

## Unaccompanied Children and the Dublin III Regulation

### Dublin Regulation

Only one country can be responsible for considering the request for international protection. That is established in an EU law called the [Dublin III Regulation](#) (604/2013). There are several reasons why a particular EU Member State may be responsible for examining an application for international protection, e.g. the presence of a family member or relative in that country, the person having been issued a visa or a residence permit there, or whether the person had travelled through another Dublin III country by regular or irregular means.

The Dublin III Regulation provides the legal basis for establishing the criteria and mechanism to determine the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national or a stateless person. This mechanism is known as the Dublin procedure.

### Dublin countries

The Dublin III Regulation applies to 32 countries which include the EU Member States, Iceland, Liechtenstein, Norway and Switzerland.<sup>1</sup>

### Dublin procedure in the case of unaccompanied children

#### Family reunification

The priority is to place unaccompanied children in the same Member State as a family member or relative, provided it is in the best interest of the child.

First of all, the Regulation gives the responsibility to proceed with the request for international protection to the Member State where unaccompanied children have a 'family member' (defined as a parent, spouse or child) or a 'sibling' who is 'legally present' in the country. This State has an obligation to take the responsibility for examining an application of an unaccompanied child.

Secondly, it gives the responsibility to proceed with the asylum application to the Member State in which the unaccompanied child has a 'relative' (defined as an adult aunt, uncle or grandparent) who is 'legally present' there. In this case, there are further conditions: there must be a separate investigation to check that the relative is able to take care of the child, and the allocation of responsibility must be in the best interests of the child.<sup>2</sup>

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<sup>1</sup> The Dublin countries include the 28 European Union countries (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, as well as 4 countries "associated" to the Dublin Regulation (Iceland, Liechtenstein, Norway and Switzerland).

<sup>2</sup> Dublin regulation (*Article 8*) **Minors**

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 interests of the minor. Where the applicant is a married minor whose*

Once it is clear that the asylum seeker is an unaccompanied child who has family or relatives as defined by the EU rules in a particular Member State, the child must be transferred to that Member State to apply for international protection there.

The unaccompanied child should provide the state authorities with all the information they have about the presence of any family members or relatives in any Dublin country.

Means of proof in the case of the presence of a family member or relative (father, mother, child, sibling, aunt, uncle, grandparent, adult responsible for a child, guardian) of an unaccompanied child are:

- residence permits issued to the family member;
- evidence that the person is related, if available;
- failing this, and if necessary, a DNA or blood test;
- verifiable information from the applicant;
- statements by the family members concerned;
- reports/confirmation of the information by an international organisation (UNHCR).<sup>3</sup>

It is important that the unaccompanied child tells the state authorities as soon as possible if they think that their mother, father, brother or sister, aunt, uncle, grandmother or grandfather could be present in one of the Dublin countries and, if so, whether or not they want to live with them.

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

The best interests of children should be respected. In the absence of a family member or relative, an unaccompanied child – unlike any other asylum seeker – in effect has a choice of which Member State to apply to. The CJEU has confirmed (in the case of MA<sup>4</sup>) that this is the case even after the child has already applied in another Member State.<sup>5</sup>

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*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.*

*2. 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 interests of the minor.*

*3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, are present 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.*

<sup>3</sup> COMMISSION IMPLEMENTING REGULATION (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

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<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d5be7015421cc24067ab1ef48fe25e8125.e34KaxiLc3qMb40Rch0SaxyKaN10?text=&docid=138088&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=198008>

<sup>5</sup> *In the absence of a family member, sibling or 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 interests of the minor.*

### **Principle of non-transfer of children**

Moving unaccompanied children from one country to another has a negative impact on their well-being. Transfer or threat of transfer may lead to their disappearance. The country responsible for examining the asylum request of a child should therefore be the one where the most recent application has been made, in order to avoid unnecessary movement, except when the transfer aims to reunite families or is in the best interest of the child. Children should not be separated from family members, including brothers or sisters who are already in the EU. Member States should have the obligation to trace family members residing in the EU.

### **Length of the procedure**

If the Member State where an asylum application is lodged considers another country to be responsible for examining the application, it requests that country to accept responsibility within three months of the date of submission of the asylum application. The State to which the request is sent must answer within two months after receipt of the request.

Not replying within the required timeframe means that this State has accepted responsibility for the application. The transfer will take place within six months of the moment at which the other country accepted responsibility for the asylum application.

### **Relevance for guardians**

The relevance of having knowledge of the Dublin III Regulation is the guardian's pedagogic tasks that follow from it.

The best interest of the child is a decisive criterium. So the point to be taken into consideration is whether the child's development will be positively stimulated by a transfer to another EU Member State where a family member or relative is residing. The guardian must therefore cooperate transnationally in order to gain insights into the situation of the family member or relative in the other EU Member State.

Nidos conducted a European project on this issue: 'Dublin support for guardians'. The aim was to offer guidance to guardians in the EU with respect to the Dublin III Regulation. The final report from this project can be found on [www.engi.eu/projects](http://www.engi.eu/projects).