

# **Family reunion in Germany under the Dublin III Regulation**

## Requirements – Process – Practical tips

**Diakonia for people**

A Guide for Advisory  
Services

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**refugee law clinics abroad e.V.**

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This is the English translation of a publication written for the German context, and parts of it reflect the German situation. However, since most of the content concerns European law, the translation could be useful for all practitioners in Europe working on family reunion under the Dublin III Regulation.

# Foreword

## Families belong together.

Every day the experience of our migration advisors confirms that integration can only succeed when those who have fled their home country no longer need to worry about their spouses and children they left behind in their country of origin or even stranded in transit countries. Fortunately, this fact is now commonly acknowledged. The structure provided by a reunited family, and the mutual support within it, significantly increase the ability of family members to process their experiences together, look towards the future, build a new life in their new location, learn German, undergo training and look for work.

Currently the reunion of families not only from third countries, but also within the European Union (EU), is a subject of debate in advisory services, political circles and the courts. At this time, several thousand immediate family members such as spouses and minors are waiting in Greek refugee camps to be transferred to their families in Germany. Some have been waiting for more than a year due to protracted delays and bureaucratic obstacles in the implementation of family reunification procedures.

Yet if anywhere, within the EU it should be possible to reunite families with a minimum of bureaucracy, for in the Dublin III procedure it is not the embassies that are involved but the Dublin Units of the national asylum authorities.

This guide is intended for all those who are involved in advisory services for refugees and asylum seekers. It is designed to elaborate the process of family reunion and explain the related procedures not only in advisory services for asylum seekers, adult migrants and youth migrants but also in institutions for unaccompanied minors; it is also for the benefit of the legal guardians of minors and the countless voluntary supporters of refugees. To all of you we say a sincere thank you for your wonderful efforts to help people who have fled persecution and crisis to find a new home in Germany.



Maria Loheide

Board member for Social Policy, Diakonie Deutschland



This publication is dedicated to the memory of **Dr. Carsten Hörich** (1981–2018), visionary and trailblazer for humane legislation on migration and refugees, with heartfelt gratitude.

# I. Introduction and issue framing: two methods of family reunion

There are a large number of asylum seekers in Germany, while their family members continue to wait in other European countries, countries of transit or their countries of origin. Most of these people wish to be reunified with their family members. Although the legal requirements for the reunion of families are relatively straightforward, their implementation poses several challenges, including because the applicants must provide documentation proving that they fulfil these requirements. This publication is designed to highlight some of the problems and provide suggestions for assistance.

There are two basic legal routes for reunifying families. Which route should be employed at which point depends on the status of the application and the individual circumstances.

The first possibility is to apply for family reunification according to national law. In Germany, the relevant provisions are laid down in §§ 27 et seq. of the Aufenthaltsgesetz (AufenthG - Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory [hereinafter: Residence Act]). As a corresponding application has to be lodged at an overseas embassy, this procedure is known as the embassy procedure or visa procedure. For family members to apply for joining another family member according to the embassy procedure, the person already in Germany must have been granted an incontestable residence permit. This means that in the case of asylum seekers, a residence permit must already have been granted according to § 25 paras 1 and 2 of the Residence Act (cf. Residence Act § 29 para 2). However, at present, a temporary legal exception is made in the case of persons who have been granted subsidiary protection (Residence Act § 25 [2], sent 1, alt 2; Asylum Act § 4): Beneficiaries of subsidiary protection are not eligible for family reunification by means of the embassy procedure until 16 March 2018 (cf. Residence Act § 104 para 13).<sup>1</sup>

The second avenue for family reunion is through European legislation – specifically, the Dublin III Regulation. In the European Union, such Regulations have legal character and are thus

directly applicable within the legal systems of Member States. Hence, the Dublin III Regulation is directly applicable in Germany. EU Regulations are applicable without transposition to national legislation, which is why the provisions of the Dublin III Regulation are not to be found, for example, in the German Residence Act. Instead, they follow directly from the text of the Regulation itself. Under the Dublin III Regulation, an international protection applicant in another EU Member State wishing to be reunited with their family in Germany is not required to have lodged an application at a German embassy, as is the case with the embassy procedure, because they are already in an EU Member State or in another country that is bound by the Dublin III Regulation (see below, Part II, Section 2). As a rule, it is not necessary for the person in Germany to have an incontestable residence permit, as is the requirement with the embassy procedure. This is because the Dublin III Regulation creates a normative mechanism for determining which Member State is responsible for the processing of an application for international protection. The EU Member State in which the family member resides and first applied for international protection (for the purposes of this publication this is always Germany) is responsible for processing the other family member's application for international protection, if the criteria provided for by the Dublin III Regulation are met. Although the application was first lodged in another member state, Germany then assumes responsibility, which means the asylum procedure must be carried out in Germany.

Despite the existence Dublin III Regulation, the embassy procedure is still possible within the EU. However, family reunion through the Dublin III Regulation will generally be the easier alternative.

## Terminology

The starting point for family reunion in Germany by means of the Dublin III Regulation is always a person in another European Member State lodging an application for international protection (hereinafter referred to as the applicant). His or her “application for family reunion under the Dublin III Regulation” will be examined in order to determine which EU Member State is responsible for his or her application for international protection. For the sake of simplicity, the person seeking advice in Germany will be referred to as the family member or relative.

<sup>1</sup> It is foreseen to extend this legal exemption until end of July 2018. As from August 2018, beneficiaries of subsidiary protection in Germany will be eligible for family reunion through the visa procedure again. However, a monthly cap of 1000 family members is foreseen.

## II. Family reunion according to the Dublin III Regulation

The Dublin III Regulation includes several provisions for family reunion, some of which are broader in their application compared to the embassy procedure. The provisions of the Dublin III Regulation for family reunion have gained significance in practice since irregular moving towards another member state within the EU has become increasingly difficult, if not impossible. Due to this new practical significance, legal practitioners and advisors are faced with new challenges. Essentially, the Dublin III Regulation determines the Member State responsible for the examination of an application for international protection within the Common European Asylum System (CEAS).

In most “Dublin cases” in Germany, the person seeking advice in Germany will be keen to ‘avert’ the responsibility of another EU Member State; in other words, to ‘protect’ him- or herself ‘from’ a Dublin transfer – for example, advice will be sought to avoid transfer back to countries of first arrival, such as Greece or Italy. In these cases, e.g. “church sanctuary” might be considered (so-called “church sanctuary” or “church asylum” is a practice specific to Germany: if a person stays in church-owned building, state authorities do not enter this building to enforce a transfer or deportation). Such transfers are legally anchored in the so-called principle of initial entry (Art 13 of the Dublin III Regulation), which determines that responsibility for the application for international protection lies with the EU Member State in which the initial irregular border crossing into the EU took place – usually countries with external EU borders.

By contrast, the provisions regarding family reunion can be understood as ‘protection through Dublin III’. These provisions make it possible to reach Germany legally for the purpose of restoring family unity. In these cases, the Dublin III Regulation thus “works in favour” of the applicant for international protection in Germany and his or her family member.

### 1. ‘Family’ according to Dublin III

When the Dublin III Regulation refers to family members, this applies only to the so called nuclear family, which must have existed already in the country of origin<sup>2</sup> (according to Art 2 (g)). To be clear: contrary to all logic, this provision is absolute, and it applies not only to legal extensions of the family, but also to biological ties. In other words, e.g. a child who is born on the way to Europe or a spouse married during travelling towards the EU, are, technically speaking, not considered a family member<sup>3</sup> under the definition of Art 2 (g) Dublin III Regulation. In practice, however, exceptions are being made. It is important to note that Art 9 goes beyond the definition of Art 2 (g) in this regard – and applies irrespective of whether the family was previously formed in the country of origin (further see below).

As a general rule, only those family members – spouses, minor children, or parents of a child who is a minor – who married in the country of origin or were born there, are eligible for family reunion. In the case of minors, instead of the parents another adult who is responsible for the minor according to the law or practices of the EU Member State in which the adult is present<sup>4</sup> can be eligible for family reunion. This formulation consistently refers to a guardian.<sup>5</sup> Where the provisions of the Dublin III Regulation refer to ‘family members’, it is impossible to extend the definition to a wider circle of relatives.

At the same time, the Dublin III Regulation also includes provisions for the broader term of ‘relatives’. ‘Relatives’ are to be

<sup>2</sup> This definition is meant to avoid marriages of convenience, adoptions of convenience and other forms of abuse. In Part II., 5.4.2 of this text (below), the irreconcilability of this criterion with human rights considerations is discussed in the framework of the so-called humanitarian clause.

<sup>3</sup> Such a case will, of course, seldom occur – and if it does, it must be viewed in the context of human rights.

<sup>4</sup> This applies in case the minor is an applicant for international protection. In case the minor is a beneficiary of international protection, the adult must be responsible according to the law or practices of the EU Member State in which the minor is present (see Art 2 (g) in detail).

<sup>5</sup> In an earlier formulation, the Dublin II Regulation explicitly stipulated this. By contrast, a lack of clarity as to which law governed the guardianship (that of the country of origin, the first EU Member State entered, or the target Member State) and the necessary research into the family law of countries of origin were countered by a very open formulation.

strictly differentiated from ‘family members’. They cover the adult uncle or aunt, or a grandparent of the applicant (Art 2 (h)).

Siblings are not covered by the above-mentioned general definition. Unless a provision explicitly refers to siblings (such as e.g. Arts 8 and 16), reunion with siblings is not possible.

#### **Specific questions in relation to ‘family members’**

■ Does the definition cover registered civil partnerships?  
In certain circumstances, partners who are not married are given the same status as spouses. A decision based on Dublin III is not made under the law of the country of origin, but on the basis of the migration law of the relevant EU Member State (for the purposes of this publication, of Germany). In Germany, only unmarried couples in a registered civil partnership as defined by LPartG (Act on Registered Life Partnerships), will be treated in a comparable way to married couples (‘spouses’) under the law relating to foreigners (Residence Act § 27 para 2). However, the LPartG relates exclusively to same-sex couples (§ 1 para 1 LPartG). Therefore, unmarried partners are in general not treated in a way similar to married partners under German law. An engagement does not establish a registered civil partnership. Therefore, engagements and similar agreements do not fall within the definition of family member under Art 2 (g) Dublin III Regulation.

A same-sex life partnership formalised under the law of other countries counts as a ‘civil partnership’ if it was recognised by means of an act of State and if it takes a form that essentially corresponds to that of a German civil partnership. Should a spouse hold legal rights, same-sex civil partners are also deemed ‘family members’. Usually, same-sex civil partnerships recognised in an act of State are not relevant to the advisory practice.

■ Is it possible for several spouses to join the person residing in Germany?

This question was the subject of drawn-out debate in relation to German national law; eventually it was answered in the negative (Residence Act § 30 para 4). This provision implements Art 4 para 4 of the EU Family Reunion Directive which makes clear that also under European Law, ‘multiple reunion’ is not desirable. Although this negative answer is not legally binding, in practice it is not possible to bring multiple spouses to join the family member in Germany.

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■ Can minors be reunited with the husband of their mother when he is a step-father, not their biological father? Does the same apply to a step-mother?

Yes, because the minor children of the spouse or civil partner are also deemed family members. However, the children must be unmarried (see below).

■ Are adopted children considered ‘family members’?

Yes, they are. The only condition is that the family – including the adopted children – must have already existed in the country of origin. (For the exemption under Art 8 Dublin III Regulation see below.) A child adopted later does fall within the definition of “family member” under Art 2(g) of the Dublin III Regulation.

## **2. Geographical applicability: Where do the persons have to be?**

The Dublin III Regulation is widely known as the fundamental regulation of the Common European Asylum System (CEAS). Accordingly, it is directly applicable in all EU Member States (see in more detail above). In addition, Norway, Liechtenstein, Switzerland and Iceland participate in the Dublin system which extends the applicability of the Dublin III Regulation. It follows that family reunion under the Dublin III Regulation is only possible when the family members are located within this ‘Dublin space’. In other words, all persons who are part of the procedure of family reunion through Dublin III must be present in an EU Member State or in Norway, Switzerland, Liechtenstein or Iceland.

## **3. Temporal applicability**

### **3.1. At what point does Dublin III come into effect?**

The Dublin III Regulation determines responsibilities for asylum procedures across EU Member States. It regulates the question which Member State is responsible for examining an application for international protection lodged on the territory of any Member State (Art 2 (b), Art 3 para 1). The temporal applicability follows from this logic: The Dublin III Regulation applies imme-

diately after the lodging of an application for international protection. Since the Regulation determines responsibility for the asylum procedure, Germany can be responsible only for as long as the applicant's application for international protection is ongoing in the other Member State. The Dublin III Regulation therefore no longer applies when this procedure has been completed and a decision has been reached on the applicant's claim for international protection.

#### **Tip for advisory services**

Confusion can arise concerning the time of the submission of an application for international protection. According to a recent judgement<sup>6</sup> of the European Court of Justice, the application for international protection is “deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.” In practice, the decisive point of time is currently disputed depending on the administrative practice of the Member State in question. In Greece e.g., the current practice of the Dublin Unit seems to consider the formal lodging of the asylum application as the relevant point of time. However, this opinion is not in line with the cited jurisprudence of the European Court of Justice according to which the earlier so-called pre-registration must be considered as decisive point of time.

You will need to find out whether an application for international protection has already been lodged in another EU Member State. If not, the person concerned should be encouraged to express their desire for family reunion known the earliest possible i.e. directly when lodging the application for international protection. If the application for international protection has already been lodged, the wish can be expressed at a later point (see below). Which documents must be submitted along with the application for international protection depends on which provision is applicable to the case at hand (see Part III).

Due to the focus on the point in time when the application for international protection is lodged, the Dublin III Regulation may take effect significantly earlier than the avenues for

family reunion available through the embassy procedure – mainly because the latter requires that the relative in Germany has been granted an incontestable residence permit. Hence, if you are considering both means of family reunion, the mechanism of the Dublin III Regulation could allow for faster achievement of family reunion.

### **3.2. Art 7 para 2 Dublin III: the “Freezing rule”**

The temporal applicability of the Dublin III Regulation is reflected by one of its key provisions, which must be considered in its application. According to Art 7 para 2 Dublin III Regulation, the determination of the Member State responsible must be based on the situation obtaining when the applicant first lodged her or his asylum application. This point in time is “frozen” for the procedure for determining the member state responsible. In view of the provisions to which the “freezing rule” applies, the applicant cannot, for example, age or get married.

However, it is important to note that Art 7 para 2 Dublin III Regulation only applies to Chapter III (“[...] in accordance with the criteria set out in this Chapter”), thus certainly to the important Arts 8 to 10 – but not to Arts 16 and 17, which are part of Chapter IV of the Regulation. And that for good reason, since the latter provisions are based on humanitarian aspects, which can of course also arise at any later point in time (see below). Specific problems of the freezing rule remain to be addressed in the following.

### **4. Ranking the criteria for determining responsibility under Dublin III**

Although the principle of initial entry (Art 13) is always at the centre of ‘Dublin discussions’ concerning which EU Member State is responsible, the relevant provisions on safeguarding the family unity must not be neglected. According to the basic principle of Art 7 para 1 (“[...] the order in which they are set out in this Chapter”), the criteria of the family unit (Arts 8 to 11) are explicitly given priority over the principle of initial entry (Art 13).

### **5. Personal scope of application: options for reunion according to beneficiaries**

The Dublin III Regulation always starts with the current applicant for international protection and examines whether this

<sup>6</sup> Judgement of the European Court of Justice, 26.07.2017, Ref. C-670/16, Tsegezab Mengesteab v Bundesrepublik Deutschland; <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-670/16&td=ALL&dates=%2524type%253Dpro%2524mode%253DfromTo%2524from%253D2017.07.25%2524to%253D2017.07.27>, para 103.

person already has family members in another EU Member State (e.g. Germany). Since ‘respect for family life should be a primary consideration of Member States when applying this Regulation’ (recital 14 of the Regulation), it needs to be determined whether a particular case might fall within the responsibility of another Member State due to the criterion of family unity. In the light of existing options under the current provisions, it is helpful to divide the persons concerned into unaccompanied minors and adult applicants – each of these groups will be addressed in the following.

## 5.1. Unaccompanied minors

According to the Dublin III Regulation, minors are all third country nationals below the age of 18 years (Art 2 (i)). A minor is unaccompanied when he or she has entered an EU Member State or is staying in a Member State without being accompanied by an adult who is responsible for him or her, or was left behind in a Member State (Art 2 (j)). The responsibility of adults for the minor is defined by the laws or practices of the Member State where the minor is present.

### Specific issue I: When is a minor unaccompanied?

There will seldom be an issue as to whether a minor is accompanied or not, because generally speaking the matter is clear: whoever travels in the company of a custodial person is ‘accompanied’.

1. Please note that the relevant question for the III Dublin Regulation is not whether the minor entered the Member State unaccompanied, but rather whether he or she is unaccompanied when lodging the application for international protection. This follows from Art 7 para 2 of the Regulation, which determines that the point in time at which the application was lodged (e.g. when the applicant was in Greece) will always be decisive (see also below). Art 7 para 2 thus ‘freezes’ the situation at one point in the process and governs the process thereafter.
2. Please also note that minors are not deemed accompanied simply because they did not enter alone or did not lodge an application for international protection on their own. The person accompanying the minor must be an adult – which excludes underage siblings. Moreover, only in very exceptional cases are adult siblings legal guardians.
3. No minor is considered ‘accompanied’ simply by the appointment of a representative (for a definition, see Art 2 (k) of the Regulation). Please note the following: The Member States are obliged to appoint a representative

(Art 6 para 2, Art 2 (k)) for according to Dublin III this is the only way to ensure that the child’s best interests will be served. In no way can an interpretation of this clause be used to the detriment of the minor.

Turning from the question of accompaniment, we now look at the age limit of the category of ‘minor’. The cut-off point is when a person reaches the age of 18. Anyone who is older than 18 at the decisive point in time is not a minor. But what is the decisive point in time? It is common for a person to enter as a minor but turn 18 during their stay, which in many cases is prolonged. However, this is irrelevant in terms of the Dublin III Regulation if an application for international protection was lodged when the person was still a minor. In determining which Member State is responsible, the relevant point in time is only and always the point in time at which the application was lodged and the situation as it existed at that point (Art 7 para 2). This situation becomes ‘frozen’, so to speak, and determines the ensuing process. Even when the process takes a long time and the applicant has reached 18 years of age in the meantime, in the eyes of the Dublin III Regulation the applicant is still a minor! (See further above on the so-called “freezing rule” of Art 7 para 2 Dublin III Regulation.)

### Tip for advisory services

The age of the applicant at the time of the application for international protection is the decisive criterion in the case of unaccompanied minors in the reunion of families. The point in time at which the unaccompanied minor applies for international protection in another EU Member State such as Greece is what matters – it is ‘frozen’ and then applies to the rest of the process. If Germany is responsible because, for example, at the ‘frozen’ point in time the parents are legally residing in Germany, the transfer can take place after the [former] minor’s 18th birthday, provided it occurs after the crucial date. If in doubt, find out whether an application for international protection has been lodged, and if so, how old the person was at that point in time.

### Tip for advisory services

In cases of the reunion of unaccompanied minors in Germany who are close to the age of 18, it is often difficult to know how the person’s real age can be determined if they have come from a third country outside the EU. In most advisory situations related to the Dublin III Regulation, however, this question will not be relevant because the minor will be located in a different EU Member State, and the assessment of age will have to be undertaken in that State. In principle, the burden of proof lies with the minor who has to prove that despite appearances she or he is under 18



years old, but the Member State is legally obliged to provide assistance.

In dealing with unaccompanied minors it is crucial to involve the German Youth Welfare Office (Jugendamt) as early as possible. This applies both when the minor is in another EU Member State and when they come to your office in Germany for advice. In many cases the youth welfare office will be involved anyway, for example, in appointing a guardian or assessing whether the child's interests are being served. In other words, it is advisable to contact the youth welfare office beforehand and maintain close contact throughout the whole procedure. Seek assistance from established structures such as the German Association for Public and Private Welfare (Deutscher Verein für öffentliche und private Fürsorge e.V.) which work closely with the relevant youth welfare offices not only in Germany but also, through partner organisations, in other European countries. You can find the contact information in the Annex.

### **5.1.1 Scenario 1: Family members or siblings in another EU Member State**

Whenever an unaccompanied minor applies for international protection, the Member State responsible is that in which a family member (see above) or a sibling is legally present, providing this is in the best interests of the minor (Art 8 para 1, sent 1). This provision foresees four preconditions:

1. The applicant is a so-called unaccompanied minor.
2. Family members or siblings are present in another Member State.
3. The presence of the family members or siblings in that Member State is legal.
4. Family reunion is in the best interests of the minor.

It becomes clear that this provision expands the narrow definition of 'family members' (see above, II. 1.) to include the siblings of the minor. It is irrelevant whether the siblings are minors or adults, or whether in their country of origin they were already taking care of the applicant or will be doing so when the family is reunited in the country they aim to live in. The only essential condition in such a case is that the persons are sib-

lings. In most cases, it will be necessary to provide proof of the relationship as siblings.

■ **Question: Can minor be reunited with adopted siblings?**  
In principle, adopted siblings are also deemed siblings under the provision in question. However, one question still needs answering: Do all of the family members, including the siblings, have to have been together already in the country of origin? In general, adopted children can only be brought to live with the family if this family (parents and children) already existed in the country of origin as they fall under the general definition of 'family members' which always requires the existence of the family in the country of origin (Art 2 (g), see above). In the case of unaccompanied minors however, the application of the term 'family members' is extended to siblings. They are not 'family members' in the original sense of Art 2(g) – and for this reason, they do not have to have been part of the family in the country of origin. In short: siblings who became part of the family through adoption and after the family has left the country of origin, do fall under Art 8 para 1 Dublin III Regulation.

### **Basics**

#### **How can facts or family relationships be verified under the Dublin III Regulation?**

##### **1. Requirement of proof**

There are many instances in which facts or information have to be verified, and in some cases this can be difficult. In principle, 'elements of proof and circumstantial evidence' shall be used in the procedure for determining the Member State responsible (Art 22 paras 2 and 3 – and specifically pertaining to family reunion, see Art 7 para 3). In case formal proof (as defined in Art 22 para 3 (a)) is not available, circumstantial evidence (as defined in Art 22 para 3 (b)) is sufficient if it is coherent, verifiable and sufficiently detailed (Art 22 para 5).

Formal proof can be refuted can only be refuted by proof to the contrary (Art 22 para 3 (a)). The Dublin Implementing Regulation 1560/2003 as amended by the Dublin III Implementing Regulation (EU) 118/2014 (hereinafter referred to as Implementing Regulation) <sup>7</sup>, Appendix II, includes a helpful list of 'probative' and 'indicative' elements that could assist in verification. Regarding circumstantial evidence, the evi-

<sup>7</sup> This document is a revised version containing all amendments up to that point (30 January 2014). It can be found under <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0118&from=DE>.

dentiary value of indicative elements shall be assessed on a case-by-case basis (Art 22 para 3 (b)).

In gathering proof, it is helpful to consult the Implementing Regulation noted above: Appendix II, List A, I No. 1: Proof, and Appendix II, List B, I No. 1: Circumstantial evidence. These could include, for example, an excerpt from the family register in the country of origin, or evidence of DNA or blood tests (proof). Statements given by others such as the United Nations High Commissioner for Refugees (UNHCR) (see recital 12 Dublin III Regulation, Art 29 para 1 Asylum Procedures Directive, as well as Annex II List B (I) (1) Implementing Regulation) or family members may also suffice; the latter must be assessed by the relevant Member States (circumstantial evidence). The administrative practice of the Dublin Units of some Member States might be different (e.g. not acknowledging circumstantial evidence and always requiring formal proof) – in these cases it might be useful to explicitly refer to the relevant provision of the Dublin III Regulation or its Implementing Regulation (e.g. to Art 22 para 5 Dublin III Regulation).

Overall, Art 22 para 4 of the Regulation states that ‘the requirement of proof should not exceed what is necessary for the proper application of this Regulation’.

## 2. How are verifications submitted?

If possible, the verifying evidence should be submitted upon the formal lodging of the application for international protection in another Member State. Should this not have been the case, evidence must be submitted as quickly as possible because, as required by the Dublin III Regulation, the ‘take charge request’ (TCR) must be sent by the Member State to Germany within three months from the time of the lodging of the applicant’s international protection application in that State (Art 21 para 1 Dublin III Regulation). If the TCR has been sent within the latter time period but with potentially basic evidence, supplementary proof can be submitted to the competent authorities at a later stage – as necessary.

For the process of verification, copies – if possible certified – are an important form of documentation. Naturally, the applicants will not always have copies with them. For this reason, to avoid a situation in which the applicant has no written documentation at all to send, copies or photos should be kept that can be sent by mail or by messenger services. In many countries these can be sent by mail to the competent authorities. If the applicant has been given a mailing address or the address is known, it is vital to ensure

that the number of the application (file number) is sent with the documentation (if there is more than one number and you are in doubt, send them all). On its website, the Informationsverbund Asyl & Migration provides contacts for the Greek and Bulgarian authorities. As attempts to establish contact with the relevant authorities in other Member States might be fruitless or complicated, encourage the applicant to seek legal advice and support by relevant actors.

Asylum authorities in some Member States might offer to retrieve applicants’ photos from mobile phones or other data storage mediums such as USB sticks and store them on a server. In Greece this is currently the case, for example. However, this administrative practice could change at any time.

### Specific Issue:

Does the applicant have to submit (certified) translations of the documents proving family relations, e.g. family book, extracts from relevant registers, or marriage certificate?

No. For the procedure to determine the Member State responsible for an application for international protection, formal proof as well as circumstantial evidence shall be used (Art 22 para 2 Dublin III Regulation). A formal proof, e.g. a hit in the EURODAC database, directly determines the responsibility pursuant to the Dublin III Regulation.

The requirements for formal proof and circumstantial evidence are further specified in Art 22 para 3 Dublin III Regulation in conjunction with Annex II of the Implementing Regulation. In this Annex extracts from registers are listed explicitly as proof. However, neither Art 22 para 3 Dublin III Regulation nor the list in Annex II of the Implementing Regulation provide for a requirement of any translation of extracts from registers. Therefore, a non-translated document must be considered as proof under the Dublin III Regulation. Notwithstanding the aforementioned and in any case, a non-translated or non-officially translated document submitted by a specific applicant and containing the names of the applicant and his or her family members or showing pictures of those, must be considered at least as circumstantial evidence which meets the requirements of Art 22 Dublin III Regulation (see in particular Art 22 para 5).

This argument is supported by the background of revision of the Dublin-Regulation. The idea underlying the revision of Art 22 Dublin III Regulation was to establish a binding Regulation for the assessment of formal proof and circumstantial evidence, as the previous Regulation was strongly compro-

mised by inconsistent requirements concerning proof and circumstantial evidence in different countries of Europe.<sup>8</sup> According to Art 22 para 3 Dublin III Regulation thus now formal proof determine responsibility as long as it is not refuted by proof of the contrary. Therefore, if the extract of the register is questioned due to lack of translation, there has to be a formal proof of the contrary. Since the exhaustive list of the Implementing Regulation is intended to create legal certainty, a proof to the contrary can only be provided through one of the means of evidence listed there as well. If there were different standards for formal proof and proof of the contrary, the specification in Annex II of the Implementing Regulation would run into nothing.

Finally, such a requirement would conflict with the purpose of the Dublin III Regulation. The aim of the Dublin III Regulation is to determine the Member State responsible for the asylum procedure fast and unambiguously. Therefore, it is essential that there are no excessive requirements regarding the proof and circumstantial evidence during this procedure of determination. When implementing EU legislation and in particular the Dublin III Regulation all Member States are obliged to guarantee the full practical effectiveness (effet utile). Excessive requirements regarding the necessary proof and in particular regarding translation of all documents required during the determination of the responsible Member State, would result in much prolonged procedures and therefore contradict the purpose of the Dublin III Regulation.

#### **Specific Issue:**

Can a take charge request be rejected solely with the argument that the document submitted as proof is false?

No. Art 15 para 2 of the Implementing Regulation provides that “any request, reply or correspondence emanating from a National Access Point [...] shall be deemed to be authentic.” This means that any document which the requesting Member State uploaded to DubliNet as proof or circumstantial evidence must be considered as authentic by the requested Member State.

This follows from the principle of mutual trust<sup>9</sup> and in particular from the presumption of compliance of other Mem-

ber States with EU law which constitute the “raison d’être of the EU and [...] of [...] the Common European Asylum System” (ECJ, C-411/10 and C-493/10, N.S. and M.E. et al, para 83). As soon as the requesting Member States uploads a document to DubliNet, it thereby asserts that it deems this document to be authentic – as otherwise the Member State would not be allowed to submit this document in the procedure for determining the responsible Member State. The latter follows from the principle of sincere cooperation (Art 4 para 3 TEU). A document which is assessed as authentic by one Member State may not be rejected as false by another Member State without any further argument. To the contrary, it must be considered as proof or circumstantial evidence under Art 22 as long as counter-proof is not submitted (see above).

#### **Legal presence**

The family member to whom the applicant is to be brought must be legally present in the relevant Member State. The Dublin III Regulation does not include its own definition of legal presence; Annex VII of the Implementing Regulation however provides for some categories of statuses which shall be considered as legal presence. In Germany, the person must have either a residence document, as stipulated in the Residence Act, or be legally present by other means (for discussion of the ‘Duldung’ (temporary suspension of deportation) and ‘Aufenthaltsgestattung’ see below, Specific issues II and III).

#### **Tip for advisory services**

Most relevant in practice is the provision of advice to asylum seekers or individuals in Germany who have already been recognised in one form or another. Please note that the relevant residence document must be granted when the application for international protection is lodged by the person (applicant) they want to bring to Germany, because this point in time is frozen as the basis for determining the State which should bear responsibility under the Dublin III Regulation (see above on Art 7 para 2). In other words, if in the meantime the request for international protection of the person in Germany has been rejected (German Asylum Act § 72), and even if a status as someone entitled to international protection has been terminated or withdrawn (German Asy-

<sup>8</sup> See Danish Refugee Council/COM (2001), The Dublin Convention. Study on its implementation in the 15 Member States of the European Union

<sup>9</sup> Legal principle stemming from the EU Internal market, transferred to the Area of Freedom, Security and Justice, legal basis in Art 2 and/or Art 4 para 3 TEU.

lum Act § 73), this is irrelevant for the purpose of a family reunion under the Dublin III Regulation. As long as the negative decision had not yet been communicated to the family member in Germany at the time the application for protection was lodged at the other Member State, the person's presence in Germany is considered as legal for the purpose of the Dublin III Regulation.

**A question arises ...**

What seems to be a beneficial situation for the person applying for international protection (in a different EU Member State) can also be turned around: a family member's application for international protection in Germany is rejected, and at the time the applicant in another Member State lodges an application for international protection, the family member in Germany is residing there illegally. After that, however, the decision of the Federal Office for Migration and Refugees (BAMF) is reversed via the courts, and the person sitting in your office has had their refugee status recognised. Nevertheless: Art 7 para 2 of the Dublin III Regulation still applies. In this case, reunion by means of the binding provisions of the Regulation is not possible. However: The humanitarian clause (Art 17 para 2) can be applied and the request should be accepted on this basis by Germany (no room for Member States' discretion i.e. positive obligation to accept under Art 17 para 2) as Art 7 para 2 does not apply to the humanitarian clause – see further Part II, 5.2.4 below.

**Specific issue II: Is a person who has an “Aufenthaltsgestattung” (International Protection Applicant’s Card) legally present in the sense of Art 8?**

Yes. This follows already from the list of statuses establishing “legal presence” which is provided for in Annex VIII of the Implementing Regulation, according to which an “applicant for international protection” is “legally present”.

The following argument is presented as the question is nevertheless contentious in German legal discussion. Applicants for international protection in Germany are technically permitted to stay: their residence in the Federal Republic of Germany for the duration of the international protection procedure is not illegal (‘Aufenthaltsgestattung’ – International Protection Applicant’s Card – according to the Residence Act § 55, with written certification according to § 63).

Whether the International Protection Applicant’s Card is sufficient to establish “legal presence” under Art 8 Dublin II Regulation is however currently disputed in Germany. Current administrative practice still seems to indicate that family

reunion indeed takes place with persons whose asylum procedure is ongoing. Recently, however, some have adopted the view that residence only becomes legal once the legality of the person’s stay has been determined through a legislative or executive act. According to this view, an International Protection Applicant’s Card would be insufficient because such act is necessary for a permit to be granted; in fact, it is granted in lieu of an initial decision. However, it must be noted that the scholars following this argument usually refer to the German language version exclusively i.e. do not differentiate between “legal presence” under Art 8 and “legal residence” under Art 16 (see below). Having in mind that this argument is not correct under Art 16 either (see below), it can in any case not be applied to Art 8.

**Background:**

The German version of the Dublin III Regulation does not differentiate between “legally present” in the sense of Art 8 and “legally residing” in the sense of Art 16, but uses the same terminology (“rechtmäßig aufhältig”) in both provisions. This is due to the particularities of the German legal language and does not affect the interpretation of the requirements under Arts 8 and 16 Dublin III Regulation.

According to the case law of the European Court of Justice (in particular ECJ, CILFIT, 238/18 and ECJ; Confédération paysanne, C-298/12), EU law must be interpreted “on the basis of the real intention (...) and the aim (...) in the light, in particular, of the versions in all other official languages”.

Most language versions of the Dublin III Regulation differentiate between “legal presence” under Art 8 and “legal residence” under Art 16 Dublin III Regulation. This is in line with the aim of Art 8 which is to provide for a lower requirement with regard to the status of the family member in case of unaccompanied minors. Therefore, the requirement of Art 8 is distinct from the requirement of Art 16 Dublin III Regulation. As EU law must be interpreted autonomously and coherently within all Member States, this differentiation also applies in Germany – notwithstanding the lack of differentiation in the German language version.

However, as the German administration usually exclusively refers to the German version of the Dublin III Regulation, the above must be brought to the attention of the German Dublin Unit. In a legal statement supporting a take charge request, it should be explained explicitly that the requirement of Art 8 (“legally present”) is distinct from the one of Art 16 (“legally resident”). In any case, Annex VIII of the Implementing Regulation should be referred to explicitly.

**Related tip for advisory services**

Only very rarely should this contentious issue pose a problem in the case of unaccompanied minors, because they can continue to be reunited with their families via Art 10 (see Part II, 5.2.2. below). However, it must be noted that it is not possible under this procedure to reunify with siblings who have an International Protection Applicant's Card – in this specific case, it is therefore of utmost importance to bring the above to the attention of the German Dublin Unit.

However, a written consent is required for family reunion under Art 10. For this reason, it might be useful to always submit the minor's written consent, even though in the context of unaccompanied minors it is not actually legally required under Art 8 (see above, Part II, 5.1.1. for the requirements).

Should you nevertheless face a case that is rejected with reference to illegal presence, make sure you call in a lawyer. Depending on the circumstances, the case could send a signal to similar cases.

**Specific issue III: Is a person who has a so-called "Duldung" in Germany (particular form of temporary suspension of deportation) legally present in the sense of Article 8?**

Yes. The 'Duldung' is specific to German migration law. It is applied, for example, when due to legal or factual reasons a deportation is not possible (Residence Act § 60a). Regardless of this, the person has an enforceable obligation to leave, and their residence is not lawful for the purpose of the Residence Act.

European regulations, on the other hand, including the Dublin III Regulation, do not foresee a similar provision. The Dublin III Regulation only differentiates between legal and illegal residence or presence. For this reason, the Dublin III Regulation incorporates the 'Duldung' in accordance with the unequivocal formulation of an 'Aufenthaltsgenehmigung' ([temporary] residence permit) (Art 2 (l) – Residence document), and the person's stay is, according to the Dublin III Regulation, lawful. Therefore, reunion with a family member in Germany who has a 'Duldung' is possible, according to Art 8 para 1 of the Dublin III Regulation. However, please note that this issue has not yet been settled before German Courts.<sup>10</sup>

**Related tip for advisory services**

Should you face a case that has been rejected, make sure you contact a lawyer. The case might establish a precedence for similar cases.

**■ Serving the best interests of the minor**

Family reunion must serve the best interests of the minor. According to the Dublin III Regulation, 'the best interests of the child' are to be 'a primary consideration for Member States with respect to all procedures' (Art 6 para 1). The possibility of family reunion therefore is mostly in the best interest of the child as indicated by Art 6 para 3, which mentions this as first determining factor for the best interest of the child. Only in exceptional cases does family reunion not serve the best interests of the child. If there are indications of the latter, the Member State has to examine these. An indication could be derived from a child's expressed will not to be reunited with the family member. In this case, it must be assessed whether reunion would indeed be in the child's best interests. Violence, abuse or other extraordinary circumstances could be factors indicating that reunion is contrary to the child's best interests. In practice, there is the occasional case in which one parent is legally present in a Member State but does not have legal custody of the minor. In such cases too, reunion might not serve the minor's best interests – this is however to be assessed on a case by case basis taking into account e.g. care arrangements in the concerned Member States.

**■ Special case: married unaccompanied minors (Art 8 para 1 sent 1)**

Specific provisions apply to cases of married unaccompanied minors. In these cases, reunion with their parents cannot be considered because the parents are no longer interpreted as family members for the married minor (Art 2 (g) indents 3 and 4). This means that for the purpose of the Dublin III Regulation a marriage can disconnect the formal familial ties with the parents.

This provision only differs when the spouse of the minor is illegally present in another Member State. As stated above, the legality of the person's residence in the receiving Member State is a prerequisite of reunion. A reunion of the couple is therefore not possible. However, it would not be in the best interests of the minor to be 'stuck' in one Member State while the parents are legally residing in another. As an exception, reunion with the parents is possible in such a case (Art 8

<sup>10</sup> The decision by VG Düsseldorf 8 April 2015, 13 L 914/15 A Ref. No. 19 can be used to argue that 'Duldung' is a form of legal residency in terms of art. 8 para 1, since it is an executive (or legislative) act.

para 1 sentence 2). In this way, the Dublin III Regulation takes the best interests of the child into account. Reunion with siblings remains possible.

#### ■ **Is an application necessary?**

The Dublin III Regulation provides the criteria for determining Member States' responsibility for assessing an unaccompanied minor's application for international protection, in cases of separation of the family members and siblings. The Member States must cooperate closely in assessing whether the minor has family members within the Common European Asylum System (Art 6 paras 3 and 4). Legally speaking, an application is not strictly required as the procedure is implemented by the national competent authorities of the Member States in question. In practice however, Member States do not always comply with this obligation – in order to not put at risk the individual case, an application should therefore always be submitted.

#### **Tip for advisory services**

It is important to draw to the attention of the determining authorities of the Member States the existence of a minor's family members in another Member State. If you have the feeling that this has not happened, or the Member State in question has no knowledge of the family situation of the minor, take the necessary steps. Directly contact the person concerned or find out contact details of their guardian – the Member States are bound to provide the minor with a 'representative' (Art 6 para 2). Non-Governmental Organisations also frequently take on guardianship or representation roles.

#### **Tip for advisory services**

You will often encounter the situation that the mother, father and siblings in Germany all come to you for advice. Do not let this worry you. The only deciding factor is whether the person who is not in Germany is unaccompanied and a minor applicant in another EU Member State. The assessment of all requests for family reunion has to be oriented towards this person. If family members and siblings are legally present in Germany, Dublin III is applicable. The unaccompanied minor can be reunited both with her or his parents and with her or his siblings! All family members will need to be indicated in the unaccompanied minor's the application for protection. The situation is different when the family members are scattered across several Member States – see below Part II, 5.1.3.

#### ■ **Procedure to determine the responsible Member State and possibilities of legal aid**

If the requirements for family reunion are met, the following procedure is initiated between the Member States:

1. The Member State in which the minor is located (requesting Member State) sends a take charge request (Art 21). The take charge request is sent using a form provided by the Implementing Regulation (see Annex).
2. The requesting State has three months to send the take charge request, starting from the time of the lodging of the minor's application for international protection.

#### **Tip for advisory services**

Annex I of the Implementing Regulation includes the form of the take charge request. It is worth looking at, especially to be sure what data must be obtained and sent with it.

3. The Member State receiving the request has two months to reply to take charge request (Art 22 para 1). The requested Member State assesses its responsibility on the basis of elements of proof and circumstantial evidence. If no reply is sent within the allotted time, the lack of response is regarded as 'tantamount to accepting the request' (Art 22 para 7) – lack of response is thus seen as acceptance, and the requested Member State has to take steps to receive the minor.

Under exceptional circumstances when the requested Member State can demonstrate that the examination of a take charge request is particularly complex, an additional time period of up to one month can be requested. In such situations, the requested Member State can ask such an extension within the original deadline of two months.

#### **What this means for advisory services**

If Germany, for example, fails to reply to Greece's take charge request within two months, Germany becomes responsible, and the family reunion is mandatory. For this reason it is important to know whether – and, if so, when – a take charge request was sent. You can find this out from the Dublin Unit of the Federal Office for Migration and Refugees (BAMF) (for contacts, see Part VI below).

#### **Tip for advisory services**

You can find out from the BAMF whether a specific take charge request has been received and the stage of the procedure. Beforehand, try to obtain:

- the applicant's family name, given name, date and place of birth, reference number of the application for international protection and the date on which the person in another Member State lodged the application.

Keep these together with:

– the family name, given name and reference number used by the BAMF, or the serial number or access number of the residence document of the person in Germany (preferably have a copy of the residence document or a photo when you contact the BAMF per telephone or mail). You will find the contact details below [Part VI].

bereit, wenn Sie sich telefonisch oder per Mail mit dem BAMF in Verbindung setzen. Die Kontaktdaten finden sie unten (VI).

If no take charge request has yet been sent, this is due to the relevant authority in the other Member State. The BAMF states that it can, however, send a corresponding message to the other Member State <sup>11</sup> – so make sure you expressly request the BAMF caseworker to do so. Otherwise, the person in the other Member State must be requested to contact the relevant authority again. You could also get in touch with organisations in the other state – see below for contact details (Part VI).

4. Upon acceptance of the take charge request by the requested Member State, the requesting Member State has six months to transfer the minor (art 29 para 1). If this deadline is not met, the requesting state becomes responsible (art 29 para 2).

#### **Tip for advisory services**

These stipulations mean that, according to the Dublin III Regulation, the process of family reunion should not theoretically take longer than 11 months. Each of the deadlines is strictly adhered to – once a deadline has passed, the responsibility passes to another Member State. This is in line with the aim of the Dublin III Regulation, which is to assign responsibility as quickly and with as few complications as possible. Nevertheless, you will doubtless be faced with cases in which the transfer takes a lot longer than 11 months. Given the current administrative practice of the BAMF, as explained below (see Specific issue IV - discussion on the agreement between Germany and Greece on caps or slowing down of family reunion), the right to family reunion does not expire when the transfer deadline expires. (Please note that this legal opinion has been confirmed by some German administrative Courts but that however, other

Courts in Germany or in other Member States might adopt other opinions. See below in more detail.)

#### **5.1.2 Scenario 2: ‘Relative’ in another Member State**

Another opportunity for the family reunion of unaccompanied minors is presented if there is a ‘relative’ in another Member State (Art 8 para 2). Relatives can be adult uncles and aunts, or grandparents (Art 2 (h)). This is valid provided that the relative can look after the minor, as established by an individual assessment. Additionally, the reunion must serve the best interests of the minor. This provision thus standardises five conditions:

1. The individual is an unaccompanied minor.
2. The relative resides in another Member State.
3. The relative is legally present in that Member State.
4. The individual assessment shows that the relative can look after the minor.
5. The family reunion serves the best interests of the minor.

See Section 5.1.1. above for information concerning unaccompanied minors, the legal presence of family members and relatives, and the best interests of the minor.

#### **■ Individual assessment to determine whether a relative can care for a minor**

The assessment of whether a relative can take care of a minor is undertaken in the Member State in which the relative resides. The necessary individual assessment must focus to the capability and willingness of the relative. The question of whether the relative has taken care of the person in the past can also be taken into account. The capacity to take care of someone is not necessarily the same as their ability to provide for them financially or available living space, even if these factors play a role.

The purpose of the provisions regarding the family reunion of unaccompanied minors is predominantly humanitarian and must therefore be guided by the best interest of the minor (cf. Art 6) and not by other considerations of the Member States such as e.g. reducing the financial costs of migration or reduc-

<sup>11</sup> Accessible at <https://familie.asyl.net/innerhalb-europas/nach-dublin-iii-vo/verfahren-und-kosten/> [in German] (accessed 9 July 2017).

ing numbers of asylum seekers. The argument that the relative cannot pay the living costs of the minor and therefore cannot care of him or her is not to be taken into account in the light of the purpose of the Dublin III Regulation, namely to clearly determine responsibility for the lodging of an application for international protection. As a rule, applicants for international protection already receive social security benefits. They fall under the 'Asylum Seekers Benefits Act' (Asylbewerberleistungsgesetz). Thus, no attempt to minimise the costs of migration can be allowed to obstruct the reunion or take precedence over the humanitarian purpose (see the Tip for Advisory Services below for responsibilities and possibilities of legal aid). The priority lies squarely with the best interests of the child; this is why an assessment must be targeted to the individual case and consider all factors, taking into account specific factors relating to the child's age, views and individual needs. Practical questions must be asked: for example, a lack of living space could be an argument against granting guardianship, although a particularly close relationship between the individuals being reunited, for example, could balance out this factor. The question of the relative's capacity if they are caring for several children may also be taken into account.

#### ■ Is an application necessary?

As explained above, legally speaking an application is not required in this case either. It is recommended, however, that you advise the competent authorities where the relatives are residing, informing of the desire for family reunion with the minor.

#### ■ The information exchange, take charge request and transfer procedure

The procedure between the Member States, in the case of 'relatives' differs from the above in terms of the following additional requirements:

1. First, the Member State in which the minor is located sends a request for information to the Member State where the relative is residing (Art 34). The aim is to clarify whether the relative can take care for the minor in accordance with the minor's best interests. For unaccompanied minors, the form for the exchange of information can be found in Annex V of the Implementing Regulation.

The information request is directed to the Dublin Unit of the BAMF in Dortmund. Depending on the residence status of the relative, the BAMF in turn will request information from the relevant local migration authorities.

#### Tip for advisory services

In most cases, the authority will be the local Foreigners Registration Office (Ausländerbehörde) and, less frequently,

the Youth Welfare Office (Jugendamt), which would actually be more appropriate. The authority in question produces an assessment as to whether the relative, in their view, can take care for the minor. The final decision lies with the BAMF. Although some BAMF employees do not abide by the recommendation of the Foreigners Registration Office, as a rule the assessment is followed. In many instances the caseworkers at the Foreigners Registration Offices are inexperienced with Dublin III cases, and for this reason they sometimes apply the framework applicable to family reunion under the Residence Act without any explanation – this means that they examine only whether the relative can cover the living costs and provide living space. This is legally incorrect as these requirements do not apply under Dublin III. (See above for the fundamental distinction between family reunion under the Residence Act on the hand, and under the Dublin III Regulation on the other hand.) Keep in mind that a lack of space can be an indicator but should by no means be the only point of consideration in a decision. And by no means will a reference to the failure to cover living costs suffice on its own – the purpose of the provisions for unaccompanied minors is humanitarian, not the reduction of costs! The best interests of the child are front and centre; however, the assessments of the Foreigners Registration Office sometimes fall short. Should you believe this is the case, communicate it to the relevant person in the BAMF – they are not compelled to follow the recommendation of the Foreigners Registration Office, or of the Youth Welfare Office. You may need to draw the attention of the BAMF to the mentioned incorrect practice of the Foreigners Registration Office.

2. The requested Member State has four weeks to reply to the request for exchange of information; the time for the reply might be extended to six weeks, if the Member State can prove, that further investigation can lead to even more relevant information (Art 12 para 6 Implementing Regulation). Should the assessment conclude that the relative is unsuitable for the care of the minor, reunion is not possible.

A positive assessment leads to the procedure described above and summarised as follows:

3. The requesting Member State in which the minor is located lodges a take charge request (Art 21) (hereinafter referred to as requesting Member State). It has three months from the date on which the minor's application for international protection was lodged. If the Member State does not send a take charge request within these three months, it will automatically assume responsibility.



4. The requested Member State has two months to respond to the take charge request (Art 22 para 1). It assesses its responsibility on the basis of elements of proof and circumstantial evidence. If no response is sent within the allotted time, this is taken to be tantamount to accepting responsibility (Art 22 para 7). The requested Member State must then make preparations for receiving the minor.
5. The requesting Member State has six months to transfer the minor (Art 29 para 1) to the requested Member State. If the transfer is not carried out within this deadline, responsibility would automatically fall back to the requesting Member State (Art 29 para 2). See below for details on the administrative practice of delaying transfers and the legal consequences thereof.

#### **Tip for advisory services**

You can find out from the BAMF whether a take charge request has been received and what stage the procedure in general has reached. Beforehand, try to obtain:

- family name, given name, date and place of birth, reference number of the application for asylum and the date on which the person in another Member State lodged the application.

Keep these together with:

- the family name, given name and file number used by the BAMF, or the reference number or access number of the residence document of the person in Germany (preferably have a copy of the residence document or a photo when you contact the BAMF per telephone or mail. You will find the contact details below (Part VI)). Please note that a Legal Authorization is necessary for access to files.

#### **5.1.3 Scenario 3: ‘Family members’ scattered in more than one Member State**

Finally, the Dublin III Regulation also foresees a provision for cases when ‘family members’, siblings or ‘relatives’ are located in more than one Member State (Art 8 para 3). In this case, the responsible Member State is determined depending on the reunion that best serves the best interests of the minor. The various States in which the family members, siblings or relatives reside are present are not a priori ranked in order. An individual assessment must therefore be conducted. As a rule, reunion with the parents will best serve the child’s best interests. The Implementing Regulation also prioritises a consideration of the strength of family ties (Art 12 para 5 (a)). As already indicated, however, this is not the only criterion; rather, the

capacity and willingness to care for the minor must also be considered (Art 12 para 5 (b))– as well as their best interest (Art 12 para 5 (c)).

#### **Tip for advisory services**

If a person applying for international protection maintains relationships with relatives in more than one Member State and wishes to be reunited with the person you are advising, keep in mind that the applicant must provide evidence to show why this person is the most suitable relative to be reunited with. It is best if a corresponding statement is submitted with the application for international protection. You could assist the family members by helping them to draft such a document – in English, if appropriate. Your argumentation should emphasise the strength of the family ties: if you are advising the parents, it will be easier to produce a convincing case than if the minor is to be reunited with an uncle. In the latter case, you need to outline why the reunion would be in the best interests of the minor. The minor is your starting point in your argumentation, not, for example, the uncle – it is not about his wellbeing. This is why it will be rare for a reunion to take place with relatives other than the parents present in another Member State and will only occur when for some reason the parents cannot, or do not want to, care for the child. In such a case, your argument should focus on the deficits of parental care – describe in detail all factors known to you.

#### **5.2. ‘Accompanied’ minors and adults**

A few sentences on the systematic of the Dublin III Regulation help to understand which provisions apply in which case: Under the Dublin III Regulation, only unaccompanied minors are exempted from the general scheme and subject to a particular set of provisions. All other applicants are subject to the set of provisions. The Regulation does not have a separate category for ‘accompanied minor refugee’. As long as a minor is travelling in the company of someone who is eligible to be their primary carer according to the law or practice of the Member State (legal guardian), they will not be subject to any special provisions despite needing protection. The processing of the applications of a minor travelling with an adult, or born after entry into the Member State, is intrinsically linked to the processing of the adult’s application. This also helps to prevent their separation (Art 20 para 3).

The rules of the Dublin III Regulation then further differentiate according to the status of the family member in the other Member State. Applicants are differentiated according to whether their relatives (in the requested Member State, e.g.

Germany) are already ‘beneficiaries of international protection’ (Art 2 (f), Art 9) or have just lodged an application for international protection (Art 10). As this guideline follows the systematic of the Dublin III Regulation, we will now turn to the case of family members who are already beneficiaries of international protection.

### 5.2.1 Family members who are already beneficiaries of international protection

If international protection has been granted and the family member is thus legally entitled to stay, a reunion with this person can take place regardless of whether the family already existed in the state of origin, as long as the persons concerned express their desire for reunion in writing.

1. A family member is already a beneficiary of international protection in the other Member State – irrespective of whether the family already existed in the country of origin.
2. This family member has a residence document based on the status as beneficiary of international protection (as in certain humanitarian residence documents – see below).
3. All persons involved in the reunion have expressed their desire to be reunited in writing.

#### ■ Family members

There are no specificities relating to the definition of family members; however, it is not required for the family to have existed in the country of origin. In other words, an exception is made for this type of reunion (Art 9) – as in all other cases the family needs to have indeed existed in the country of origin.<sup>12</sup> However, one could ask for which types of family relationships does this precondition apply. Contrary to all logic, the condition of Art 2 (g) that the family needs to have existed in the country of origin applies even to biological relationships. Although the family does not need to have existed already in the country of origin for the purpose of Art 9, the point in time when the family was formed is important. The decisive point in time at which the required family relationships must exist (qualifying the persons to be family members according to the above definition) is the point of the applicant’s application for international protection (cf. above on the so-called “freezing rule” of Art 7 para 2). This means that a marriage which took place e.g. in Turkey (after having left the country of origin and

during the travel to Greece) qualifies the persons to be ‘family members’. Theoretically it is even possible for a marriage in Greece to suffice – it only needs to have happened before the application for international protection was officially lodged.

#### ■ Legal presence as a beneficiary of international protection

When an application for international protection is lodged, it must be evident that the person with whom the applicant is to be reunited is a beneficiary of international protection. The requirement of Art 9 for ‘international protection’ is fulfilled only by means of specific legal statuses and subsequent legal documents, namely residence documents, especially those stemming from the recognition as a refugee (German Asylum Act § 3) or the need for subsidiary protection (German Asylum Act § 4). This status excludes all other avenues of being legally present, especially the preliminary residence permit (Aufenthalts-gestattung according to Asylum Act § 55), temporary suspension of deportation (Duldung) or the so-called national subsidiary protection (Residence Act § 60 V, VII) – for further details on all these statuses see above. The only exception is if national subsidiary protection was granted before 28 August 2007 – while this is seldomly relevant in practice, it can indeed occur.

In addition, there is one important feature to be noted when reunion is to take place with someone who has been granted a residence document: the regulation is linked solely to the residence entitlement resulting from the status of protection and not to the actual residence. Hence, it is required for family reunion that the person is currently present in or residing in e.g. Germany.<sup>13</sup>

#### Tip for advisory services

You will frequently encounter situations in which the person in Germany who comes to you for advice wishes to visit the applicant of family reunion in another EU Member State. Within the European Union, people with a valid residence document (and a valid passport – if the person has none, a so-called ‘Reiseausweis für Flüchtlinge’ (UN Refugee Convention Travel Document) must be issued) can travel for three months without special permission (cf. Schengen Convention Art 21 para 1).

#### Please note:

Greatest caution is called for in the case of travel outside the European Union, especially to the country of origin. The

<sup>12</sup> See the general definition of Art 2 (g), explained above. In any case, this criterion cannot be reconciled with human rights considerations, as explained below (Part II, 5.4.2) in the context of the so-called humanitarian clause.

<sup>13</sup> See also in this respect Hruschka & Maiani, in Hailbronner & Thym, EU Immigration and Asylum Law, 2nd edn, Dublin-III-Regulation, Art. 9, Ref. No. 1.

person's international protection status could be terminated (German Asylum Act § 72) or revoked (German Asylum Act § 73). Make absolutely sure you obtain all necessary information in advance.

### ■ **Written consent for reunion**

In contrast to requirements for the reunion of unaccompanied minors, the consent for reunion must be presented in writing when family members wish to reunite. This is meant to prevent family members being reunited when they have no interest in doing so. The written consent does not need to follow a certain form, but it must be submitted by all family members who want to be reunited and must be obtained by the country where the applicant is present. It is important for the applicant present in the other Member State that the written consent by the family member be produced and sent to the applicant as quickly as possible, because it is needed when the take charge request is lodged.<sup>14</sup>

### **Tip for advisory services**

Although the Member States are supposed to request the family members to express their consent for reunion in writing (as stipulated in Annex X, Part B of the Implementing Regulation, which offers information for applicants in the form of questions and answers), the family members are strongly advised to make their desire for reunion known without being asked, preferably when they lodge an application for international protection in the other Member State. The written consents of all family members involved in the reunion should be submitted at the time of the lodging of the application. See the Annex below for a template for the written consent. It is vital that each of the family members is referenced as precisely as possible so that they can be identified (name, reference number of application, etc.). This helps to speed up the process.

Submitting the written expression of the family members' consent may indeed be difficult in some cases. Here too, a document with original signature(s) is most credible. If this is not possible, copies or even photos could be helpful (see above: 'How can verification be submitted?').

Recalling: No particular format is needed apart from a written document. Please note that a national Dublin Unit may not require the written consent to be submitted in a particular form as this is not foreseen by the Dublin Regulation. Any

written expression of wish should be accepted. Member States the official language of which is not English should also accept written consents in English. Sometimes you will need to be creative. Please make sure there is as much detail as possible.

### **5.2.2 Family members who are international protection applicants**

In addition, family reunion is possible with family members who have applied for international protection and whose application has not yet been the subject of a first instance decision regarding the substance, provided that the desire for reunion is expressed in writing (Art 10 Dublin III Regulation). The following conditions apply:

- The family member has lodged an application for international protection and no decision on the substance at first instance has been reached.
- A written consent for family reunion is available (see above).

Overall, the preconditions for family members are largely identical to those described already. However, the family must have already existed in the country of origin. This time, no exemption from the general definition of Art 2 (g) is foreseen – contrary to Art 9 (see above). Additional specificities apply regarding the preconditions of the family member's application for international protection.

### ■ **A family member who has lodged an initial application for international protection**

This provision seeks to standardise the proceedings relating to family members and serves not only the purpose of family reunion but also the consistent examination of all the family's applications for international protection together.<sup>15</sup> Otherwise, the procedures relating to two applicants whose applications deal with the same content would have to be examined separately – this is why the Member State is responsible in which the application was lodged first. However, this is the case only until the decision at first instance – that is, to the point at which a decision on the substance is made for the first time on the application for international protection. This means that when the applicant's application for international protection is lodged with the other (requesting) Member State, the proce-

<sup>14</sup> From a technical point of view, the requesting Member State is then not entitled to lodge a take charge request [if there is no written consent from family members], and the requested Member State can simply reject the request.

<sup>15</sup> In this regard the rule is a counterpart to art 11, which foresees that procedures pertaining to more than one family member residing in the one Member State be dealt with together.

ture of the family member with whom the applicant is to be reunited must be between the point of lodging the application for international protection and the issuance of a first instance decision on the substance and will thus (usually) have an International Protection Applicant's Card (Aufenthaltsgestattung, see above).<sup>16</sup>

### **Don't forget!**

An application for international protection in Germany must always be the initial application. Subsequent applications are not valid for the purposes of family reunion under Art 10.

### **Tip for advisory services**

Here it becomes clear that the principle of 'freezing' the situation (Art 7 para 2) must always be taken into account by legal advisors. Just because someone visiting your service has a residence document stemming from the recognition as a refugee, this does not automatically mean his or her refugee status is relevant for family reunion according to the Dublin III Regulation. If the person had not yet been granted recognition as a refugee when the applicant lodged their application for international protection in the requesting Member State, the case will be dealt with as if only one application had been lodged – and Art 10 will apply! This could have serious consequences – for example, if the two persons married in Turkey: according to Art 10 the family has to have existed in the country of origin, whereas this is not required under Art 9. You must ensure you know the point in time at which the application for international protection was lodged! Ask to be sent, if possible, copies or photos of the family member's International Applicant's Card or other document (documents issued by authorities of the other Member State) in which the date of application for international protection is usually apparent.

### **A special case: more than one family member lodges an application in more than one Member State**

Note that there is one special case – not to be confused with cases covered by art 11 described above. If more than one family member enters different Member States and each lodges an application for international protection, the Member State in which the first application for international protection is lodged is the one responsible. Each of the persons has to provide written consent. The procedure is regulated in Art 10. Art 11 on the other hand relates to a situation in which a family unit is located in one Member State, but

the application of the criteria for determining which State is responsible could result in their separation – for example, when the principle of first entry (Art 13) is applied. In other words, Art 11 deals not with family reunion but with the prevention of separation and will not be further elaborated here. For advisory services this means that whenever reunion is desired, Art 11 can be ignored. Do not be confused by its rather complicated wording.

### **■ The take charge request and transfer**

The same procedure applies between the Member States as was outlined in the case of unaccompanied minors:

1. The Member State in which the applicant is located lodges a take charge request (Art 21) (the requesting Member State). A template of the take charge request form can be found in Annex I of the Implementing Regulation. The State has three months send a take charge request from the date that the applicant lodged an application for international protection. If the State fails to do so, it automatically becomes responsible.
2. The requested Member State then has two months to respond to the take charge request (Art 22 para 1). The State investigates its responsibility on the basis of elements of proof and circumstantial evidence. If no response is sent within the allotted time, this is seen as tantamount to an acceptance (Art 22 para 7), and the requested Member State must prepare to receive the applicant. Please note that according to Art 22 para 6, sent 2, the requested Member State may ask for an extension of the deadline to answer, maximum to one month.
3. The requesting Member State has six months to transfer the applicant (Art 29 para 1). If it fails to comply with this deadline, this State assumes responsibility (Art 29 para 2).

### **Tip for advisory services**

You can find out from the BAMF whether a take charge request has been received and what stage the procedure in general has reached. Beforehand, try to obtain:

- family name, given name, date and place of birth, reference number of the application for international protection and the date on which the applicant in another Member State lodged the application

<sup>16</sup> Because art 7 para 2 can also be applied to art 10, one could doubt that economy of process is achieved with the help of this rule.

Keep these together with:

- the family name, given name and reference number used by the BAMF, or the serial number or access number of the residence document of the person in Germany (preferably have a copy of the residence document or a photo when you contact the BAMF per telephone or mail. You will find the contact details below (Part VI)).

### 5.3. A comparison of the preconditions for reunion (see table below)

In summary, the preconditions for determining the responsibility for family reunion are presented below in comparison.

### 5.4. Family ties in another Member State, but preconditions for reunion not fulfilled

In case the requirements for family reunion under Arts 8 to 10 Dublin III Regulation are not met, the following provisions must be considered:

1. Reunion of dependents / with dependents (Art 16)
2. The humanitarian clause (Art 17 para 2)
3. The sovereignty clause (Art 17 para 1)

#### 5.4.1 Reunion of / with dependent

As noted in Recital 16 of the Dublin III Regulation, the clause governing reunion of or with dependent persons shall normally be binding. Provided the preconditions are met, the family should be reunited and the applicant for international protection should be transferred to Germany from another Member

State. Hence Art 16 provides for the family reunion if, for exceptional reasons listed conclusively as ‘pregnancy, a newborn child, serious illness, severe disability or old age’, an applicant is dependent on the support of their child, parent (family members) or sibling who are legally residing in another Member State. The same applies when for particular reasons one of the family members or sibling is dependent on the support of the applicant. Then, normally, the Member States will bring these two persons together (or keep them together), if family ties already existed in the country of origin. Additionally, the consent must be provided in writing, and the person must be in a position to support the dependent person. Six preconditions thus must be met:

1. For exceptional reasons explicitly listed in Art 16, the applicant or family member is in particular need of protection.
2. The applicant or family member is therefore dependent on the support of their child, sibling or parents (dependency).
3. Family members are capable of supporting the applicant.
4. Family ties existed in the country of origin.
5. Family members are legally residing in another Member State.
6. The consent has been expressed in writing.

- Legal consequence: as a rule the persons are brought together (or not separated).
- Where will the reunion take place? It normally takes place in the Member State in which one of the persons is legally

Reunion with:	Unaccompanied minors		Family member	
	Family member, siblings	Relatives	Family member	Family member
Residence requirement	Legal presence	Legal presence	Legal residence possible due to granting of an international protection status residence document (Art 9)	Legal residence possible due to granting of an international protection applicant’s status residence document (Art 10)
Ability to care of the applicant	Not necessary	Necessary	Not necessary	Not necessary
Required to express consent in writing	No	No	Yes	Yes

resident, unless the applicant is unable to travel ‘for a significant period of time’ (para 2).

#### **Tip for advisory services**

The wording of Art 16 may seem complicated at first. Do not get confused by it. What the formulation attempts to express is simply that the exceptional reasons can lie with the applicant or the family member in Germany. Either the applicant or the family member can thus be dependent on the support of the other person. Please also read and take into consideration Art 11 of the Implementing Regulation which provides useful guidance on the interpretation of Art 16 Dublin III Regulation.

Reunion with a spouse is not possible in the context of Art 16 – as Arts 9 and 10 of the Dublin III Regulation govern this situation. Moreover, the age of the persons is not taken into account – and children do not have to be minors. The family must have existed in the country of origin. See above for details concerning the written consent for the family reunion.

#### **Tip for advisory services**

Having read carefully, you will be bound to ask what applicants could possibly fall under Art 16 in whose cases other provisions do not allow for reunion. Art 16 is particularly useful for the reunion of, or with, adult children and siblings. In most cases, the responsibilities defined at the beginning in Arts 8 to 10 have less preconditions.

#### **■ Exceptional reasons**

The exceptional reasons are exhaustively listed in Art 16 para 1. Reunion under this clause is only possible involving persons who are pregnant, have recently given birth, are seriously ill, severely disabled or of old age. The existence of exceptional reasons is only one of the requirements. Additionally, the person has to be dependent on support because of the exceptional reason(s) (see below)

Pregnancy is an unequivocal state, and Art 16 acknowledges no exceptions to it. The implication is that an evidently pregnant woman needs special protection. Yet it has to be clarified whether she is dependent on support because of the pregnancy (see below).

The category of a woman who has recently given birth is not that straightforward. At what point does this category no longer apply? Appropriately, the exceptional reasons are oriented towards the particular difficulties faced by the mother. As the child becomes more independent, the exceptional reasons are assumed to lose their urgency. In Germany, it is

often suggested that the terms of maternal leave in Germany (eight weeks) be taken as a guide (German Maternity Protection Act § 6 para 1) – this period must be considered as minimum period. As the take-charge procedure takes longer than eight weeks, the length of validity of this ‘exceptional reason’ needs to be longer; three months would seem a reasonable standard.

#### **Caution!**

Art 7 para 2 (the “freezing clause”) does not apply to Chapter IV of the Dublin III Regulation (clear wording of Article 7 para 2) i.e. neither to Art 16 nor Art 17. The exceptional reasons and the need for special protection must be immanently evident – the point at which the application was lodged does not take precedence. Rather, Art 16 prioritises the practical necessity of providing assistance. Should this assistance no longer be needed when the transfer takes place, the preconditions are no longer fulfilled. Hence it is important, especially when the exceptional reason is a recent birth or a pregnancy, that the Member States send a take charge request immediately and without any delay.

The criterion of ‘serious illness’ is described in a very broad fashion. In practice, however, the Member States apply very restrictive standards. In fact, what ‘serious’ means can only be gauged when the degree of support needed is also taken into account. An illness that can be cured within the foreseeable future will rarely be regarded as a serious illness. In terms of the possibility of family reunion, ‘serious’ is limited to illnesses with a low probability of a cure or a very slow process of recovery; these are illnesses that significantly restrict sufferers in their everyday life, such as cancer.

The same applies to ‘severe disability’. The wording already indicates the restrictive interpretation: limitations caused by a disability are not enough in themselves. The European Court of Justice defines disability as ‘long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned ... on an equal basis’ in life with others. When such a limitation exists and when it is ‘severe’ depends on the individual case; it is difficult to set an abstract marker. Even when a certain degree of disability is determined, as is the practice in Germany (‘Grad der Behinderung’, GdB), the need for support does not automatically follow. It is safe to say that the probability of a case being defined as ‘serious’ according to the Dublin III Regulation is likely to be higher if there is a high degree of disability. At the same time, the European legal definition of disability from time to time covers disabilities that do not merit a high GdB in terms of German social law. However,

minor restrictions, such as restrictions to mobility, can usually not by themselves be regarded as sufficient.

The criterion of 'old age' is not linked to a set number of years – it cannot be said in general, for example, that a person over the age of 75 is 'old'. Someone who has worked as a farmer in Syria will be potentially frailer than a former office worker from France. Hence, the definition of 'old age' depends on the specific circumstances. Life expectancy in the country of origin can be a useful yardstick. In this regard, as above, the need for support takes precedence. This will be explained in the following.

### ■ Dependency on support / capacity to support

An important condition of the criteria cited above is that the applicant must be dependent on the support of the person concerned. This requirement is embedded in a human rights context, obliging Member States to take into account, in particular, the right to respect for family life (European Convention on Human Rights (ECHR) Art 8, Charter of Fundamental Rights of the European Union Art 7) – the application of these criteria must thus not be guided solely by rational and objective considerations. It is therefore not enough that the person is already receiving support from caretakers or a hospital in the country where they are present. The same applies when other family members are also residing in the Member State as the applicant for the purpose of care – this does not necessarily cancel out a person's dependency! Humanitarian considerations dictate that the person needing support must be given autonomy with regard to the care that is deemed necessary and the person who is to provide that care.

And yet: the capacity to provide support is crucial. A person's abstract need of support will never be deemed sufficient: the person providing support must be able to relief the specific need for support, at least in part. The question of whether the family member is able to provide every necessary form of assistance is not permissible. In this case, as above, the Member State does not assume responsibility for the person in need in order to save labour (e.g. by assigning care takers) and costs but to fulfil its humanitarian obligations. The clause is thus also aimed at a socio-psychological dimension which should not be ignored (see in this regard Annex VII of the Implementing Regulation which includes several aspects of the ability to take care such as e.g. "material capacity" as well as "the person seems socially and psychologically appropriate to take care of the applicant, the person already took care of the

applicant in the past etc.") For this reason, the fact that the family member themselves may be in need of support cannot be interpreted to the disadvantage of the person needing care, as long as the family member is able to provide some elements of the requisite support. Financial support can also be part of the assessment but it is not a necessary component. Please note that the German Dublin Unit may not apply the so-called "sufficient living space requirement" ("Wohnraumerfordernis") which may be required under German law for family reunion in the visa procedure – if necessary, you should explicitly draw the attention of the Dublin Unit to this distinction (see above in more detail). Finally please note that the criterion of capacity to provide support under Art 16 is not to be confused with that of caring for an unaccompanied minor (Art 8 para 2), although there can be some overlap.

### Special issue: How can exceptional reasons and the need for support be verified?

As in the above instances, elements of proof and circumstantial evidence can be used. Art 11 para 2 of the Implementing Regulation gives some details and elaborates on Art 16 of the Dublin III Regulation.<sup>17</sup>

The persons involved have to produce credible written evidence for the validity of 'exceptional reasons' and the need for support – they can submit the relevant documents themselves.

### Tip for advisory services

Stellen Sie sicher, dass beispielsweise ärztliche Atteste vorgelegt werden können, bevor Sie ein Verfahren für abhängige Personen anstreben. Die Abhängigkeit nachzuweisen wird regelmäßig nicht einfach werden, ist aber ausschlaggebend. Dafür ist eine glaubhafte Darstellung nötig. Sofern das Abhängigkeitsverhältnis schon im Herkunftsland bestanden hat, sollten Sie dies unbedingt vorbringen. Haben die Personen vielleicht zusammengewohnt? Wiederum gilt: Zur Glaubhaftmachung sind beglaubigte Kopien oder gar Originale am zielführendsten. Falls Sie nicht über solche verfügen, können auch Kopien oder gar Fotos beigebracht werden (vgl. oben – „Wie werden Nachweise beigebracht“?).

### Caution!

Keep in mind that Art 16 para 1 Dublin III Regulation is a strictly defined humanitarian 'exception clause'. In the sense

<sup>17</sup> It is of no consequence that the text of the Implementing Regulation mentions Article 15 para 2. This refers to the Dublin III Regulation – the text of the Implementing Regulation was not adequately adjusted.

of this clause, a person is not dependent on support just because they have an illness – for example, psychological problems or cardiac arrhythmia (palpitations). The deciding factor is that they cannot manage their everyday lives alone. Do not awaken false hopes! Nevertheless, despite these difficulties which should be communicated clearly to the applicant, reunion by means of Art 16 para 1 should be attempted – even if in many cases the chance of success looks fairly slim. Beforehand it is, as always, impossible to predict whether a case will be recognised, because the administrative practices of various Member States can be inconsistent and are sometimes impossible to understand. Be prepared for positive and negative surprises. The key factor is the credible and well-founded presentation of each individual case.

#### ■ Legal residence

Regarding the differentiation between “legal presence” under Art 8 and “legal residence” under Art 16 – despite the identical wording in the German language version of the Dublin III Regulation – please see above.

With regard to the specific question whether an International Protection Applicant’s Card or a “Duldung” (temporary suspension of deportation under German law) is sufficient to establish “legal residence” please see above. It must be noted that the requirement of “legal residence” may indeed be more restrictive than the one of “legal presence”. However, the arguments mentioned above apply.

#### Recalling Specific Issue II: preliminary residence permit

Unlike under Art 8 (on unaccompanied minors), the provision of Art 10 does not apply: in no instance will persons wanting to reunite on the basis of Art 16 have recourse to Art 10 – if they did, they would not choose this path. Under Art 16 the key factor is the ‘legality’ of the residence status. Court judgements that cast doubt on whether a preliminary residence permit constitutes legal residence had Art 16 in mind.<sup>18</sup>

#### Ensuing tip for advisory services

Should you encounter a case in which reunion has been denied due to the lack of legal residency, definitely consult a lawyer!

Also keep in mind that Art 7 para 2 does not apply to Art 16. If reunion has been denied only due to the lack of a preliminary residence permit, and if in the meantime a longer-term residence document has been issued, reunion can take place as long as the remaining preconditions are fulfilled. This means that several attempts could be made to reunite a dependent person with their family!

#### ■ Is an application necessary?

In the case of Art 16, no formal application is needed. However, unlike in the case of unaccompanied minors, Member States are not obliged to investigate whether there are family members in other Member States. This means the desire for reunion must be brought to their attention. It is vital that corresponding elements of evidence concerning the person’s need of support be submitted along with this communication (see also above).

#### ■ Where does the reunion take place

The fundamental principle is that of timing: the Member State in which the first application is lodged is responsible for all subsequent applications. This means that if a person is in need of support, responsibility normally lies with the Member State in which the family member legally resides. This principle is breached if the protracted poor health of the person who needs support prevents them from transferring to the other Member State. In this case the Member State in which the person in need resides is responsible for receiving that person’s family members, as long as these have secure residence documents in another Member State. In this way, humanitarian necessity takes precedence over the purpose of allocating responsibility for processing the application under the Dublin III Regulation.<sup>19</sup>

The point at which a person is unable for a protracted period to travel to a Member State is determined by the criteria following from Art 3 ECHR. A timeframe of six months should be assumed for the protracted inability to travel, not least because it corresponds with the amount of time foreseen for the take charge request.

#### ■ Exchange of information

The procedure between the Member States is supplemented by an exchange of information. According to Art 34 Dublin III Regulation, an exchange of information is always possible, but

<sup>18</sup> See for example VG Düsseldorf, 8 April 2015, 13 L 914/15 A.; VG München, Decision of 13.10.2015 – M 12 S 15.50785.

<sup>19</sup> Transferring the ill person despite their inability to travel would contravene Article 3 of the ECHR, and the failure to reunite family members despite necessity would contravene Article 8 ECHR.



in the situations governed by Art 16, and explicitly in Arts 11 para 6 of the Implementing Regulation, it is expected and therefore mandatory. The provisions of Art 16 differ, however, from those of the humanitarian clause in Art 17 para 2 of the Dublin III Regulation because under Art 16 the usual time-frames apply, meaning that a take charge request has to be lodged with Germany within three months of the lodgement of the application for international protection.

A note on the procedure governing the exchange of information:

1. First, the Member State in which the person resides who entered the EU later files a request for information (Art 34) to the other Member State, i.e. the one in which the family member resides. The aim of this information exchange is to clarify whether one of the persons is dependent on the other and whether the necessary support can be provided.

In Annex VII of the Implementing Regulation you will find this request. It is meant specifically for Art 16. By reading the Annex carefully, you can again verify which documents the Member States request and need.

This request for information is sent to the Dublin Unit of the BAMF in Dortmund. Depending on the residence status of the relative, the BAMF will in turn obtain information from the relevant local migration authority.

#### **Tip for advisory services**

Again: The Member State will only file such a request for information when there are concrete indications of a dependency. You have to present the necessary evidence when the application for international protection is lodged.

2. The Member State receiving the request has four weeks to respond. Should it fail to do so within this timeframe, an extension of two weeks is possible (Art 11 para 6 of the Implementing Regulation; in all other processes of information exchange, different time limits apply, as per Art 34 of the Dublin III Regulation). Although the exchange of information does not in itself constitute a decision regarding the fulfilment of the preconditions listed in Art 16, it normally anticipates such a decision.
3. Recalling: The exchange of information does not extend the usual time limits but rather occurs parallel to them. You are thus advised to refer to the above elaboration of the procedure (take charge request – response – transfer), because the process is identical.

#### 5.4.2 Humanitarian clause (Art 17 para 2)

For all scenarios that do not match the preconditions for family reunion through the binding criteria, the Dublin III Regulation offers a humanitarian clause. Discretionary clauses serve consistently to close gaps that were not foreseen at the outset and that could imply the necessity of humanitarian intervention. The humanitarian clause also comes into force when family members are facing the threat of separation due to a literal application of the Regulation. The humanitarian clause of the Dublin III Regulation requires the factual existence of family ties, allowing for the reunion of persons of every type of family tie for humanitarian reasons. Humanitarian reasons arise in particular out of the context of family or culture (Art 17 para 2). Here too, the reunion has to be consented upon in writing. In sum, the following preconditions apply:

1. humanitarian reasons arising out of the context of family or culture;
2. a familial relationship (including relatives);
3. written consent.

In their application, these conditions clearly differ from those outlined above.

#### **■ Humanitarian reasons arising out of the cultural or family context**

Humanitarian reasons that arise out of the cultural or family context form the core of the application of Art 17 para 2. The Member States apply this definition extremely restrictively. Reasons relating to cultural context could, for example, include language competency or a long period spent earlier in the Member State in which the relative resides.

#### **Tip for advisory services**

Your assessment of whether a case could fall under the humanitarian clause should be guided by its exceptional character. This clause is meant only for very exceptional cases. Certainly it cannot be seen to suffice that a person does not fit in the categories named for reunion under the binding articles. The Regulation also provides for a special clause covering the elderly and people with illnesses, as seen above, meaning that although one could imagine cases in which the requirements of Art 16 are not met and a reunion under art 17 para 2 could be possible, this would be the absolute exception (see some possible cases below).

Also keep in mind that whenever you speak to someone you are advising about ‘other possibilities of reunion’, you always awaken hopes that in most cases turn out to be false. So think carefully about the specific nature of the case before you make any mention of reunion by means of the humanitarian clause. Remember that under the Dublin III Regulation, Germany is obliged to accept a relatively high number of asylum seekers, and there is little political will for a broad interpretation of discretionary clauses

#### Tip for advisory services

At a number of points in this text it has been noted that elements of proof and circumstantial evidence will be enough to verify facts. However, you must remember that the general rules for determining responsibility (Arts 8 to 10 on the unity of the family) compel the Member State in which the application for international protection is lodged to determine which Member State is ultimately responsible (Art 20 para 1). It may be that the humanitarian clause is relevant at a later stage. More than in other situations you must be sure to plausibly depict the exceptional humanitarian circumstances. The evidence you produce should be as comprehensive and credible as possible.

#### Family relations

Confusingly, when Art 17 speaks of ‘family relations’ (para 2), it does not mean ‘relative’ in the sense of Art 2 (h) in the way this term is usually applied by the Dublin III Regulation. The circle of ‘family relations’ goes beyond ‘family members’ and ‘relatives’. It is therefore difficult to draw a clear line. As a rule of thumb, the humanitarian necessity grows with the increasing closeness of the family relationship; the more distant the family relationship, the greater the effort of justifying the reunion. And yet it is theoretically possible that even cousins could be brought together using the humanitarian paragraph. And because the formulation is unique to the humanitarian clause, the family relations do not need to have existed in the country of origin.

#### Consent in writing

The persons involved must provide their consent in writing. In advisory services the same applies as outlined above: no condition other than this is imposed.

#### Is an application necessary?

Again, to be clear: the humanitarian clause does not require a formal application for reunion. Nevertheless, you must inform the respective Member States of the special situation and produce evidence.

#### Possible scenarios

As noted, the possibilities for applying the humanitarian clause are limited. Few scenarios are imaginable. Examples of these are noted in the following (this is not an exhaustive list):

1. In the main type of cases to be considered, the preconditions for regular reunion, especially those relating to dependent persons (Art 16), are not fulfilled, but they are almost identical with these preconditions. One possibility might be, for example, that an elderly person is ill and in need of care, but the other person cannot provide an adequate degree of care. Or: the other person is in fact capable of providing adequate care but does not belong to one of the categories stipulated in Art 16 (parents, children, siblings), nevertheless they can prove family relations.
2. According to the regular requirements, unaccompanied minors will only be reunited with family members who are legally present (see above Part II 5.1).
3. A greater problem is posed by cases in which the person’s presence has become legal since the lodging of the application for international protection – for example, by means of an objection entered or a successful appeal. The humanitarian clause is to be applied in such a case, because under this clause the person’s presence does not have to be legal. The reunion of a married couple in the case that the spouse is not legally present in the other Member State could also fall under the humanitarian clause.
  - The highest probability that family reunion via the humanitarian clause will succeed is in the case of minors who for whatever reason cannot be reunited with their family members – albeit exceptions, reunion always serves the best interests of the minor. This means other cases could be imagined in which the humanitarian clause could apply, for example:
    - a. A minor became ‘unaccompanied’ after the lodging of the application for international protection (again, the issue arising from the application of Art 7 para 2).
    - b. The family did not yet exist in the country of origin.
    - c. A married person cannot be reunited with their spouse; in some circumstances it may be possible to reunite them with the parents, even though these are not ‘family members’ in the sense of the Dublin III Regulation.

4. According to a judgement of the European Court of Human Rights, it is a violation of human rights to deny the right to family reunion on the grounds that the family did not exist in the country of origin.<sup>20</sup> This implies that, in such cases, it is always possible to consider reunion according to the humanitarian clause.

#### Tip for advisory services

The aforementioned case is thus promising on the basis of the humanitarian clause. Yet the BAMF or the relevant authority in another Member State will most probably turn down the application. For such cases you should in principle always obtain legal support by a lawyer.

5. At present, deadlines for responding to requests to take charge, or for transfer, are deliberately being ignored by the Member States. According to the legal opinion of the authors, the humanitarian clause must be invoked in this case to enable reunion.<sup>21</sup>

#### Tip for advisory services

You will probably deal frequently with cases involving the expiry of deadlines. At present, Germany accepts applicants when the transfer is delayed. Thus, the expiry of a deadline cannot be invoked against a person (and in our view this should never be the case). See below for elaboration of delayed transfers from Greece to Germany (Specific issue IV).

#### ■ Take charge request procedure

The take charge request procedure between the involved Member States for cases under Art 17 para 2 is as follows:

1. The Member State in which one of the persons resides lodges a take charge request (Art 21) and is the 'requesting State'. This can be found in Annex 1 of the Implementing Regulation. It is at the Member State's discretion whether to send such an outgoing request.

The time limits noted several times above do not apply to the humanitarian clause – the take charge request can be lodged at any time before a first decision regarding the substance of the application for international protection is taken. Please note the relevance of this provision in case a preliminary "admissibility procedure" is applied such as

e.g. in the EU Hotspots: A decision concerning the admissibility of the claim for international protection does not hinder a take charge request under Art 17 para 2. As this applies regardless of the instance at which the decision is taken, e.g. Greece may submit a take charge request even after a negative admissibility decision of an Appeals Committee or an Administrative Court.

2. The requested Member State will respond to the take charge request and has two months to do so (Art 17 para 2 sub-para 3) – however, unlike the procedure under other clauses, the requested Member State does not become automatically responsible if no response is sent within the two months (under Art 22 para 7); this follows from Art 17 para 2 subpara 4). A rejection must be justified (Art 17 para 2 subpara 3).
3. When a requested Member State responds positively, the transfer takes place according to the requirements outlined below. As in other cases, the requesting Member State has six months to transfer the person as of the acceptance of the take charge request.

#### 5.4.3 Sovereignty clause (Art 17 para 1)

A quick reference to the right of Member States to invoke the sovereignty clause will suffice. From time to time this may be of relevance to advisory services, since the underlying aim of this clause is also humanitarian. However, in cases of family reunion to Germany this does not play a role because only the Member State in which the applicant for international protection already resides can invoke Art 17 para 1 of the Dublin III Regulation (see Art 17 para 1: 'lodged with it').

## 6. How is the transfer implemented?

As outlined above for several procedures, various consultations have to take place between the Member States before the actual transfer occurs. The transfer is then implemented according to the national law of the requesting Member State after both Member States have agreed on this (Art 29 para 1). Under the latter prerequisite, according to Art 7 of the Implementing Regulation, there are three possibilities:

<sup>20</sup> See ECtHR, Judgement 06.11.2012, 22341/09, Hode and Abdi v. The United Kingdom.

<sup>21</sup> See Vogt, 'Family Life Temporarily not Available', VerfBlog, 2017/7/13, <https://verfassungsblog.de/family-life-temporarily-not-available-bilateral-limits-on-family-unity-within-the-dublin-system/>.

1. At the initiative of the person applying for international protection: through the issuance of a *laissez-passer*<sup>22</sup> and independent departure within a certain time limit;
2. In the form of a controlled departure: the person must be accompanied to the point of boarding the means of transport, and the specific circumstances (time, place) must be arranged with the other Member State (charter flights);
3. Accompanied: escorted all the way to the Member State responsible and handed over there.

Under all three cases, Art 8 of the Implementing Regulation, which provides for cooperation between Member States on all transfer, applies. For Alternatives 1 and 2, *laissez-passer* are issued; for Alternative 3, they are only issued if the person has no identity documents.

#### Tip for advisory services

A sample of the *laissez-passer* can be found in Annex IV of the Dublin Implementation Regulation 118/2014.

#### Specific issue IV: Agreement between Greece and Germany to cap or slow down family reunion under Dublin III

Germany and Greece have agreed at government level to slow down family reunion under the Dublin III Regulation.<sup>23</sup> This has resulted in longer waiting periods for the transfer to Germany than foreseen by Dublin III. The German government has not admitted the existence of such an agreement, but a decision in temporary injunction proceedings the Administrative Court of Wiesbaden<sup>24</sup> presumes the influence of the BAMF on the delay. In its judgement, the Administrative Court of Wiesbaden acknowledged the right to timely transfer for the purpose of family reunion and compelled the BAMF to work towards a transfer in a timely manner. The administrative Courts of Halle and Berlin have followed this decision, while the Administrative

22 A *laissez passer* is a document granting permission to enter the Member State responsible and to travel through countries of transit – for the legal basis see art 29 para 1 sub-para 3).

23 For a detailed discussion of this topic see Vogt, 'Family Life Temporarily not Available', *VerfBlog*, 13 July 2017, <https://verfassungsblog.de/family-life-temporarily-not-available-bilateral-limits-on-family-unity-within-the-dublin-system/>.

24 VG Wiesbaden, Judgement 15.09.2017, File no. 6 L 4438/17.WI – *asyl.net*: M25517; see Vogt, *Dublin Family Reunion: neither subject to limits nor delay*, <http://www.asylumlawdatabase.eu/en/journal/dublin-family-reunion-neither-subject-limits-nor-delay-note-administrative-court>.

Court of Würzburg has adopted a different legal standpoint.<sup>25</sup>

#### Ensuing tip for advisory services

If the time limit for the transfer (six months) threatens to expire, it is therefore advisable – regardless of current administrative practice – to contact a lawyer or corresponding organisation to consider possible legal measures against the delay. To this end, a template for possible litigation in Germany (application for interim measures) can be found on the website of the Informationsverbund Asyl & Migration – its aim being to help facilitate the gaining of a temporary injunction in an administrative Court.<sup>26</sup> Delays beyond the six-month time limit are unlawful. Should you be advising in a case in which the six-month transfer deadline has already passed, you must definitely call in a lawyer, because the provided template does not cover these cases.

## 7. Who covers the costs of the transfer?

The transfer costs are to be covered by the transferring Member State (Art 30 para 1) – they are not to be demanded of the person to be transferred (para 3). In contravention of the Regulation, Greece (depending on availability of state funding) and Bulgaria do not cover the costs, instead passing them on to the person to be transferred. Financial support for the transfer can be obtained, for example, from the family reunion fund of Diakonie Deutschland or from Caritas – a request has to be made for each case (see contact details below in Part VI).

## 8. A specific issue: legal protection in case a transfer is not carried out

According to Art 27 of the Dublin III Regulation, an appeal can only be launched, at least directly, against an unwanted transfer but not for a desired transfer. Whether Dublin III allows for

25 VG Halle, Decision 14.11.2017, File no. 5 B 858/17 HAL – *asyl.net*: M25674; VG Berlin, Decision 23.11.2017, File no. 23 L 836.17 A – *asyl.net*: M25667; VG Würzburg, Decision 02.11.2017, File no. W 2 E 17.50674 – *asyl.net*: M25678.

26 Accessible under *asyl.net* Arbeitshilfen/Publikationen; <http://www.asyl.net/arbeitshilfen-publikationen/arbeitshilfen-zum-aufenthalt-und-fluechtlingsrecht/muster-schriftsatz-eilrechtsschutz-zur-frist-gerechten-dublin-familienzusammenfuehrung.html> [in German].

an [individual] subjective right to [timely] transfer – meaning that the right of appeal would need to be extended – has not yet been clarified by the courts. As indicated above, recent decisions in Court proceedings concerning interim measures have allowed for steps to be taken when a transfer fails to eventuate. However, these are cases in which the BAMF had at least accepted a request for transfer. It has yet to be clarified in Court whether there is any legal protection in Germany if the BAMF rejects a request for transfer. In promising cases, a legal response would be worth an attempt.

**Tip for advisory services**

Contact the BAMF, or the authority responsible in the other Member State, to inquire about the process (see above) and, if appropriate, the reasons for rejection. If the take charge request has been rejected due to the lack of documentation, you need to lodge the necessary documents with the authority in the other Member State where the applicant is present. In some circumstances this can be done by mail (see below Part VI for contact details of organisations in other Member States).

## III. The procedure of determining the responsible Member State

Although the procedural steps have been outlined when dealing with the respective provisions already, a brief overview of the procedure for determining the Member State responsible is to be given. Furthermore, reference is to be made to the documents to be submitted.

In order to determine the Member State responsible, the Member States communicate via the so-called DubliNet. As already shown, regarding Dublin family reunion, take charge (art 22) and information requests (art 34) are conceivable. In the event of a negative decision by a Member State, a so-called resubmission (art 5 para 2 Implementing Regulation) is also foreseen. The templates which are to be used by the Member States in this procedure can be found in the Annex of the Implementing Regulation. Please note that reading the Implementing Regulation and its Annexes is extremely helpful when providing legal advice as you can find out what is the information the requested Member State will ask for – this is the information which you will have to provide to the requesting Member State.

The procedure of determining the responsible Member State is no longer an inter-state procedure (as it was under the Dublin II Regulation, cf. ECJ, C-394/12, Abdullahi). As has been clarified by the European Court of Justice, the applicant for international protection has a right to the correct application of the responsibility criteria laid down in the Dublin III Regulation and therefore must be involved in the procedure of determining the responsible Member State (see C-63/15, Ghezelbash and C-670/16, Mengesteab).

### **Specific issue: Does the requesting Member State have to inform the applicant about a rejection of a take charge request?**

Yes. According to the judgement C-63/15, Ghezelbash Mehrdad v Staatssecretaris van Veiligheid en Justice of 7 June 2016 (in particular para. 51) and judgement C-670/16 Tsegezab Mengesteab v Bundesrepublik Deutschland (in

particular para. 45) the asylum seekers have to be involved in the process and have to be informed about the criteria for determining the responsible Member State and have to be given the opportunity to submit information as well as the access to an effective remedy in respect of any transfer decision. This involvement of the applicant in the procedure according to the ECJ's legal opinion should be carried out, in particular, in order to ensure that the criteria of jurisdiction are correctly and quickly complied with and that the Dublin III Regulation is properly applied (cf. *ibid*). Furthermore, in its recent case law, the ECJ has pointed out that applicants have an individual right to an impeccable compliance with the Dublin III Regulation's jurisdiction order, which can be asserted in court (cf. C-63/15; C-670/16). This also implies that applicants must be involved in all procedural steps and must be informed of any changes to their procedure for determining the responsible Member State. In particular the applicants must therefore be informed of positive and negative decisions regarding the take charge request submitted in their case and they must be given the opportunity to state their position.

### **Ensuing tip for advisory services**

The current practice of the Dublin Units of some Member States is to not inform the applicant/responsible lawyer about a rejection of a take charge request, or inform with significant delay. In many cases, the applicant is only informed after the deadline for re-submissions has passed already. This practice might have been justified under the former Dublin II Regulation. However, the practice of non-information is not legal under the current Dublin III Regulation as clearly follows from the above. It is therefore necessary to explicitly draw the attention of the responsible Dublin Unit of its obligation to immediately inform the applicant of any positive or negative decisions in the procedure of determining the responsible Member State. This should be included in the original application for family reunion already and should include a legal argument (e.g. the argument outlined above).

## 1. Documents to be submitted in the Dublin procedure

As we have seen, the Dublin III Regulation covers reunion based on a variety of provisions. A number of the documents listed below will always be needed and others only when they are specifically required. While it is necessary only in some cases to provide written consent for the reunion, it does not hurt to submit it and is therefore recommended in all cases.

The sooner the documents can be submitted to the other Member State the better, ideally upon the lodging of the application for international protection.

The following information and documents are to be submitted:

1. Family name, given name, date and place of birth of the person in the other EU Member State; reference number of the application for international protection in the Member State and the date it was lodged;
  - You can find these details in the international protection applicant's card issued for the person in the other Member State; ask for a photo of this to be sent to you.
2. Family name and given name of the person(s) in Germany; legal status (if relevant); BAMF reference number (if relevant);
  - Suitable sources are: a copy of the residence document/proof or arrival/ registration certificate
  - Certified copies are the most credible documentation of these, but before an applicant hands in anything at all, photos should be held in readiness. In many cases it is possible to send these by mail; sometimes Member States are willing to download and save data sent by mobile phone.
  - Make sure the name and reference number are written on all documents as well as submitted separately (including mentioned on the written consent for reunion).
3. Evidence for family relations between the person(s) in Germany and the person in the other Member State; if available, identity documents or other documentation of the identity of the person in the other Member State;
  - See above. The Implementing Regulation provides a list of possible elements of proof and circumstantial evidence (Annex II – useful elements are, for example: excerpt from the civil registry, excerpt from the family register, birth certificate).
4. A declaration of consent to an exchange of data, submitted by the applicant in the other Member State in accordance with the Dublin III Regulation;
  - As a rule, these will be provided by the requesting Member State. However, there's no harm in being certain and sending a declaration of consent.
  - See form in Annex to this document.
5. Written consent of the desire for family reunion, submitted by all persons involved (in Germany and in the requesting Member State – or by the guardian/representative of an unaccompanied minor or an adult not in a position to conduct their own affairs);
  - All persons should be listed as precisely as possible including family name, given name, date and place of birth, and the application reference number.
  - See form in Annex to this document.
6. A statement of consent from the youth welfare office responsible for the custody of a minor if no guardian has yet been appointed for that person, with a declaration with regard to the child's wellbeing;
7. Consent in writing, if necessary (humanitarian clause);
  - See form in Annex to this document.
8. If relevant, evidence of a dependency (necessary when a person is being reunited with a dependent in the Member State – art 16 para 2) and, if appropriate, written elaboration of the nature of the dependency;
  - See above. Art 11 and Annex VII of the Implementing Regulation provide an indication of what is required with regard to the nature of the dependency.
  - Suitable evidence could include, as described, especially written documentation such as medical statements. Copies (if possible certified) are considered the most credible documentation, but before an applicant hands in anything at all, photos should be held in readiness. In many cases it is possible to send these by mail;

sometimes Member States are willing to download and save data sent by mobile phone.

9. if relevant, written elaboration of the necessity of reunion under the humanitarian clause;

- This kind of reunion in particular needs to be well argued. It is advised to consult a lawyer.

## **2. Rejection of a take charge request – what to do?**

In case a take charge request is rejected, the requesting Member State has three weeks to ask for its request to be re-examined (art 5 para 2 Implementing Regulation) if it feels that the rejection is based on a misappraisal or where it has additional evidence to put forward. These so-called “re-submissions” are of particular practical relevance.

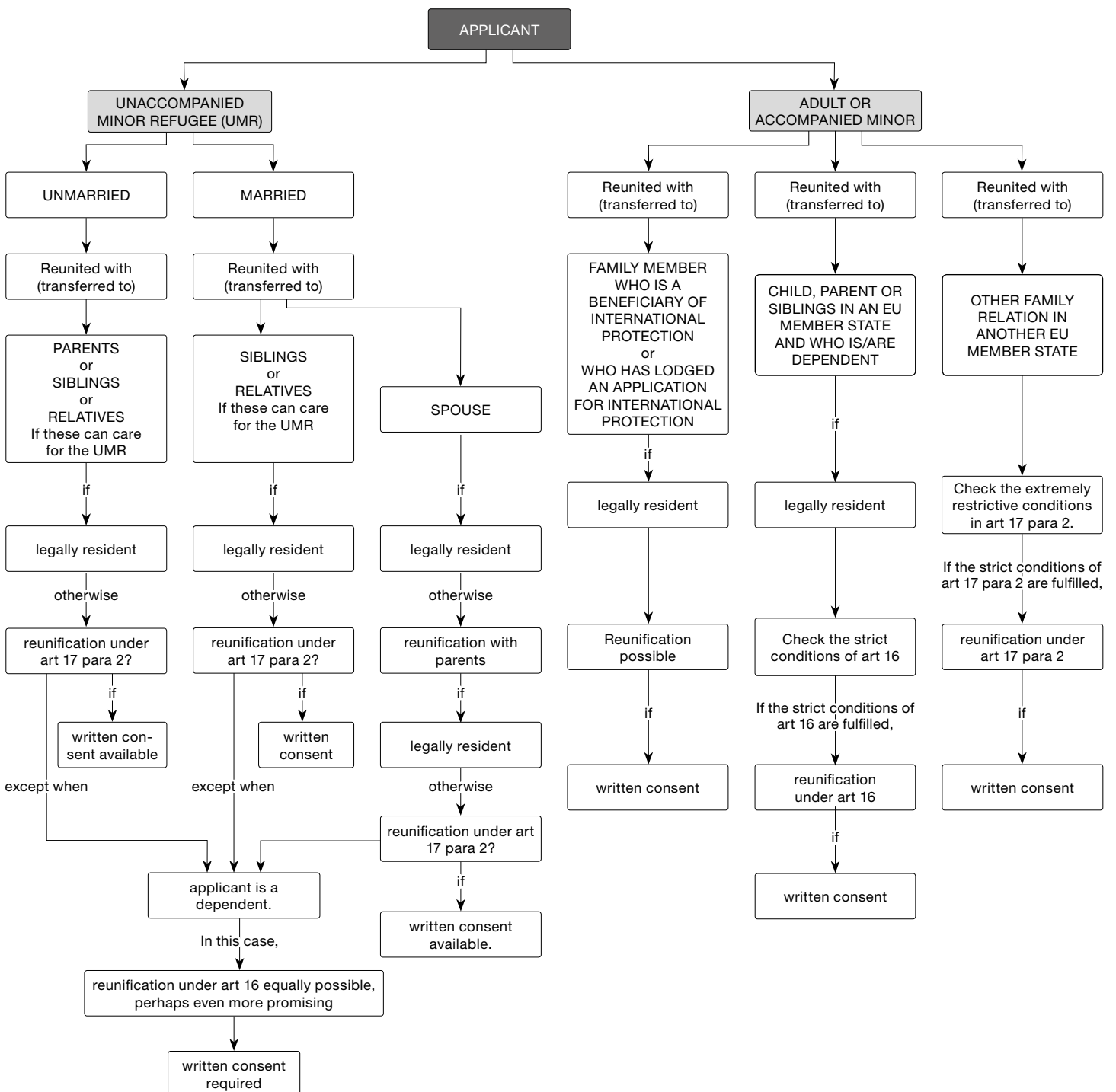
In cases where the deadline to submit a take charge request is about to expire but the necessary evidence is not gathered

yet, it is advised to draw the attention of the national Dublin Unit of the requesting Member State to the fact that a take charge request should at all costs be sent within the deadline of art 21, and that missing evidence can then be submitted under art 5 para 2 Implementing Regulation. This is necessary in order to not “lose the advantage” of the binding criteria under art 8 to 11 Dublin III Regulation.

This is because the only alternative would be to submit a delayed take charge request with the complete evidence under the discretionary clause of art 17 para 2. Another alternative might be to ask the national Dublin Unit to send a so-called “holding letter” to the Member State which will be requested. This is an administrative practice applied at least by some national Dublin Units (e.g. between the Greek and the German Dublin Unit) which serves the purpose to ask for an extension of the deadline to submit a take charge request or re-submissions. In case the national Dublin Unit to which you submit your documents applies this practice, you can ask the responsible caseworker explicitly to send such a “holding letter”. However, as this is an administrative practice which is not legally granted, the aforementioned alternative should be preferred.



# IV. Summary



## V. Further information

The [Informationsverbund Asyl und Migration](https://familie.asyl.net/start/) [in German] provides information on all areas of family reunion, along with constant updates, helpful tips and links to further information: <https://familie.asyl.net/start/>

Further links can be found predominantly under 'Materialien': <https://familie.asyl.net/materialien/> (contains links in English).

The [Bundesfachverband für unbegleitete minderjährige Flüchtlinge](https://www.bund-fuer-unbegleitete-minderjaehrige-fluechtlinge.de/) (Federal Association for Unaccompanied Minor

[Refugees](https://www.b-umf.de/en/about/bumf-en) – page in English) also provides a wide range of information:

<http://www.b-umf.de/en/about/bumf-en>

A guide provided by the [Deutschen Verein für öffentliche und private Fürsorge e.V.](https://www.deutscher-verein.de/de/empfehlungen-stellungnahmen-1156.html) (German Branch of the International Social Service) contains many contact addresses and an overview of various possibilities of family reunion: <https://www.deutscher-verein.de/de/empfehlungen-stellungnahmen-1156.html>

## VI. Important contacts for advisory services and organisations

All of the following contacts could be significant specifically with respect to family unification:

### 1. Official contacts in Germany

- Informationsverbund Asyl & Migration  
The contacts provided by this organisation are grouped into 'Ausland' (outside Germany) and 'Inland' (within Germany): <https://familie.asyl.net/links-adressen/>
- BAMF (Federal Office for Migration and Refugees)  
– Auskunftsstelle des Dublin-Referats in Dortmund (DU 3)  
[du3-posteingang@bamf.bund.de](mailto:du3-posteingang@bamf.bund.de)  
0231 9058 755  
Adress: Bundesamt für Migration und Flüchtlinge  
Außenstelle (Regional office) Dortmund  
Märkische Straße 109  
44141 Dortmund
- BMF contacts database to find the relevant Ausländerbehörde (aliens registration office) (in German):  
<http://webgis.bamf.de/BAMF/control>
- Jugendamt (Youth Welfare Office)  
There are youth welfare offices in local areas and districts of Germany; the one responsible is always the youth welfare office in the place of residence of the person in Germany you are dealing with.
- Internationaler Sozialdienst (ISD) in the Deutschen Verein für öffentliche und private Fürsorge e.V. (German Branch of the International Social Service)  
[isd@iss-ger.de](mailto:isd@iss-ger.de)  
030 62980 403 (hotline accessible on working days)  
<http://www.issger.de/en/home/home.html> (page in English)  
Adress: Michaelkirchstr. 17-18  
10179 Berlin

### 2. Advisory services in other Member States

- The European Council of Refugees and Exiles (ECRE) has a comprehensive list:  
<https://www.ecre.org/members/>
- The Informationsbund Asyl und Migration provides contacts specifically for Greece and Bulgaria  
<https://familie.asyl.net/links-adressen/> (Choose 'Ausland')
- Website 'Welcome to Europe'  
<http://www.w2eu.info/>
- Helsinki Committee for Human Rights (represented in many countries)  
– Bulgaria: <http://www.bghelsinki.org/en/>  
– Hungary: <https://www.helsinki.hu/en/>
- Refugee law clinics abroad e.V.  
[familienzusammenfuehrung@rlca.de](mailto:familienzusammenfuehrung@rlca.de)

### 3. Assistance in the search for family members

- DRK (Red Cross, Germany) Tracing Service  
<https://www.drk-suchdienst.de/en/>; <https://familylinks.icrc.org/europe/en/Pages/Home.aspx>

### 4. Legal expertise on reunion under Dublin III

- Advisory services on applications for international protection run by German charities  
An overview is provided e.g. by:  
– <https://familie.asyl.net/links-adressen/>  
– <https://www.proasyl.de/beratungsstellen-vor-ort/> (in German)
- Refugee councils  
[www.fluechtlingsrat.de](http://www.fluechtlingsrat.de)
- Refugee law clinics abroad e.V.  
[familienzusammenfuehrung@rlca.de](mailto:familienzusammenfuehrung@rlca.de)

## 5. Other advisory services

- The Informationsverbund Asyl und Migration provides a list of non-government organisations (NGOs)  
<https://familie.asyl.net/links-adressen/>
- Advisory services on applications for international protection run by German charities  
An overview is provided e.g. by:  
<https://familie.asyl.net/links-adressen/>

## 6. Financial support for family reunion

- Diakonie Deutschland, fund for family reunion  
[https://hilfe.diakonie.de/fileadmin/user\\_upload/Diakonie/PDFs/Hilfe\\_Journal/MerkblattFamzfonds201601Diakonie.pdf](https://hilfe.diakonie.de/fileadmin/user_upload/Diakonie/PDFs/Hilfe_Journal/MerkblattFamzfonds201601Diakonie.pdf)
- BumF fund for legal assistance  
[www.b-umf.de/de/themen/rechtshilfe](http://www.b-umf.de/de/themen/rechtshilfe)

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Legally responsible for the content: Katharina Stamm

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## VII. Terminology

A glossary is not included because all legal terms are defined in context in the brochure. Only in exceptional cases have non-legal definitions been used.

- The Dublin III Regulation (Regulation (EU) 604/2013) is a European Regulation law and includes a comprehensive list of definitions in Art 2. These are authoritative for the

interpretation of the rules. For this reason it is important to check these definitions before consulting commentaries.

- The Dublin III Implementing Regulation (Regulation (EC) 1560/2003 as amended by the Dublin III Implementing Regulation (EU) 118/2014) also contains a range of references to definitions and how to understand them.

## **VIII. ANNEX: Templates**

In the following you will find templates for:

1. Written desire for reunion
  - the written expression of the desire for reunion, which is a requirement of some of the Dublin reunion clauses and is recommended in all cases; it must be submitted by all the persons involved in the reunion;
2. Written consent
  - necessary when the reunion takes place where a dependent person resides, and in the case of the humanitarian clause;
3. The written declaration of consent to data exchange under the Dublin III Regulation.

The letters are composed in English. If you know the language of the other Member State, you can of course write the letter in that language.

**1. Written expression of the desire for reunion**

[your address]  
 [address asylum office where you are]  
 -Dublin Unit-

**WRITTEN DESIRE CONCERNING THE FAMILY REUNIFICATION OF**

[name, date of birth, place of birth]

[city, country, date]

Dear Madam or Sir,

I, [name, date of birth, place of birth, number of the asylum application/file number] sincerely request to be reunified with my [relationship, name, date of birth, place of birth, number of the asylum application/file number].

*Hinweis: Falls es mehrere Familienangehörige geben sollte, nehmen Sie alle mit auf.*

I am currently living at [address]. My family is currently living at [address].  
 Thank you for your cooperation.

I applied for asylum in [country of residence] and [have been an official asylum seeker/recognized as beneficiary of international protection] in [country] since [date of asylum application/ recognition]. The number of my file is [number of the asylum application/file number].

Yours sincerely

[name, signature]

## 2. Written consent

[your address]  
[address asylum office where you are]  
-Dublin Unit-

### WRITTEN CONSENT CONCERNING THE FAMILY REUNIFICATION OF

[name, date of birth, place of birth]

[city, country, date]

Dear Madam or Sir,

I, [name, date of birth, place of birth, number of the asylum application/file number] sincerely request and consent to the family reunification with my [relationship, name, date of birth, place of birth, number of the asylum application/file number].

*Hinweis: Falls es mehrere Familienangehörige geben sollte, nehmen Sie alle mit auf.*

I am currently living at [address]. My family is currently living at [address].  
Thank you for your cooperation.

I applied for asylum in [country of residence] and [have been an official asylum seeker/recognized as beneficiary of international protection] in [country] since [date of asylum application/ recognition]. The number of my file is [number of the asylum application/file number].

Yours sincerely

[name, signature]



### 3. Declaration of consent for data exchange under the Dublin III Regulation

[your address]  
[address asylum office where you are]  
-Dublin Unit-

#### **DECLARATION OF CONSENT FOR DATA EXCHANGE UNDER THE DUBLIN III REGULATION**

[name, date of birth, place of birth]

[city, country, date]

Dear Madam or Sir,

I, [name, date of birth, place of birth, number of the asylum application/file number] hereby certify that I agree that all the data necessary for the conduct of my family reunification with my [relationship, name, date of birth, place of birth, number of the asylum application/file number] can be exchanged between the Member States involved.

I am currently living at [address]. My family is currently living at [address].  
Thank you for your cooperation.

Yours sincerely

[name, signature]

# Notes

**Auszug Diakonie Texte 2014/2015/2016/2017/2018**

- 02.2018 Familienzusammenführungen im Rahmen der Dublin-III-Verordnung nach Deutschland  
Anspruch – Verfahren – Praxistipps
- 01.2018 Positionen der Diakonie Deutschland in der Gesundheits-, Rehabilitations- und Pflegepolitik 2018
- 06.2017 Einrichtungsstatistik zum 1. Januar 2016 – Regional
- 05.2017 Kinder, Jugendliche und ihre Familien nach der Flucht begleiten, unterstützen und bemächtigen  
Zugänge – Ansprüche – Leistungen
- 04.2017 Einrichtungsstatistik zum 1. Januar 2016
- 03.2017 Diakonie-Charta für ein Soziales Europa
- 02.2017 Personalkonzepte der Zukunft in Einrichtungen der stationären Altenhilfe  
Impulse für eine innovative Diskussion
- 01.2017 Sektorenübergreifende Versorgung für multimorbide alte Menschen
- 07.2016 HILFE! Zwischen den Stühlen – Junge Menschen mit psychischen- oder Suchterkrankungen ohne Wohnung  
Analysen, Forderungen und Empfehlungen.
- 06.2016 Pflegestatistik zum 15. 12. 2013
- 05.2016 Kirche und Diakonie in der Nachbarschaft  
Neue Allianzen im ländlichen Raum
- 04.2016 Soziales Unternehmertum und aktuelle Tendenzen am Sozialmarkt  
Ein Diskussionspapier für die Diakonie in Deutschland
- 03.2016 Verlässlicher Ganzttag  
Ein Plädoyer für ganzheitliche Bildung und Erziehung
- 02.2016 Medizinische Rehabilitation von chronisch psychisch erkrankten Menschen  
Diakonische Positionen zur medizinisch-rehabilitativen Weiterentwicklung der Gemeindepsychiatrie
- 01.2016 Junge Menschen (18 bis 27 Jahre) zwischen den Hilfesystemen – psychisch krank, suchtkrank, wohnungslos  
Vorschläge zu einer umfassenden Unterstützung, Begleitung und Behandlung
- 06.2015 Einrichtungsstatistik – Regional zum 1. Januar 2014 05.2015 Zehn Jahre Hartz IV – zehn Thesen der Diakonie  
Menschenwürde und soziale Teilhabe in der Grundsicherung verwirklichen
- 04.2015 Einrichtungsstatistik zum 1. Januar 2014
- 03.2015 Strategie im Vergabeverfahren  
Handreichung für Diakonische Träger
- 02.2015 Gerechte Teilhabe durch Arbeit
- 01.2015 Diakonische Positionen zu einem Präventionsgesetz
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