concerns of the educational climate where a child grows up. If concerns are too risky, a Child Protection Board can be asked to investigate the situation. If they convince themselves that intervention from the government is necessary, they have to motivate their opinion and ask for a measure to a juvenile judge. After this, it can be possible that a guardian is appointed. The guardian takes his time to work with a family further and, in a worst case scenario, it could turn out that the child and parents have

to be separated for an indefinite period of time. Again, this decision is reviewed by a juvenile judge.

These kind of processes take over at least two years. Within the framework of the Dublin Regulation we are talking about a few months, there is no judicial review (refer to the presentation of John) and we have as mentioned the complicating factor of the situation in which the relatives are in another Member State.

#### **Sheet ten – commitment of the child and his relatives or family members**

I just talked about bringing things together. Final decisions concerning the question if a minor should be unified with his relatives or family members are taken after a while. In the meantime, it is important to work to get the commitment of a child and his relatives or family members and to keep this commitment during the whole procedure. With commitment I mean that the child and his relatives or family members have received sufficient information about the procedure and that there is a certain trust that things can work out. Crucial aspects with respect to this commitment are for example a prompt appointment of a guardian who is in contact with both the child as the relative or family member, the previous mentioned knowledge on the possibilities of the Regulation and – very important – a representative or guardian who can share previous and successful cases of other minors that went to relatives or family members on the basis of the Dublin Regulation.

If commitment is lacking, there is always a risk that a minor and his relatives or family members think or believe it would be better not to wait and to proceed on his own way, with all the risks that come with that decision. This follows for example from the following case.

A 10-year old minor from Afghanistan arrives in Member State A. He is placed in a shelter for minors. The practice in the Member State is that guardians are appointed several months after arrival of an unaccompanied minor to the country. In the meanwhile the minor is dependant on the information from the shelter. He tells them

he has an uncle in Member State B. this information is not picked up by the staff. After two weeks, the minor disappears and involved staff thinks that he went to his uncle in Member State B. He is reported missing at the police and is later found back via the EURODAC system showing that he applied for asylum in Member State B. In an interview of the concerned authorities it is stated that he travelled in the back of a truck for several days where the minor had no access to drinks or food and that he was suffering from stress and anxiety.

### **Sheet eleven – Appointing a representative after a Dublintransfer?**

I am almost at the end of my presentation but still would like to raise one more aspect with regard to the Regulation. As mentioned in the morning programme, the project aimed to work towards a process where the actual care of an unaccompanied minor is transferred from one representative to the other. This transfer of care would very much be in the best interest of the child. From a perspective of the child, we know from experience that minors suffer in case they have to tell their story over and over to different persons. Another important point with regard to this is that a situation on a child always contains specific information on the well-being of the child (for example, information from treatment at a psychologist) and it is good to not create gaps in the process of assisting a minor towards independency. Finally, some relatives or family members would actually benefit from a “helping” hand in case they welcome a minor in their home. This is especially the case since the minor would go through an asylum procedure. I have one more case to illustrate the urgency of transferring care-to-care and to appoint a guardian/representative also in case an unaccompanied minor is reunited with relatives or family members. I have to note to pay attention to other details of this case too, since it is an interesting one for the panel we have after my presentation.

It concerns a 16-years old boy from Somalia when he arrives in Member State A. His uncle lives with his family (wife and

children) in Member State B and they all have a refugee status. The guardian seeks contact with the family after the boy gives her permission to do so. Over the phone, the family member seems to be really involved with the minor in Member State A. They have good contacts with each other and lived in the same village in the country of origin before uncle fled from war to Member State B. Since there is no guardianship system in Member State B, it is difficult for the guardian to ask someone to assess the situation more in depth. It is also in the awareness of the guardian that Member State B has made agreements with a Social Services department to assess the family situation mentioned in art 8-2 of the Regulation. She therefore asks the authorities of Member State A to ask the authorities of Member State B to send a take-over request but under the condition that a copy of the individual assessment will be shared afterwards in order for the guardian to make a decision on the situation.

In first instance, the authorities of Member State B reject the incoming request. After a second opinion, they accept. The guardian assumes that the individual assessment is taken care of but no one can share it with the guardian: Member State A states that they did not receive anything and refer the guardian to the authorities of Member State B. Member State B however does not reply to the guardian. During a telephone call with the uncle in Member State B, the uncle states that no one from the Social Services has visited him and that he also did not know that the authorities of Member State B has accepted the request from the authorities of Member State A. The guardian communicates this with the authorities of Member State A. They respond that they follow the principal of mutual trust and that they want to continue the transfer. The uncle however, has loads of questions about the upcoming situation, for example: will he be the guardian? Is he going to live with the uncle? Does he have to apply for asylum for the boy? Does the minor get a lawyer then?

All these questions cannot be answered by the guardian since there is no information on paper at all. This raises the question if the transfer of the minor is at that moment

with the lack of information in the best interest of the child. It might work, when the guardian could transfer the situation to a new guardian in Member State B.

**Sheet twelve - To sum up some conclusions following this presentation**

On the basis of this presentation, I would like to share the following conclusions/ recommendations

- 1) Invest in training for representatives;
- 2) Support transnational contacts between representatives;
- 3) Invest in the cooperation between authorities and representatives;
- 4) Monitoring a situation after a transfer; care-to-care.

**Sheet thirteen - Thank you for your attention.**

## APPENDIX V

# Speech on effective remedy and Dublin

### Lecture 17th of November 2014

Distinguished guests, dear colleagues and dear friends,

First of all, I would like to take the opportunity to thank France Terre d'Asile, Caritas and Nidos for inviting me to this conference, and giving me the opportunity to elaborate a little on a subject that was brought to my attention by Germa Lourens from Nidos. I must admit that when she first brought it up, I did not recognize the subject as posing a problem. However, after having looked into it a little bit better, I must admit now that the subject is indeed of the utmost importance, as it may pose a serious threat to carrying into effect the concepts of "best interest of the child" and family reunification.

I am a judge, and for the largest part of at least my professional time, I deal with all sorts of migration cases, including asylum law. And I must admit that I always find the concept "best interest of the child" a difficult one.

During the day, we have witnessed several most interesting lectures on this concept "best interest of the child". We learned that reuniting a minor with his or her parents is in many cases the best option. We heard that the concept "best interest of the child" is not easy to define, though several attempts to do so have already been made. And just now, we talked about the question which authority ultimately should decide what is the "best interest of the child" in a specific case. Being a judge, my first reaction would be that it is finally up to the judge to decide on the matter. But let's be honest: I may have thought that I knew what was in the best interest of my own children (and I really hope that in retrospect, they do agree on that...), but I definitely lack the knowledge to decide what is 'the best interest of a child' in a specific case. Simply because I

don't know the child. It seems to me that if a professional and educated guardian is charged with the supervision over a child's development and wellbeing, that guardian would be best suited to propose what action would be in the best interest of a child in a specific case. Only if the guardian's proposal was contested or questioned, there may be room to differ from the proposal. Nevertheless, even then it should not be up to the judge to decide; I would rather appoint another expert on the development of children to advice on the matter. But that's just a reaction on the panel discussion we just had...

So, we discussed a lot during the day! But what if there is nothing to discuss?

As I said before, I was asked to talk to you about a gap in the protection the Dublin Regulation seeks to offer to minors. More specifically, the absence of an effective remedy in cases concerning the best interest of unaccompanied minor asylum seekers and the possibility of family reunification.

In order to clarify the subject of my presentation, let me begin by giving you some examples from real, everyday life. And just to make it clear: when I use the word "minor", I mean Unaccompanied Minor Asylum seeker.

### SHEET AHMED

Ahmed, a 14-year old boy, is put on a plane to Member State A by his mother, who fears that he will not survive the ongoing war in his home country. She tells Ahmed to immediately ask for asylum on arrival and to tell the authorities that during the asylum procedure, he wishes to be reunited with his father, who is legally residing in Member State B.

The authorities in Member State A however are reluctant to ask Member State B whether or not the father resides there, because Ahmed only knows his father's

name, and has no clue as to where his father lives. The authorities in Member State A require Ahmed to present any kind of proof of the said relationship between him and his father, and to point out more precisely in which town his father lives. Discussions on the matter between the authorities in Member State A and Ahmed take very long, and in the end the three months period for Member State A to request Member State B to take charge of Ahmed expires. A transfer decision is not issued and MS A starts examining Ahmed's application for protection.

#### **SHEET IRINA**

Irina is a 15-year old girl. She arrives in Member State A, and requests for asylum. EURODAC shows that before Irina came to Member State A, she stayed in Member State B with her parents. Applying the Dublin Regulation, both Irina and her parents were transferred by Member State B to Member State C. Irina states that soon after arrival in Member State C, she ran away from her parents and travelled to Member State A on her own.

In Member State A, Irina is appointed a guardian. The immigration authorities ask the guardian whether or not Irina should be reunited with her parents in Member State C. The guardian has severe doubts because of Irina's rather convincing claim that her father molested and abused her. Therefore, the guardian states that investigation into the matter is necessary.

The authorities in Member State A, who are very cooperative at this point in time, ask Member State C to reveal the whereabouts of Irina's parents. MS C replies that they do not know where the parents reside, and that as a result, Irina's interest would be served best if the request for asylum was dealt with in Member State A. The authorities in Member State A then declare that there is nothing more they can do, and begin examining the application for protection, submitted by Irina.

One last example. Slightly more complicated, but once again: taken from normal, everyday life.

#### **SHEET MUNYA AND SAHAR**

Munya and Sahar, two under-aged brothers, ask for asylum in Member State A. They state that their 20-year old brother Singh legally resides in Member State B and that they would gladly be reunited with him. Therefore, a take-charge request is sent by Member State A to Member State B. Relevant documents and a written consent of the brother residing in Member State B are sent along with the take charge request.

Member State B rejects the take charge request stating that "the brother living in Member State B, does not fulfil the requirement of "family member" as defined in article 2(g) of Dublin Regulation III." Furthermore, Member State B states that the 20 year old brother cannot be appointed as guardian for his two younger brothers, and should not be imposed with such responsibilities as required in article 8, paragraph 1 of Dublin Regulation III.

A request for re-examination is filed by Member State A, in which it is stated that the father of the boys died some years ago, that their mother resides in their country of origin and that both boys are unaccompanied minors, with nobody to take care of them except their brother in Member State B. However, Member State B refuses to accept the responsibility for examining the application for international protection. Therefore, no transfer decision is issued and Member State A start examining the brother's application for international protection.

These were just some examples of normal, everyday situations that may occur when applying the Dublin Regulation. And trust me on it: I could give you many more examples, and even much more complicated than these ones. But they all deal with the same subject: the best interest of all these minors was at stake. Now let's have a look at some preambles to the Regulation, and what they tell us about the best interest of a child.

#### **SHEET PREAMBLE (13)**

(13) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best

interest of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

#### **SHEET PREAMBLE (14)**

(14) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.

#### **SHEET PREAMBLE (16)**

(16) When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion.

From these preambles, it's pretty obvious that compared to its predecessor Dublin Regulation II, the recast of the Dublin Regulation focusses quite strongly on the best interest of the child, and on the importance of family reunification, at least in cases where that would be in the child's best interest. And indeed, article 6 of the Regulation provides for a catalogue of guarantees and safeguards in this respect, and obliges the Member States to take "appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child." Furthermore, Member States confronted with minors seeking asylum "shall closely cooperate with each other" in order to make sure that the best interest of the child and the possibility of family reunification are best dealt with in every possible way.

These obligations to take action and closely cooperate which each other are imposed on the Member States, and Member States are trusted to act accordingly. As we all know, mutual trust amongst Member States has always been one of the pillars of the European Union and its legal system. And in most cases rightfully so. At the same time however, the possibility of a Member State not being able or being reluctant to fully comply with its legal obligations can never be excluded. An administrative authority (f.e. an immigration authority) may not yet be aware of its obligations under the Dublin Regulation. Or it may require a minor to prove the relationship she or he relies on by submitting evidence; evidence that a minor may not be able to provide, and most certainly not within the narrow timeframes the Dublin Regulation has set for submitting a request to take charge of the application another Member State. Obligations like I just mentioned (taking appropriate action and cooperating closely with each other in order to guarantee the best interest of the child) may therefore at some point not be fulfilled, for whatever reason. Is that a problem? It definitely is.

#### **SHEET ARTICLE 27 DUBLIN REGULATION**

Article 27 of the Dublin Regulation provides for an effective remedy against a transfer decision. No legal remedies however are provided for in the Regulation against any other decision, nor against the refusal to make a decision, be that refusal implicit or not.

In the cases I just mentioned, obligations laid down on the Member States were neglected, and no transfer decision was issued. Therefore, the minor (or rather, her or his representative or guardian) did not have the opportunity to contest the reluctance or inadvertence of the administrative authority. No transfer decision means no legal remedy, at least according to the Dublin Regulation. That raises the question as to what other possibilities a minor has at its disposal to make sure that Member States fulfil their obligations and provide the minor with the guarantees, laid down in the Regulation and

especially meant to meet hers or his best interest. In other words: is there any legal remedy in cases like these?

National legislation may perhaps provide for a legal remedy. For example, in the Netherlands, according to article 72, paragraph 3 of the Aliens Act, objection can be made against any act, taken by an administrative authority regarding an alien as such. And though the word “act” may suggest otherwise, objection can also be made if the administrative fails to act, for whatever reason.

A short inquiry amongst judges from several member states showed that in some Member States, national law indeed provides for the possibility to lodge a complaint to an administrative court against failure to act by an administrative authority. In at least one Member State however, such a provision in national law lacks completely, although efforts to create such a possibility have been made in the past. But regarding the rights and guarantees given to minors we have been talking about today, and the importance attached to them in the preambles and the text of the Regulation: should we be satisfied by relying on national legislation? As far as I’m concerned, the answer should definitely be ‘no’.

Simply because any other answer would imply that whether or not its best interest is best served, a minor would be totally dependent on the legal system in the Member State he or she ends up in, often totally by coincidence. But what other means are there?

The Dublin Regulation is part of the European Union’s Legal System. Therefore, Member States implementing the Dublin Regulation are bound by the rights and provisions laid down in the Charter of fundamental rights of the European Union. So let’s see what the Charter has to offer.

#### **SHEET ARTICLE 24 CHARTER (title and paragraph 2)**

Article 24 of the Charter of fundamental rights is titled “the rights of the child”. In paragraph two, it states that in all actions relating to children, the child’s best interests must be a primary consideration.

And now, let’s take a look at article 47 of the Charter.

#### **SHEET ARTICLE 47 CHARTER**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. The preambles to the Dublin Regulation, read in conjunction with especially articles 6 and 8 of the Regulation provide for rights and guarantees, in order to secure that the best interest of a child is best served, and that the possibilities of reuniting a child with family members or relatives residing in any Member State are taken into account profoundly. It is with that purpose in mind, that Member States are imposed with the obligation to take appropriate action and cooperate closely with each other in order to guarantee that the best interest of the child and the possibility of family reunification are best dealt with in every possible way.

Whenever a Member State (or rather: an administrative authority) fails to comply to these obligations, it violates these rights and guarantees. Therefore, according to article 27 of the Charter of fundamental rights of the European Union, there should be an effective remedy before a tribunal. I’m not in the business of making laws. I am just a humble judge. But it seems to me that in order to secure the right to an effective remedy in cases like I mentioned before, it would suffice to add just a few words to article 27 of the Dublin Regulation.

#### **SHEET**

The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision or the failure to issue a transfer decision, before a court or tribunal.

It’s just a suggestion, free of charge.



