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Family reunification in Germany under the Dublin III Regulation

Entitlement – Procedure – Practical tips

English translation of 2nd edition, 2022

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Content

I. Introduction and outline of problem

Families are often separated while fleeing. In many cases, situations arise in which persons seeking protection are in Germany while their family members are either in other European countries, in transit countries or still in their countries of origin. Many people would like to be reunited with their family members.

In principle, there are two possible paths for this reunification. Which path is worth pursuing depends on the status of the procedure and the individual conditions. On the one hand, reunification can be sought according to national law, in Germany this is regulated by §§ 27 ff. of the Residence Act (AufenthG). Because this provision requires a visa application at a German embassy abroad, the procedure is also called embassy or visa procedure. For family reunification in the embassy procedure, the person who is already in Germany must already have been issued a residence permit in a final (incontestable) decision. In the case of recognised refugees with a residence permit pursuant to § 25 para. 2 p. 1 Alt. 1 Residence Act, the so-called privileged reunification (cf. section 29 para. 2 Residence Act) comes into consideration here.

Another possibility for restoring family unity is offered by European law, specifically: the Dublin III Regulation (Dublin III Regulation).[1] Regulations, as legal acts of the European Union (EU), are directly enforceable in the national law of the Member States, which means that the Dublin III Regulation is directly applicable in Germany. The regulations do not have to be transposed into national law, so the legal basis is not found in the Residence Act or other German laws, but follows directly from the text of the Dublin III Regulation.

In these cases, someone wishing to join a family member does not have to apply to a German Embassy abroad. The embassy procedure does not apply because the person is by definition already in the EU or another signatory state of the Dublin III Regulation (see section II. 1.). A residence permit, which is a prerequisite for the embassy procedure, is also not necessary in this case.

This is because the Dublin III Regulation standardises responsibilities in the Common European Asylum System (CEAS) and thus regulates which state is responsible for conducting an asylum procedure.

For asylum seekers in Germany who are subject to a Dublin procedure, the issue is usually to »resist« the responsibility of other Member States. The asylum seekers generally attempt to get protection »against« Dublin transfers to countries such as Greece or Italy. The legal basis for these transfers is the principle of first entry (Art. 13)[2]: According to this principle, the EU Member State into which the first illegal entry occurred is responsible for the asylum application – mostly states at the external borders of the EU.

In contrast, in the case of family reunion, the issue is »Protection through Dublin«, since a legal entry to Germany is allowed in order to restore family unity. This serves to ensure that there is a single responsibility for the asylum process of a family and that they can go through the process together. The family reunion provisions of the Dublin III regulation have gained importance since irregular onward migration within the EU has become more difficult or even impossible.

Both the embassy procedure and the »Dublin family reunification« can be considered as options for the reunification of family members if they are already in Europe. As a rule, however, reunification via the Dublin III Regulation will be the simpler path for the persons concerned, although the procedures can also be pursued in parallel.

The relatively simple legal regulations encounter a number of difficulties in practice – especially because it is often difficult in practice to provide evidence that the conditions for reunification have been met. This publication aims to address some of the problems and provide assistance.

Detailed and continuously updated information on both procedures as well as materials, checklists and advice on specific countries of origin and on transit countries are provided by the website familie.asyl.net.

[1] Regulation No. 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180/31 of 29 June 2013. Available at asyl.net under Recht/Gesetzestexte/EU-Recht/Verordnungen.

[2] Unless otherwise stated, all Articles mentioned refer to Articles of the Dublin III Regulation.

II. Scope of application of the Dublin III Regulation

1. Territorial scope of application

The Dublin III Regulation applies directly in all EU Member States. In addition, Norway, Liechtenstein, Switzerland and Iceland also participate in the Dublin system and extend the scope of application accordingly. Family reunification via the Dublin III Regulation is thus also only possible if the family members reside in this »Dublin area«. Therefore, all family members involved in the family reunification process must reside in a Member State of the EU or Norway, Switzerland, Liechtenstein or Iceland.

2. Temporal scope of application

The Dublin III Regulation establishes responsibilities for the asylum procedure (cf. Art. 1), i. e. for the examination of an application for international protection (refugee status or subsidiary protection, cf. Art. 2(b)). The temporal scope of application is already clear from this: the Dublin III Regulation applies from the date of the application for asylum. In the case of family reunification, this refers to the family members joining them. They must have filed an asylum application. This may be the only formal requirement for reunification.

However, since the regulation regulates the responsibility for the asylum procedure, Germany – or another Member State – can only be responsible for a person as long as he or she is still in the asylum procedure. The Dublin III Regulation therefore no longer applies once the asylum procedure has been completed and a decision has been made on the asylum application of the person to be transferred.

This means that the Dublin III Regulation applies to a person as long as he or she has filed an asylum application and no decision has been taken on the application.

Note **The »freezing« principle** It should be noted that the situation at the time of the application for asylum is what matters when examining the responsibility of a Member State. This follows from the »freezing clause« of Art. 7 para. 2. Specifically In the case of family reunification, it must therefore be examined whether the prerequisites are met at the time the asylum application is filed by the relatives joining the family. This may concern, for example, the minors of children joining them or the status of the reference person to whom the reunification is to take place. The advantages and disadvantages of this »freezing clause« will be discussed in more detail in the individual points below.

3. Persons covered by the Regulation

When determining responsibility, the Dublin III Regulation always starts with the person who has filed an asylum application in another Member State and wishes to join family members (Art. 1). Hereafter, this family member is referred to as the **joining person**. In the case of family reunification, it is examined whether this person has family members who are already in another Member State (i. e. for example in Germany) (hereinafter: **reference person**). Since family unity is to be a primary consideration of the Member States (14th recital), it must be examined whether another Member State is responsible on the basis of the family unity criteria.

4. Definition of the Family

The Dublin III Regulation speaks of family members, relatives and siblings in the provisions on family reunification.

Family members in this sense are always only the members of the so-called nuclear family (Art. 2 let. g). This means that only **spouses, underage children or the parents of underage children** are eligible for reunification. In the latter case, instead of the parents, an adult person who is responsible for the underage child according to the law or practice of the Member State in which he or she resides is also eligible. This form of words generally refers to a person who is exercising care of the minor. An extension to a larger group of persons is not possible if the provision only speaks of »family members«.

Another requirement is that the term »family members« only includes those who were family members in the country of origin (cf. Art. 2(g)). Contrary to all logic, this applies absolutely, i. e. to both legal and biological extensions of the family circle. This means that a child born on the way to Europe is no more a family member[3] in the

[3] See also Hruschka/Maiani, in: Hailbronner/Thym, EU Immigration and Asylum Law, 3rd ed., 2022, Dublin III Regulation, Art. 2, para. 10. Such a case will rarely be relevant and must then be seen in the human rights context (ibid., para. 11). The example is only intended to serve as a clarification. Article 20(3) of the Dublin III Regulation, which links the procedure for children born within the EU with that of their parents, also applies here.

technical sense of the Dublin III Regulation than a married couple if the marriage took place after leaving the country of origin.

With regard to the reunification of unaccompanied minors, the Dublin III Regulation also uses the broader concept of **relatives**. These are to be strictly distinguished from »family members« and include the **adult uncle, adult aunt or grandparent** of the minor being reunited (cf. Art. 2(h)).

Siblings are **not covered** by the aforementioned general definitions. However, as long as a provision does not explicitly mention siblings, reunification with them is also out of the question. It should be borne in mind, however, that Art. 20 para. 3 links underage children with their parents, so that underage siblings are also covered by the family reunification of parents with another underage child.

Note **Life partners** Under certain circumstances, unmarried life partners are treated in the same way as married couples. The residence law of the receiving Member State is decisive here.[4] In Germany, unmarried couples are treated comparably to married couples in terms of residence law if there is a civil partnership within the meaning of the Registered Civil Partnership Act (LPartG) (Section 27 para. 2 Residence Act). A civil partnership in this sense is not already established by an engagement. The LPartG **applies exclusively to same-sex couples** (section 1 para. 1 LPartG).

Same-sex civil partnerships concluded under foreign law fall under this term »if the partnership is recognised by an act of the state and its structure essentially corresponds to the German civil partnership.«

Note **»Multiple marriages«** The question of whether a person can join several spouses was also disputed for a long time under national law and has now been answered in the negative (section 30 para. 4 Residence Act). This provision implements Art. 4 para. 4 of the EU Family Reunification Directive, so that it is also clear for European law that »multiple reunification« is not desired. Even if the question is thus not necessarily answered negatively in formal legal terms, it applies in practice that multiple spouses cannot be reunited.

Note **Stepparents, stepchildren and adopted children** A reunification between stepparents or stepchildren as well as adopted children is also possible under the Dublin III Regulation. In principle, these also fall under the concept of family members and are thus covered by the regulation. Here, too, it is assumed that the family must have already existed in the country of origin.

5. Proof of family ties

a. Requirements for evidence

Within the framework of the family reunification procedure, the existence of the conditions must be sufficiently proven. In particular, the proof of family relationships can cause difficulties, but is often of decisive importance for the outcome of the procedure.

In principle, according to the Dublin III Regulation, »proof and circumstantial evidence« are sufficient (cf. Art. 22 para. 2, 3). The Regulation explicitly states that the standard of proof is kept low and that proof can also be provided by circumstantial evidence alone if no evidence is available (cf. Art. 22 para. 5). Annex II of the Dublin Implementing Regulation lists the individual forms of evidence that must be provided.[5]

Proof may include identity documents, family books, register extracts, birth certificates and, as a last resort, a DNA test. If such evidence is provided, it can only be invalidated by proof to the contrary (cf. Art. 22 para. 2 let. a).

The concept of circumstantial evidence is broad and anything that confirms the family link can be considered as evidence and thus circumstantial. This can be, for example, the same family name, details of the persons involved, statements by an international organisation – as well as other reports – as well as photos, statements made by the family members in their hearings or other documents such as vaccination certificates or similar. The more circumstantial evidence is submitted, the stronger is its probative value. Submitting a large amount of circumstantial evidence is crucial, as the BAMF often does not recognise circumstantial evidence as proof and its probative value must then be established in court proceedings (see section V. 2.).

[4] Filzwieser/Sprung, Dublin-III-Verordnung, Art. 2, K. 28.

[5] A revised version of the implementing regulation, which incorporates previous amendments, can be found at asyl.net under Recht/Gesetzestexte/EU-Recht/Verordnungen.

Note **Increased requirements for evidence** In practice, the BAMF disregards the low standard of proof. The provisions of the Dublin III Regulation are supposed to do justice to the situation of displaced people and take into account that the persons are not entitled to a residence permit after they have been transferred to another country, but that only an asylum procedure is carried out.

Circumstantial evidence is not taken into account in official practice and even numerous pieces of evidence, such as Tazkiras, family books and the like, are not considered sufficient on their own. This is obviously unlawful and has been reprimanded by the administrative courts in numerous cases.[6] Unlike the authorities, the courts consider the existence of circumstantial evidence to be sufficient if it is coherent and multiple. If problems arise in this matter, legal assistance should therefore always be sought at an early stage.

b. Providing proof

If possible, the supporting documents should be submitted when the joining family members apply for asylum in the other Member State. If this has not been done, a quick submission is urgently advised, as a take charge request to Germany (for the procedure see section III. 2.) will be only be made on the basis of such a submission. After expiry of a three-month request period, reunification is only possible via the very restrictive humanitarian clause (see section III. 4. b).

Copies that have to be submitted to the competent asylum authority of the state in which the joining persons are located are sufficient proof. As a rule, photos of documents sent by e-mail or messenger service are also considered sufficient by the authorities and courts. It is often possible to submit these documents later by e-mail. When doing so, make sure to include the asylum application number (in case of doubt, all numbers if there are different numbers).[7] You should also ask for an e-mail or other contact address if you do not have all the documents you need to submit your asylum application. It should also be noted that documents must always be submitted exclusively via the asylum authority of the other Member State and cannot be sent directly to the BAMF.

Note **Translations** Translations are not required by either the Dublin III Regulation or the Implementing Regulation. However, since many Member States, including Germany, nevertheless require translations, it is advisable to submit translations at least into English. It is sufficient if these are informal. Certified translations are not required. Legal action can be taken against refusals based on the lack of translations.

[6] Cf. instead of many: VG Ansbach, decision of 2 October 2019 – AN 18 E 19.50790 – BeckRS 2019 51657; VG Ansbach, decision of 13 August 2020 – AN 17 E 20.50216 – juris (decisions also available via the Equal Rights Beyond Borders case law database).

[7] Contact addresses for authorities in some Dublin countries are provided on familie.asyl.net under »Links & Addressen«.

III. Family-related criteria of responsibility

1. Ranking of criteria

Although the »first entry principle« (Art. 13) is always present in the framework of the Dublin III Regulation when it comes to determining the Member State responsible, the rules of responsibility with regard to family unity must not be disregarded. Rather, they enjoy priority: according to the basic rule of Art. 7 para. 1, the criteria of family unity (Art. 8–11) explicitly take precedence over the »first entry principle« (Art. 13). This illustrates the special protection of family unity and the best interests of the child, to which the Dublin III Regulation attaches particular, overriding importance (cf. recitals 13, 14).

2. Procedure

The family reunification procedure under the Dublin III Regulation is – unlike the so-called embassy procedure under the Residence Act – not an application procedure. This means that persons cannot apply for family reunification, but rather must inform the competent asylum authority when applying for asylum that family members, siblings or relatives are staying in another EU Member State and that they would like to be reunited with them. The respective authorities then initiate the procedure. This follows from the fact that the procedures under the Dublin III Regulation are merely procedures between Member States to regulate the responsibilities for asylum procedures within the EU. The persons concerned therefore have no direct influence on the procedure and documents and the like can only be submitted via the Member State authorities. In order to carry out these procedures, a communication network, the so-called dublinet, has been set up through which all communication between the Member State authorities takes place.

a. Admission procedure and deadlines

The procedure under the Dublin III Regulation is strictly regulated and contains rigid deadlines. Missing a deadline always leads to a transfer of responsibility to the missing Member State.

The aim of the Regulation is to ensure fast and effective procedures (Recital 5), which is why the determination of the Member State responsible for an asylum procedure should be fast and straightforward.

Case example 1 The minor W enters Greece unaccompanied on the 13th of May 2022. His sister A is in Germany, where she has been granted subsidiary protection. W applies for asylum through his legal representation on the 20th of May 2022.

Take charge requests

The family reunification procedure begins with the sending of a so-called **take charge request** (Art. 21). With this request, one Member State (requesting Member State, in this case: Greece) asks another (requested Member State, in this case: Germany) to take in a person applying for asylum for the purpose of carrying out the asylum procedure. The reason given is that family members are already staying in the requested Member State and that this Member State is therefore also responsible for the asylum seeker according to the rules of the Dublin III Regulation (see section III. 3. below). The request to take charge contains all relevant information and data on the persons concerned as well as all required documents, such as proof of family ties. The form of such a request can be found in Annex I of the Dublin Implementing Regulation.

The request to take charge must be sent within three months of the asylum application (Art. 20, 21 para. 1). If a Member State misses the deadline for sending the request to take charge, it automatically becomes responsible for conducting the asylum procedure itself (Art. 21 para. 1 subpara. 3).

In the case example above, the Greek authorities must send a take charge request to the BAMF by the 20th of August 2022 and request Germany to take charge of the unaccompanied minor W. The request must be submitted by the 20th of August 2022.

Note **Start of the deadline** The point in time at which an asylum application is filed can sometimes cause confusion. According to current ECJ case law, the asylum application is generally considered to have been filed when the competent asylum authority receives the information about the asylum application of the person seeking protection in writing. This can therefore already happen at an appointment that is only

referred to as »registration« and records that a person has entered the country. It should be noted that the comparison with the European database Eurodac can result in different »types of hit«. In practice, there are often several months between entry and registration by taking fingerprints (Eurodac hit 2, illegal entry) and the filing of an asylum application (Eurodac hit 1, asylum application), so that it is decisive which point in time is taken as the beginning of the three-month period of Article 21 para. 1.

The BAMF often takes into account the date of entry if this took place well before the filing of the asylum application, so that take charge requests are considered to be too late. In contrast, the Eurodac hits can usually be cited as proof of compliance with the deadline. The Eurodac hit 2 only proves the »illegal entry«, but not that the person concerned has also filed an asylum application. However, such an application is required for the three-month time limit of Article 21 para. 1 to begin. An asylum application made well after entry can be proven with the Eurodac hit 1. To this end, the authorities of the requesting Member State also regularly state in the resubmissions that the asylum application was only made at the later date, and that the time limit thus has been observed. Due to the European principle of trust, these statements are to be followed in principle – especially if there is no proof to the contrary.

Reply

The requested Member State (in this case: Germany) has two months to respond to the request to take charge (Art. 22 para. 1). In doing so, it checks its responsibility on the basis of proof and circumstantial evidence. The requested Member State must check its own responsibility under all provisions of the Dublin III Regulation, irrespective of the provision on which the requesting Member State based the request to take charge (Art. 3 para. 2 Dublin Implementing Regulation). The answer can then be either a consent or a refusal, whereby a refusal according to Art. 5 para. 1 Dublin Implementing Regulation must state all reasons in detail.

If the two-month deadline for replying is missed, consent is deemed to have been given, i. e. the requested Member State becomes responsible for taking up and conducting the asylum procedure of the asylum seeker (Art. 22 para. 7).

In the case example above, Germany must respond to the request by the 20th of October 2022. If there is no reply within this period, Germany automatically becomes responsible for W's asylum procedure.

Resubmission of requests

If a rejection is issued by the requested Member State (in this case: Germany) within the two-month response period, the requesting state (in this case: Greece) has the opportunity to resubmit the request to take charge within three weeks of the rejection and to respond to the reasons stated in the rejection and submit new evidence (Art. 5 para. 2 Dublin Implementing Regulation). These three weeks thus provide another opportunity to collect documents and submit comments or reports. The authorities regularly inform supporting parties about the progress of the procedure and explicitly request further documents (see also section IV).

If Germany rejects the take-charge request within the deadline, on the 20th of October 2022, the Greek authorities have until the 10th of November 2022 to resubmit the request.

Final reply

According to Art. 5 para. 2 Dublin Implementing Regulation, the requested Member State should respond to a resubmission within two weeks – i. e. give a consent or a further refusal. However, a delayed response or even a complete lack of response no longer leads to a transfer of responsibility to the requested Member State.[8]

After receiving the resubmission on the 10th of November 2022, the BAMF should reply within two weeks. If the reply is not received or is delayed, Greece is still responsible for W's asylum procedure.

Further resubmissions

The authorities involved disagree on whether further resubmissions are possible after two previous refusals. Case law is not unanimous on this point either. Although it is often the case that documents submitted after a second

[8] ECJ, judgment of 13 November 2018 – C-47/7, C-48/17 X and X v. the Netherlands –, asyl.net: M26728, Asylmagazin 1–2/2019, pp. 31 f.

refusal are recognised through further resubmissions and the request is thus granted, the requested state is not obliged to do so. Therefore, care should be taken to ensure that all necessary documents and evidence are submitted together with the first resubmission at the latest.

b. Transfer

i. Deadline

After a request to take charge has been accepted, the transfer of the person concerned must take place as soon as possible, but at the latest within six months (Art. 29 para. 1). If the transfer is not carried out within this period, the procedure comes to nothing and the requesting Member State becomes responsible for conducting the asylum procedure after all (Art. 29 para. 2). Here, again, the Dublin III Regulation »punishes« the expiry of the time limit with a transfer of responsibility.

After receiving the resubmission, Germany accepted the take-charge request by letter dated on the 15th of November 2022. Greece now has until the 15th of May 2023 to transfer W to Germany. If W is not transferred within this period, Greece will still be responsible for carrying out his asylum procedure.

ii. Practical arrangements

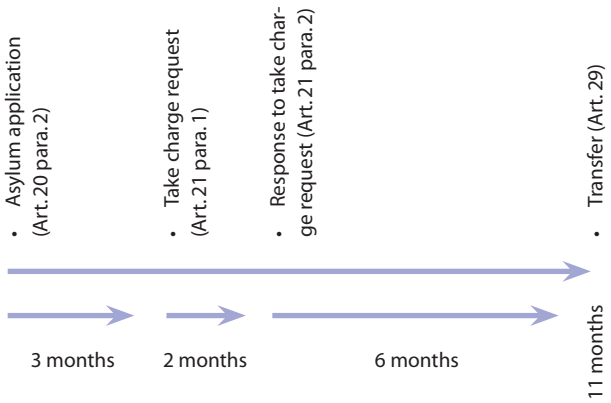
The transfer shall be carried out according to the law of the requesting Member State (in this case: Greece) once the Member States concerned have coordinated accordingly (Art. 29 para. 1). Art. 7 of the Dublin Implementing Directive foresees possibilities for this:

1. On the initiative of the asylum seeker. This requires that the person concerned is issued a »Laissez-passer« (a document which permits entry into the responsible Member State and travel through transit countries, the legal basis is Art. 29 para. 1 subpara. 3) and the person is required to leave the non-responsible Member State before a certain deadline.
2. In the form of a supervised departure: For this, the person must be accompanied until boarding the means of transport and the exact arrangements (time, place) must be coordinated. This can also take place by way of charter flights.
3. Under escort: The asylum seeker is escorted to the responsible state by employees of the state authorities of the requesting member state and handed over to the authorities there.

In practice, the BAMF only ever allows persons to travel to Germany by means of supervised departure or under escort. In this case, the person applying for asylum is informed by the competent authority of the requesting Member State when a ticket has been booked. In the case of unaccompanied minors, this is often done in coordination with the youth welfare office or family members of the child concerned in the requested Member State in order to ensure a pick-up from the airport.

The costs of the transfer are to be paid in full by the requesting Member State and not by the persons concerned (Art. 30). If problems arise during the transfer, it is urgent to seek legal assistance.

c. Overview of the procedure



3. Binding criteria

Articles 8, 9 and 10 of the Dublin III Regulation contain standard criteria for determining the responsible member state in relation to family unity. These are provisions which, if met, entitle the persons concerned to be transferred to the requested Member State and thus to family reunification. If the individual requirements of the respective provision are met, the requested Member State must accept the request and thus declare its consent to take charge of the asylum seeker. This is in contrast to the discretionary provisions, where the respective requested Member State has a certain margin of discretion (see section III. 4.).

a. Art. 8 para. 1 – Unaccompanied minors to family members and siblings

Art. 8 para. 1 provides for the reunion of unaccompanied underage asylum applicants with their family members and siblings, if the latter are residing legally in another Member State and the reunion is in the interests of the

child's welfare. The provision thus stipulates four preconditions:

i. The applicant for asylum is an unaccompanied minor.
ii. The reference persons are family members or siblings.
iii. The residence of the reference person in the other Member State is lawful.
iv. The reunification is in the best interests of the child:

Case example 2 The unaccompanied minor T has applied for asylum in Greece, while his sister L is in Germany with her family. She is the holder of a residence permit according to Section 25 para. 2 AufenthG. T entered Greece together with his adult cousin. After his entry, he was accommodated in a home and a social worker was assigned legal representation. T wants to be reunited with his sister L in Germany.

i. Unaccompanied minors

The minor must first be **unaccompanied**. A person is unaccompanied if he or she has entered, is staying or has been left in an EU Member State unaccompanied by an adult responsible for him or her (Art. 2(j)). The responsibility of the adult for the minor is determined by the law or practice of the Member State in which the minor is present.

Here, too, the decisive point in time with regard to the existence of unaccompanied status is the date of the application for asylum (cf. Art. 7 para. 2, see section II. 2.). Changes that occur after this point in time are legally irrelevant. The situation may be different in the case of »left-behind minors«, i. e. who were still accompanied when they applied for asylum and only became unaccompanied afterwards. Here, in order to protect the best interests of the child and the value of Article 7 para. 3, an exception must be made to the »freezing clause« of Article 7 para. 2, so that a minor is also considered unaccompanied if he or she was left behind alone after applying for asylum.

It should also be noted that a person is **not automatically accompanied** if they enter together with siblings or other relatives. The accompanying person must be of age, which excludes underage siblings. Also, a minor is only considered to be accompanied if the adult travelling with him or her has been appointed as the legal guardian. However, this should only apply in the rarest of cases.

Note **Legal representation** A person is not »accompanied« solely by the appointment of a legal representation (e.g. guardianship, cf. for definition Art. 2(k)). In this respect, three points in particular must be taken into account:

1. the point in time at which the asylum application is filed is decisive. If a representative is appointed afterwards, this is irrelevant for the assessment of whether a minor is accompanied.
2. The Member States are obliged to appoint legal representation for unaccompanied minors (Article 6 para.2), as this is the only way to ensure the best interests of the child according to the assumptions of the Dublin III Regulation. This must not be interpreted to the disadvantage of the minor.
3. Often, only »temporary guardianship« is transferred, but not full-scale custody or personal care, which is, however, necessary for the classification as accompanied.

Although T entered Greece together with his adult cousin and although a social worker was assigned legal representation after T was placed in a home, T continues to be unaccompanied within the meaning of Art. 8 para. 1.

The asylum seeker must also be **underage**. All persons under the age of 18 are considered underage (Art. 2(i)). The assessment of age is the responsibility of the Member State in which the minor is located and in which the asylum application is lodged. This classification is to be accepted by the other Member States within the framework of the Dublin procedure, although in practice it is quite common for the BAMF to cast doubt on the underage status of a person without identity documents. However, just as with the determination of identity, the BAMF must be reminded that the principle of mutual trust between the EU Member States prohibits doubting the findings of another Member State without concrete evidence to the contrary.

Note **»Aging-out«** It is not uncommon for persons to enter the country as minors and reach the age of 18 during their stay – which often lasts a very long time – before the responsibility check is carried out. This is irrelevant for the Dublin III Regulation as long as an asylum application was filed while the person was still a minor (cf. »freezing clause« of Art. 7 para. 2, see section II. 2.). Even if the procedure takes a long time and the applicant has meanwhile reached the age of majori-

ty, he or she remains a minor within the meaning of the Dublin III Regulation.[9]

ii. Reference Person

According to the wording, **family members** or **siblings** can be considered as reference persons. This is a provision that supplements the narrow concept of family members with the minor's siblings. It does not matter whether the siblings are minors or adults and whether they were already entrusted with the custody of the minor sibling in the country of origin or will be in the future in the country of destination of the family reunification. The only connecting factor here is that the persons are siblings.

Since L is T's sister, she is to be regarded as a reference person within the meaning of Art. 8 para. 1.

Note **Half-Siblings** Half-siblings are also covered by Art. 8 para. 1. A distinction between full and half siblings is not only alien to the Dublin III Regulation, but also to the entire Common European Asylum System (CEAS) and German law. On the contrary, such a distinction contradicts the requirements for the protection of the family unit and the best interests of the child and constitutes unjustified discrimination. In practice, the BAMF often sees this differently, but the reunification of half-siblings can be enforced in court (see section V. 2.).

iii. Legal residence of the person of reference

The person to whom the reunification is to take place must be lawfully resident in the other Member State. The Dublin III Regulation does not have its own concept of lawfulness, so that the assessment must be based on the law of the respective Member State. The concept is explicitly defined in broad terms – precisely in contrast to Articles 9 and 10 (right of residence due to recognition of protection or ongoing asylum proceedings) – in order to ensure comprehensive protection of the best interests of the child. For the Federal Republic of Germany, this means that either a residence permit in accordance with the Residence Act must be available or the person must be legally resident in some other way. The decisive factor is therefore that there is some kind of legal residence; it does not necessarily have to be a so-called humanitarian residence, which was granted, for example, on the basis of refugee recognition.

With regard to lawful residence, the following should be pointed out: A corresponding residence permit must be available at the time of the asylum application of the person joining the reference person (cf. Art. 7 para. 2). A rejection of the reference person's asylum application, or even a lapse (Setion 72 of the Asylum Act) or a revocation/withdrawal (Section 73 Asylum Act) of the granting of protection, after the application has been filed, is therefore irrelevant. If the negative decision has not yet been issued at the time of the asylum application, the residence is to be considered lawful in the sense of the Dublin III Regulation.

This is also conceivable in a reverse situation: The reference person's asylum application is rejected and the residence is unlawful in the other Member State at the time the family member joining the reference person applies for asylum. Afterwards, however, the decision of the BAMF is corrected by the courts and the reference person is granted refugee status. The »freezing clause« also applies here, which means that reunification via Art. 8 is generally not possible. However, Art. 10 and in any case the humanitarian clause (Art. 17 para. 2), to which the »freezing clause« of Art. 7 para. 2 does not apply, come into consideration here (see section III. 4. b).

L is the holder of a residence permit according to Section 25 para. 2 of the Residence Act (AufenthG) – this means that she has been granted international protection. She is therefore legally resident in the Federal Republic of Germany.

Note **Aufenthaltsgestattung** The stay of persons seeking asylum in Germany is permitted in Germany (so-called Aufenthaltsgestattung according to Section 55 of the Asylum Act, which is certified according to Section 63 of the Asylum Act). They are not staying in Germany unlawfully for the duration of the asylum procedure. Whether the Aufenthaltsgestattung is sufficient for a lawful stay in the sense of the Dublin III Regulation is disputed. More recently, it has been assumed that residence is only lawful if this has been established by a legislative or executive act.[10] According to this opinion, the Aufenthaltsgestattung could not be considered sufficient, because no decision on the merits is necessary for its issuance;

[9] ECJ, judgment of 1 August 2022 – C-19/21 I, S v. Netherlands – asyl.net: M30813, Asylmagazin 9/2022, pp. 320 ff., para. 25; with comment by Anne Pertsch, pp. 299 ff.

[10] This is argued, for example, by Funke-Kaiser, GK-AsylVfG, 111th supplementary edition, April 2017, § 29, marginal no. 86; and Hailbronner, in: ders.: Ausländerrecht, 108th update, January 2019, § 29 AsylG, marginal no. 90.

rather, it arises by operation of law for the duration of the proceedings until the initial decision.

For unaccompanied minors, this contentious issue should rarely lead to problems, as they can continue to be reunited with their family members in the so-called family procedure (Art. 10, see section III. 3. e). Only the reunification with siblings with a Aufenthaltsgestattung is not possible via this provision according to the above-mentioned legal opinion.

For reunification in family proceedings, however, a so-called written wish is necessary (see section III. 3. d. iii). Therefore, a written declaration of intent of the minor should always be submitted, although this is not actually necessary within the framework of Art. 8.

Note **Duldung** A special feature of German residence law is the »Duldung«, which is granted, among other things, if deportation is impossible for legal or factual reasons (section 60a of the Residence Act). Irrespective of this, however, the person remains subject to an enforceable obligation to leave the country and his or her stay is not lawful within the meaning of the Residence Act. European regulations, on the other hand, do not recognise an instrument such as the Duldung, and it is also foreign to the Dublin III Regulation. Here, a distinction is only made between lawful and unlawful residence. Therefore, according to the clear wording of the Dublin III Regulation, a Duldung is equivalent to a residence permit (Art. 2(l) »any permit«) and the stay is lawful in the sense of the Dublin III Regulation. This assumption has also been explicitly confirmed by the BAMF, so the persons concerned can refer to this opinion in individual cases in any necessary court proceedings.

Note **Citizenship** Article 8 also applies to reference persons with German citizenship. In addition to persons with a residence permit, legal residence in this sense also includes EU citizens entitled to freedom of movement as well as persons with the citizenship of the corresponding Member State. Art. 8 does not refer to an asylum procedure of the reference person, but is explicitly defined more broadly for the special protection of the best interests of the child. The Dublin III Regulation also only refers to the applicant as an »asylum seeker« (see section III. 2. a and cf. Art. 1). So far, this has been consistently assessed differently by the BAMF, however, due to consistent case law in this regard, it is to be hoped that in future the BAMF will no longer regard the German nationality of reference persons as an obstacle. Legal support should be sought urgently if an application is rejected based on the argument outlined above.

iv. Child welfare

The reunification must serve the best interests of the child. The wording is intended as a corrective, since the best interests of the child must be taken into account in all proceedings anyway (Art. 6 para. 1). It is an objective criterion, the existence of which is indicated. This means that it is generally assumed that reunification with family members and siblings serves the best interests of the child.[11] Only if there are indications that this is not the case, as through the expressed will of the child, the best interests of the child are examined separately. Violence, abuse or similar circumstances may stand in the way of reunification.

The basic rule for dealing with unaccompanied underage asylum seekers is that the Youth Welfare Office (Jugendamt) should be involved as early as possible. This applies both to the case in which the minor is in another Member State as well as to the reverse case in which the minor is in Germany. The Youth Welfare Office will often play a role anyway, for example when it comes to determining legal representation or if an assessment has to be made whether the best interests of the child are being safeguarded. Coordination with the Youth Welfare Office can prove helpful, as can cooperation with established structures, such as the International Social Service in the German Association for Public and Private Welfare (Deutscher Verein für öffentliche und private Fürsorge e.V.), which works closely with the respective Youth Welfare Offices both in Germany and – via their partner organisations – in other European countries. The contact details can be found in the appendix.

Since T is alone in Greece without family ties, it is in his best interests to live with his sister.

Practical advice The situation often occurs in which not only the mother and father of a minor are in Germany, but also their siblings. However, this is not a problem for the entitlement to family reunification; the only decisive factor is whether the person who is not in Germany is unaccompa-

[11] So also ECJ, judgment of 1 August 2022, op. cit. (fn. 9), para. 25.

nied and underage. If both family members and siblings are in Germany, there are only several connecting factors based on the Dublin III Regulation. The unaccompanied minor can be reunited with both parents and siblings – depending on which person is best suited to prove that the necessary requirements can be met. The situation is different if the family members are »scattered« in several Member States (see section III. 3. c).

b. Art. 8 para. 2 – Unaccompanied minors to relatives

In its second paragraph, Art. 8 regulates the reunification of unaccompanied minors with relatives. The relatives must also be **legally resident** in a Member State and the reunification must be in the **best interests of the child**. In addition, however, the relatives must also be capable of caring for the minor. The standard thus contains five conditions:

i. The applicant for asylum is an unaccompanied minor.
ii. The reference person is a relative.
iii. The reference person's stay in the other Member State is lawful.
iv. The reunification is in the best interests of the child.
v. The reference person is capable of caring for the minor

Case example 3 Y would like to be reunited with his uncle D. D has German citizenship and lives together with his two children in an apartment of 60 m². D has already supported Y financially and emotionally since he became displaced and is his main contact person.

i. Unaccompanied minors

The applicant must be an unaccompanied minor, whereby the prerequisites must be met at the time of the asylum application. For the individual requirements, see section III. 3. a. i.

ii. Reference person

According to the wording, relatives can be considered as reference persons. Relatives are (adult) uncles and aunts and grandparents (Art. 2(h)).

As D is Y's uncle and he is an adult , he is a relative within the meaning of Art. 8 para. 2.

iii. Legal residence of the reference person

The reference person must be legally resident in the other Member State. In this respect, the above applies (see section III. 3. a. iii).

As a German citizen, D is legally residing in Germany.

iv. Child welfare

The reunification must serve the best interests of the child. This assumption is applied as a general rule when unaccompanied minors are reunited with relatives.[12]

v. Ability of the reference person to take care of the minor

In contrast to reunification with family members and siblings, it must additionally be proven within the framework of Art. 8 para. 2 that the relative is capable of taking care of the minor.

Whether the reference person is able to care for the minor in the individual case is assessed by the Member State in which the former resides. The necessary individual assessment must be based on the capacities of the reference person. In particular, their character and social abilities must be taken into account. It may also be taken into account whether the reference person has already been entrusted with care.

Athough there may be overlaps, the ability to take care of the underage relative is not to be equated with the requirements of securing a livelihood and sufficient living space, which are fundamentally required for family reunification under the Residence Act. The regulations on family reunification of unaccompanied underage asylum seekers primarily have a humanitarian, not a cost-minimising purpose. The argument that relatives cannot provide for the minors' livelihood and therefore cannot take care of them is also out of the question in view of the function of the Dublin III Regulation: it standardises responsibilities for the asylum procedure. Asylum seekers are usually entitled to social benefits under the Asylum Seekers' Benefits Act, so additional financial security is not necessary. Striving to minimise costs must therefore

[12] ECJ, judgment of 1 August 2022, op. cit. (fn. 9).

not prevent reunification and must not override the humanitarian purpose.

Only the best interests of the child take precedence; therefore, an overall assessment must be made on a case-by-case basis, also taking into account age-specific circumstances and individual needs. Practical questions must be asked in which access to a flat and the available capacities may be indications, but do not in themselves speak against the ability to care for the child. Such factors can be outweighed by a special relationship of proximity between the persons to be reunited. The question of capacities of the reference person in the case of simultaneous care of several children is also admissible.

Note **Standards to be applied in the review** As a rule, the BAMF asks the Youth Welfare Office and the locally competent Foreigners Authority whether there are any reasons that might speak against reunification. A deadline of two to three weeks is set, and if there is no reply, it is assumed that there are no objections. If a response is received, it can usually be assumed that the Foreigners Authorities, who are inexperienced in Dublin cases, will sometimes apply the framework known from the Residence Act without further explanation, i.e. they will question whether the person concerned will be able to provide for the cost of living and for living space. However, this may only be one aspect, but by no means the only point to be considerd in the decision-making process.

A mere reference to the incapability to provide for the means of subsistence is all the more unacceptable due to the fact that the regulations, as described, have a humanitarian, not a cost-minimising purpose. The best interests of the child are central, so that the assessments of the Foreigners Authority will sometimes fall short.

Some courts also assume without any legal foundation that the existence of sufficient living space must be proven. In this context the they make use of the standard of the Residence Act (basically 12 m^2 for persons over 12 years, 10 m^2 for children under 6 years). In order to prevent problems, it should therefore be checked beforehand whether sufficient living space is available. If this is not the case, it should be made clear from the beginning that this is not necessary according to the intention and purpose of the Dublin III Regulation.

D is capable of caring for Y. D has already been supporting Y financially and emotionally since Y fled. In addition, he has two children who want to grow up together with Y. Even if the strict conditions regarding living space are applied, D is capable of taking in Y. Including Y, four people would live in the household. Regardless of whether the children are under or over 6 years old, 60 m^2 is sufficient (4x12 m^2 = 48 m^2).

Practical advice As a rule, the written consent of the persons concerned (see section III. 3. d. iii) should always be obtained in the case of reunification under Art. 8. Although it is not legally required, it should be submitted to be on the safe side, as it often has to be examined whether other provisions might be relevant. For example, if a deadline has been missed, the humanitarian discretionary clause of Art. 17 para. 2 may be relevant, for which written consent is required. Written consent also serves as a personal statement by the applicant and the reference person and thus as an indication of family ties (see section II. 5. a).

c. Art. 8 para. 3 – Family members and relatives in different Members States

Finally, the Dublin III Regulation also addresses the situation in which family members, siblings or relatives are in different Member States (Article 8(3)). Here, the Member State responsible is to be determined on the basis of what is in the best interests of the minor. There is no order of priority between the various family members mentioned.[13] A case-by-case assessment is therefore necessary; **as a rule**, family reunification **with the parents** will be in the best interests of the child. The Dublin Implementing Regulation also stipulates that the degree of family ties have to be considered (Art. 12 para. 5 (a)). However, as already shown, this is not the only criterion; rather, there must also be the ability and willingness to take care of the minor (subparagraph b) – their best interests must be given priority (subparagraph c).

[13] Also: Hruschka/Maiani, in: Hailbronner/Thym, EU Immigration and Asylum Law, 3rd ed., 2022, Dublin III Regulation, Art. 8, para. 4; a different view is held by Filzwieser/Sprung, Dublin III Regulation, Art. 8, K. 13.

Practical advice If different family members reside in different Member States, the following should be considered: If possible, evidence should be provided at the time of the minor's asylum application as to why reunification with a particular family member is appropriate. For this purpose, reports or statements can be prepared – ideally in English or with a translation – explaining why reunification with the person in question should take place. The justification should be based on the degree of family bonding and why this reunification is in the best interests of the child in particular – therefore the minor is the relevant connecting factor in the justification. Therefore, reunification with relatives will only take place in rare cases and only if the parents cannot or do not want to care for the child for certain reasons. Here, in particular, deficient behaviour from the past can be considered as a possible argument.

It should be noted that this situation also arises if, for example, siblings are also in the state in which the minor concerned has applied for asylum, while another sibling is in Germany. In this case, it can also be argued that the family members in the country in which the asylum application was filed will usually also be in the asylum procedure, so their stay is by no means secure. For this reason alone, it is in the best interests of the child to be reunited with the sibling who is legally resident in Germany.

d. Art. 9 – Family members with international protection

Art. 9 provides for reunification with family members with international protection – irrespective of whether the family already existed in the country of origin. Thus, in addition to the unaccompanied minors covered by Art. 8, it also includes accompanied minors and spouses (Art. 2(g)). The connecting factor is that the reference person has already been granted international protection and has given written consent to reunification. The provision thus has three conditions:

i. The applicant and the reference person are family members.
ii. The reference person has already been granted international protection.
iii. The persons concerned have given their written consent to the reunification.

Case example 4 M fled to Germany in 2016, where he was granted international protection. In 2018, he married S »by proxy«, being represented by his lawyer at the marriage in his country of origin. In 2021, S fled to Turkey, where Z, M and S's joint daughter, was born. S and Z later entered Greece and applied for asylum there, they would like to join M in Germany in the context of family reunification. S and M have also stated this in writing.

i. Reference person

The provision of Art. 9 explicitly names family members as reference persons and thus refers to the nuclear family (Art. 2 let. g, see section II. 4.). Contrary to the general definition, this provision does not limit the definition of »nuclear family« to those families which have already existed in the country of origin. Accordingly, the family membership must have existed at the time the asylum application was filed by the person joining the family (Art. 7 para. 2). This means, for example, that a marriage that took place after one or both persons left the country of origin falls within the scope of application of Article 9. This also applies to children born in another country or while fleeing.

Note **Siblings** In principle, siblings, including minors, do not fall under the concept of family members. It should be borne in mind, however, that the examination of asylum applications of minors who were travelling together with adults or who were born after the arrival in a Member State is inseparably linked to the accompanying adult person, also in order to avoid family separation (Art. 20 para. 3). This means that underage siblings travelling with their parents are also entitled if the parents are reunited with an underage child.

Note **»Marriage by proxy«** Marriage by proxy, i. e. when a marriage was concluded without the presence of one or both persons, is also recognised in principle in the context of the reunification of spouses. Here, too, the regulations of the state to which the reunification is to take place are decisive. In principle, this type of marriage does not violate public order in the receiving Member State (here: Germany) and is thus valid if it is permissible under the law of the country of origin. However, it is important in practice that it can be proven by a power of attorney or affida-

vit issued for the marriage that the representation was limited to the act of the marriage (mere »representation in word«). The representative must not have had the power to decide whether and whom the person concerned is to marry (»representation in will«). The latter is contrary to public order and unlawful; a marriage concluded in this way is thus invalid.

Note **Underage marriage** The question of whether the marriage of minors is recognised also depends on the regulations of the state to which the subsequent migration is to take place. In Germany, a marriage of persons under 16 years of age is generally invalid (Art. 13 Introductory Act to the Civil Code). If a person entering into marriage is between 16 and 18 years of age, the marriage is considered annullable. This means that the marriage is initially considered valid, but can be annulled for the future upon application.

In practice, this means that spouses whose marriage was contracted when they were younger than 16 are not recognised as family members. It should be considered here, however, that other possibilities for reunification might arise if there are joint children. The reunification of spouses whose marriage was contracted when they were 16 or older is possible in principle, especially since the desire for reunification confirms the marriage.

M, as the husband of S and as the father of the minor Z, is a family member within the meaning of Art. 9. It is also irrelevant that both the marriage to S was only concluded after M had left his home country. Since he authorised a legal representative for the marriage with S, the marriage is to be regarded as valid. The fact that Z was born in Turkey and thus not in the home country is also irrelevant in the context of Art. 9. Art. 9 explicitly states that family membership does not have to have existed in the country of origin.

ii. International protection status of the reference person

Recognition of the international protection of the reference person must have taken place at the time of the asylum application of the person joining him/her. International protection only includes recognition of refugee status (section 3 Asylum Act) or subsidiary protection (Section 4 of the Asylum Act). Therefore, all other forms of legal residence are excluded, in particular the Aufenthaltsgestattung (Section 55 of the Asylum Act), the Duldung (Section 60a of the Residence Act) or the national prohibitions of deportation (Abschiebungsverbot, Section 60 para. 5 and para. 7 of the Residence Act). Thus, reunification according to Art. 9 can only be considered if the reference person receives a residence permit according to Section 25 para. 2 of the Residence Act. This permit does not have to have been issued yet; it is sufficient if the decision granting protection status has been made at the time of the asylum application of the person joining the reference person (Art. 7 para. 2).

In addition, an important peculiarity arises in the context of reunification with beneficiaries of protection: the provision is linked solely to the right of residence as a result of the recognition of a protection status and not to actual residence. This means that physical residence of the reference person in the Federal Republic of Germany, for example, is not a prerequisite for reunification.[14]

M as a family member was already granted international protection in 2016.

iii. Written consent of the persons concerned

The reunification of family members according to Art. 9 also requires that the persons concerned express in writing their intent to be united. This is to prevent the reunification of family members against their will.

The written request does not need to be in any particular form, but it must be made by **all family members** who wish to be reunited. In principle, the requesting Member State obtains the written wish of the person to be reunited when he or she applies for asylum. In parallel, the written consent of the reference person should also always be sent and, in the best case, submitted directly with the asylum application of the person to be reunited in the other Member State. In practice, the requested Member State (here: Germany) will nevertheless contact the reference person after receiving the take-charge request and obtain the consent in writing by setting a deadline of two weeks. It should therefore always be ensured that the current address is available to the authorities and attention should be paid to whether a letter from the BAMF arrives. The written consent should always contain the exact details (full name, date of birth, place of residence) of the person joining them as well as the reference person's written wish for their family member to join them. A sample for such a consent can be found in the appendix.

[14] Cf. Hruschka/Maiani, in: Hailbronner/Thym, EU Immigration and Asylum Law, 3rd ed., 2022, Dublin III Regulation, Art. 9, para. 1.

S and M have given written consent to the reunification

e. Art. 10 – Family members in an ongoing asylum procedure

Family members can also be reunited if the reference person is already and still in an ongoing asylum procedure when the person joining them applies for asylum and the intent to be reunited is made known in writing. This provision therefore contains three conditions:

i. Reference and asylum applicant are family members.
ii. The asylum procedure of the reference person is pending.
iii. The persons concerned have consented to the reunion.

Case example 5 The minor H entered Greece and filed her asylum application there on the 10th of October 2021. Her mother E has already been in Germany since 2020. Her asylum application was rejected on the 15th of August 2021. She filed an appeal against the rejection on the 24th of August 2021, which is pending. Both H and E have agreed in writing to family reunification.

i. Reference person

Here, too, family members must be involved, although the provision does not contain an exception to the narrow definition of family members in Art. 2(g) and the family membership must therefore have already existed in the country of origin. This can lead to restrictions under certain circumstances and should always be checked carefully.

E is the mother of minor H and thus a family member in terms of Art. 10.

ii. Ongoing asylum procedure of the reference person

The purpose of the provision is to combine the **proceedings** of family members and thus, in addition to ensuring family unity, it also serves the efficiency of procedures. The proceedings of two applicants, whose applications are closely connected due to their family ties, would otherwise have to be dealt with separately. Therefore, Art. 10 provides that the Member State in which the first application was filed is responsible. However, this only applies up to the first decision, i. e. up to the point in time when a substantive decision on the asylum application was taken for the first time. The reference person must therefore be at a point between the filing of the application and the first decision at the time of the asylum application of the person joining him/her and must therefore usually have a Aufenthaltsgestattung.

Here, too, the time of the asylum application of the person joining the migrant is decisive (Article 7 para. 2). This means that this point in time is decisive and a later granting of international protection is legally irrelevant. This can be relevant if, for example, the marriage in question was only contracted after leaving the country of origin, which is possible under Art. 9, but not under Art. 10. The point in time can also become relevant if, for example, prohibition of deportation (Abschiebungsverbot) has been granted. This rules out reunification under Art. 9. However, the question arises as to whether this already existed at the time the asylum application was filed by the person moving in or whether the asylum procedure was still pending at that time. It should also be noted that, according to the prevailing opinion, the asylum application must be a first application.

Note **»First decision regarding the substance« of a case** There is disagreement between case law and the BAMF regarding the assumption of what constitutes a »first decision regarding the substance« of a case: the BAMF assumes that the rejection of an asylum application already constitutes such a decision, and thus the scope of application of Art. 10 is significantly shorter. In contrast, the established case law[15] uniformly assumes that an »initial decision on the merits« only exists when this decision is legally binding, i. e. only when a final, incontestable decision has been made after legal remedies have been taken. This can have considerable consequences if, for example, only a prohibition on deportation (Abschiebungsverbot) has been granted and an appeal has been filed against the refusal of international protection. In the opinion of the BAMF, reunification is not possible under these circumstances (unless it converns unaccompanied minors joining, whose reunification is regulated by Art. 8). However, according to case law and academia, Art. 10 is still applicable if an appeal has been lodged against the refusal to grant international

[15] Cf. inter alia OVG Berlin-Brandenburg, decision of 3 September 2019 – OVG 6 N 58.19 – https://openjur.de/u/2257179.html; as well as OVG Schleswig-Holstein, decision of 17 August 2021 – 1 LA 43/21 – asyl.net: M29952.

protection. Therefore, when the BAMF grants an Abschiebungsverbot, possible family reunification should always be taken into consideration when considering whether to appeal.

At the decisive point in time of H's application for asylum in Greece – on the 10th of October 2021 – E is in ongoing asylum proceedings in Germany. The rejection issued on the 15th of August 2021 is legally irrelevant, as E filed an appeal against it in time and the proceedings are still pending.

iii. Written consent of the reference person

Here, too, the intent to carry out the reunion must be expressed in writing. The above applies (see section III. 3. d. iii).

f. Summary: Preconditions for responsibility on family grounds

Preconditions	Art. 8 para. 1	Art. 8 para. 2	Art. 9	Art. 10
Joining person	Unaccompanied minors	Unaccompanied minors		
Reference person	Familiy members and siblings	Relatives	Familiy members	Familiy members
Status of Reference person	Legal residence	Legal residence	International protection	Ongoing asylum procedure
Additional conditions	Child welfare	Child welfare ability to take care	Written consent	Written consent

4. Discretionary provisions

The binding provisions of the Dublin III Regulation on family reunification were described above. The requirements for the application of these provisions are sometimes narrowly defined, therefore many practical cases are not covered.

For these cases, the Dublin III Regulation provides fall-back provisions. Here, however, unlike in the case of the regular responsibilities, reunification is **at the discretion of the Member States**. This means that the transfer of responsibility to another Member State is not automatically triggered if the conditions are met. A distinction must be made between two forms of discretion: Art. 16 on »dependent persons« provides for reunification as a rule if the conditions are met and thus prescribes a so-called **reduced discretion**. This means that, in principle, reunification must take place. According to Art. 17 para. 2, the so-called humanitarian clause, reunification is at the **full discretion** of the Member States.

A distinction must be made between the humanitarian clause and Article 17 para. 1. This provision contains the so-called **sovereignty clause**, which is also a discretionary clause with a humanitarian objective, but does not play any role with regard to family reunification. The sovereignty clause (i. e. the right to take over an asylum procedure even if the Member State is not formally responsible) can only be exercised by the Member State in which the person is already residing when the asylum application is lodged (cf. Art. 17 para. 1: »lodged with it«).

When applying the discretionary clauses, it should also be noted in particular that the »freezing clause« of Art. 7 para. 2 **does not apply**. This means that their prerequisites do not have to be met at the time of the asylum application. It therefore always depends on the respective point in time at which the assessment of the facts takes place.

a. Art. 16 – Dependent persons

The reunification of/to dependent persons is the narrowest of the discretionary clauses of the Dublin III Regulation. If the conditions are met, the family **should normally be reunited**. In this context, an applicant must be dependent on the support of a family member (reference person) legally residing in another Member State for conclusively named reasons (dependency). The same applies if the reference person is dependent on the support of the applicant for special reasons. The family relationship must have already existed in the country of origin and the written request must be made known. In addition, the family member must be able to **support the dependent person**. If the requirements are met, reunification is generally carried out in the Member State where one of the persons has already been staying for an extended period of time, unless the person to be reunited is incapable of travelling for a significant period of time (para. 2). Thus, there are six conditions for reunification:

i. Family members named by the provision
ii. Presence of specific reasons for dependency
iii. Existing dependence on support
iv. Ability of the family member to support
v. Legal residence of the family member
vi. Written consent of all persons concerned to reunification

The requirements of Art. 16 in detail

i. Reference person

Art. 16 does not refer to the concept of family members as far as the group of persons covered is concerned, but mentions children, siblings and parents. The term »children«, in the absence of wording which would indicate a different meaning, also includes adult children. Therefore the circle of persons covered is, on the one hand, wider than the term family members. However, spouses are not covered by the provision. At the same time, the provision stipulates that the family relationship must have already existed in the country of origin.

ii. Vulnerability

The special reasons giving rise to dependency are listed exhaustively in Art. 16 para. 1. Reunification is only possible with persons who are pregnant, have just given birth to a child, are seriously ill, seriously disabled or of old age. Only one of these special requirements must be fulfilled. In addition, the person must be dependent on support precisely because of the existence of the special reasons (see section III. 4. a. iii).

Pregnancy is an unambiguous term from which Art. 16 knows no exceptions. Accordingly, a demonstrably pregnant woman may have grounds for dependency. Whether she is dependent on support precisely because of the pregnancy must be clarified additionally.

It is more difficult to assess how long a child is considered »**newborn**«. Here the special reason ties in with the particular difficulties of the parent. It is often suggested that a definition should be based on maternity protection periods, which in Germany regularly amount to eight weeks (Section 6 para. 1 of the Maternity Protection Act); this period is covered at least. Because the admission procedure under the Dublin procedure will probably take longer than eight weeks, this time limit should also be extended to a longer period, so that approximately three months should be a good guideline.[16]

The criterion of **serious illness** is initially broadly defined, since the wording of the provision does not contain any further qualifiers. However, the Member States apply a very restrictive standard here. The question of seriousness can only be correctly assessed if the need for support is also taken into account. In any case, a disease that can be cured within a foreseeable period of time will only rarely be classified as severe. Rather, »severe« restricts the possibility of reunion to cases of diseases with a low chance of recovery or with a protracted healing process. In addition, the disease must take a course that impairs the sick person in everyday life in a significant manner.

The same applies to **serious disability**. The wording »serious« already provides for a restrictive interpretation, so that impairments resulting from the disability will not be sufficient. The ECJ defines disability as the existence of »physical, mental and psychological impairments of a permanent nature« which »in interaction with various barriers« may prevent the person concerned from participating fully, effectively and on an equal basis with others.[17] The assessment of when such an impairment exists and when it is serious depends in each case on the individual case and on whether a certain level of severity has been reached; an abstract specification is therefore difficult. Even from a certain degree of disability (Grad der Behinderung, GdB), i. e. the classification commonly used in Germany, the need for assistance cannot automatically be concluded. However, the probability of classification as »serious« in the sense of the Dublin III Regulation is likely to increase with a high degree of disability. At the same time, the concept of disability under European law sometimes also includes disabilities that are not assigned a high GdB on the basis of German social law. However, cosmetic impairments or walking difficulties, for example, cannot be considered sufficient (on their own).

The criterion of **old age** does not include a rigid age limit, so there is no clear definition. However, it must in any case be assumed to be from retirement age onwards,[18] even if this differs greatly even within the EU. Moreover, old age has to be based on the concrete circumstances and thus also on the socio-cultural background of the person concerned. Life expectancy in the country of origin must also be taken into account. Here, too, the question of the **need for support**, which will be explained below, plays the main role.

Note **Proof of the reason for dependence** As already explained above, the standard of proof under the Dublin III Regulation is deliberately kept low and should not go beyond what is necessary for application. In principle, evidence and circumstantial evidence can be considered, whereby Art. 11 para. 2 of the Dublin Implementing Regulation contains more detailed information regarding proof within the framework of Art. 16.[19]

[16] Cf. Funke-Kaiser, GK-AsylVfG, 111th supplementary edition, April 2017, § 29, marginal no. 169.

[17] ECJ, Case C-356/12 (Glatzel) of 22 May 2014, para. 46 f.

[18] Cf. Funke/Kaiser, GK-AsylVfG, 111th supplementary edition, April 2017, § 29, marginal no. 170.

[19] It is irrelevant that the text refers to Art. 15(2). This refers to the Dublin II Regulation and the text of the implementing regulation was only insufficiently adapted.

This provision stipulates that the parties involved must provide prima facie evidence of the special reasons and the need for support by means of documents that can be submitted on one's own initiative. Even though prima facie evidence should in principle be low-threshold, in practice it is difficult to provide. Medical reports and evidence are required, but these are difficult for asylum seekers to obtain in some Member States. In addition, the BAMF often disregards the evidence threshold, which is deliberately kept low, and ignores reports and evidence that have not been issued by official doctor's practices or hospitals. All available documents should therefore be submitted and their consideration should be insisted upon.

iii. Dependence

The central precondition with regard to the criteria referred to here is that the person concerned must be dependent on the support, i. e. is dependent on the family member with whom he or she wishes to be reunited. In this context, the dependency must exist precisely for the reasons exhaustively listed above. This requirement is embedded in a human rights context, so that Member States must take into account in particular the right to respect for family life under Article 8 of the European Convention on Human Rights (ECHR) or Article 7 of the Charter of Fundamental Rights of the European Union (CFR) and not be guided solely by objective-rational calculations. The refusal of reunification can therefore not be justified by the fact that the person is already sufficiently cared for by care providers or the hospital in the state of residence. The same applies if other family members are already in the Member State to provide care – this does not automatically eliminate the possibility of dependency. For humanitarian reasons, the dependent person must be granted autonomy in deciding on the assistance deemed necessary, which also includes the person of the family member providing assistance.

Note **Proof of dependence** Here, too, the question arises as to which standard is to be applied in the context of dependency and how this can be proven. In view of the intention and evaluation of the Dublin III Regulation (Art. 22, Art. 11 para. 2 Dublin Implementing Regulation), it has to be assumed that a low-threshold standard applies, which can be met by evidence and circumstantial evidence. In theory, it is sufficient to explain in detail in what form and for what purpose a person is dependent on assistance. In particular, it should be explained to what extent daily life and daily tasks cannot be carried out without support. In practice, this can be set out through reports – social, psychological or medical – as well as statements and opinions from the person concerned and close confidants. It should be noted, however, that the BAMF applies a high standard not provided for by law and rarely considers the notion of dependency to be fulfilled.

iv. Ability to provide support

In addition, it depends on the ability of the reference person to provide assistance. An abstract need for assistance on the part of a person will never be recognised as sufficient; rather, it is precisely the person providing assistance who must be able to – at least partially – address the concrete need for assistance. In this context, the question as to whether the person providing assistance can provide all necessary assistance is not permissible. Again, the Member State does not become responsible for the person providing assistance in order to save work (in the form of providing carers) and costs, but in order to fulfil its humanitarian obligations. In this respect, the provision focuses on a psychological dimension that should not be neglected. Therefore, a situation in which supporting persons may need support themselves cannot be considered as a negative aspect if these person can at least provide part of the assistance.[20] Finally, the criterion is not to be confused with the concept of »taking care«, which has been explained in the context of Art. 8 para. 2 (although there may be overlaps).

Furthermore, support can also be of a financial nature. However, it should be noted that in some circumstances it could be assumed that the person providing assistance does not have to be in the same Member State in order to offer financial support.[21]

v. Legal residence of the family member

With regard to the lawfulness of residence, the above applies (section III. 3. a). A humanitarian residence permit is not necessary; the special issues arising from nationality, Duldung and Aufenthaltsgestattung should also be taken into account.

[20] Cf. Funke-Kaiser, GK-AsylVfG, 111th supplementary edition, April 2017, § 27a, marginal no. 174.

[21] Cf. ibid.

vi. Written consent of the persons concerned

Finally, the written consent of the persons concerned is also required for Art. 16 to apply. This should be obtained in good time. What has already been said in the context of Art. 9 and 10 applies (see section III. 3. d. iii).

Legal consequence of Art. 16

As a legal consequence, Art. 16 provides that, as a rule, reunification or no separation takes place. This reduced discretion provides that the Member States must, in principle, allow reunification or consent to the adoption of a family member if the conditions are met.

With regard to transfer, the principle of temporal priority also applies here (Art. 16 para. 2): The Member State in which the first asylum application was lodged also becomes responsible for the asylum applications of the other family members. This means that, as a rule, the Member State responsible is the one in which the relatives are legally residing. This principle is not to be applied if the health condition of the person in need of assistance prevents him or her from travelling to the other Member State for a significant period of time. In this case, the Member State in which the person in need of assistance resides is also obliged to take charge of his/her relatives, even if they already have a permanent residence permit in another Member State. This means that the purpose of allocating responsibility for examining asylum applications under the Dublin III Regulation is superseded by humanitarian needs.[22] The criteria of Art. 3 ECHR determine under which conditions someone is prevented from travelling to a Member State for a significant period of time.

Practical advice It should always be borne in mind that Art. 16 para. 1 is a humanitarian »exception clause« to be interpreted narrowly. Persons are not dependent on support in the sense of this provision just by virtue of having an illness. What matters is whether or not they can still manage their daily lives independently. Although false hopes should not be raised for the persons concerned, reunification via Article 16 para. 1 should be sought even if there are doubts as to whether the requirements are met. It is true that in many cases the chances of reunification are not particularly high. Nevertheless, due to the discretionary powers, the decision of the authorities cannot be clearly predicted. The administrative practice of various member states is sometimes inconsistent and in some cases simply incomprehensible. The credible and well-founded presentation of the individual case remains decisive.

b. Art. 17 para. 2 – Humanitarian fall-back clause

For all other scenarios that do not fall under the conditions for prioritised family reunification, the Dublin III Regulation also contains a humanitarian clause.

According to Art. 17 para. 2, the Member State in which an application for international protection has been lodged may at any time request another Member State to take charge of the applicant as long as the asylum procedure has not been completed. Such a request for admission is possible if there are humanitarian reasons, arising in particular from a family or cultural context, to reunite persons of any family relationship. The fall-back clause can also be applied if the other Member State is not responsible according to the criteria in Articles 8 to 11 and 16.

Broad discretionary clauses always serve to close any gaps not considered in advance where humanitarian necessities exist. The humanitarian clause is also intended to be applied in cases of imminent separation of family members as a result of applying the regulation to the letter.[23]

It should be noted that the humanitarian clause explicitly contains its own time limit regulation by stipulating that a take-charge request can be sent **at any time** before a decision has been made on the asylum application of the person to be joined. This illustrates the exceptional and catch-all character of the norm. Since – as already explained above – the »freezing clause« of Art. 7 para. 2 does not apply, the situation at the time of the assessment is decisive.

The humanitarian clause of the Dublin III Regulation is not a pure hardship provision, but explicitly requires family ties. The provision allows for the reunification of persons of any family relationship for humanitarian reasons. The humanitarian reasons result in particular from the family or cultural context (Art. 17 para. 2). Here, too, family reunification must be consented to in writing. The clause thus contains four conditions:

i. Persons of family relationship
ii. Residence of the reference person
iii. Humanitarian reasons for reunification
iv. Written consent to reunification of the persons concerned

[22] Transferring someone despite inability to travel would contradict Art. 3 ECHR, but non-reunification despite family necessity would contradict Art. 8 ECHR – cf. Filzwieser/Sprung, Dublin III Regulation, 2014, Art. 16, K. 12.

[23] Filzwieser/Sprung, Dublin-III-Verordnung, 2014, Art. 17, K. 14.

Conditions of Art. 17 para. 2 in Detail

i. Reference person

Art. 17 para. 2 does not refer to the known definitions, but provides for the bringing together of persons of **any family relationship**. The term »family relationship« (confusingly) does not mean »relatives« as defined in Art. 2(h). The circle of persons with a family relationship goes far beyond »family members« and »relatives«. As a rule of thumb, the humanitarian necessity increases with the proximity of the kinship relationship, so the justification effort becomes higher with decreasing proximity. Nevertheless, it is – theoretically – also possible to bring together cousins, for example, via the humanitarian clause. Because the wording is a unique one that only applies to the humanitarian clause, the family ties do not have to have existed in the country of origin (as is stipulated in the definition of family members).

ii. Requirements regarding the residence of the reference person

The provision does not explicitly impose any requirements on the residence of the reference person. However, it can be assumed that a stay of a certain duration is required in order to achieve the effect of reunification on humanitarian grounds. In any case, the stays already mentioned above should not pose any problems.

iii. Humanitarian grounds

According to the wording of Art. 17 para. 2, the humanitarian reasons can result from the cultural or family context. They form the core of the standard grounds. When applying these humanitarian grounds in the context of the Dublin III Regulation, an interpretation is required that is committed to the principles of family unity and the best interests of the child, which can be seen in particular in recitals 13 to 17.

Member States apply this provision extremely restrictively. In practice, reasons arising from a family context are generally the only ones accepted. The closer the persons are related to each other and the more emphasis is placed on the protection of the family unit, the more likely the reasons put forward will be taken into account. The best interests of the child can play a decisive role here, and in particular the interests of unaccompanied underage children that are worthy of protection.

Moreover, the humanitarian clause explicitly has a catch-all character. The clause is thus intended to prevent the separation of family members that may result from the strict application of the criteria of jurisdiction. The closer a situation comes to the constellations laid down in Articles 8–10 and 16, the closer the application of Art. 17 para. 2.

A successful application under the humanitarian clause requires circumstances beyond the mere interest in family reunification. The circumstances must be such that they reduce the margin of discretion to the point at which an obligation to unify the family arises, because any other decision would appear unjustifiable.

In view of the restrictive application practice of the Member States, it should always be borne in mind that application of the humanitarian clause is only successful in rare cases – and even then usually only after legal proceedings have been conducted.

Note

Proof The low standard of proof of the Dublin III Regulation also applies legally to the humanitarian clause; with regard to the proof of the family relationship, reference can be made to above (see section II. 5. a). The humanitarian grounds are difficult to prove in practice. In principle, it is helpful to submit as many reports as possible (social reports from carers, teaching staff or other persons, medical reports, etc.) to show the impact of the separation. It should be made clear that maintaining the separation leads to a deterioration in the physical and mental health of the person concerned. It is sufficient if carers or counsellors describe the situation of the person concerned in the reports and explain to what extent the separation has an impact.

iv. Written consent of the persons concerned

The persons concerned must give their consent in writing. However, what has been said above applies (see section III. 3. d. iii): Apart from the written form, no requirements have to be met.

Case studies for the application of Art. 17 para. 2

In the following, some of the most frequently occurring constellations will be presented in order to give an overview of what can fall under the humanitarian clause. The list is by no means exhaustive and only includes the most relevant cases at the time of writing.

»Sending-on« cases

Probably the most common situation at the moment is that of the so-called »sending-on« cases – or as the

BAMF calls them: Cases of »voluntary separation«. These describe a situation in which the persons concerned, often parents and children, enter the EU together and apply for asylum. This often happens in Greece and often without the persons being aware of it, as their intention was to go to Germany or to another central European country, rather than to apply for asylum in Greece. After applying for asylum, one person – usually a child – then travels on to Germany and again applies for asylum. After Germany has declared itself responsible for the asylum procedure (mostly because Greece consistently rejects applications for readmission under the Dublin III Regulation), the persons concerned want to join their child in Germany.

In such a situation, the standard responsibilities (Art. 8, 9, 10) of the Dublin III Regulation do not apply. This is due to the frequently mentioned »freezing clause« of Art. 7 para. 2: At the time of the asylum application, the persons concerned were together in one Member State – as a family in Greece – so that at the relevant time there was no situation that would provide grounds for family reunification. All subsequent changes are legally irrelevant.

Thus, in such cases, only the humanitarian clause of Art. 17(2) comes into consideration. In such cases, the BAMF regularly refuses reunification on the grounds that the separation had been »voluntary« and that the right to reunification had been lost as a result. Moreover, family reunification in these cases would constitute secondary migration, which should be prevented, according to the BAMF.

The chances of success in such a case depend on the individual circumstances. In most cases, Germany's consent to the admission of the family members can only be obtained through court proceedings and only if reports and statements clarify the situation of the persons concerned and the necessity of reunification. In addition, it depends considerably on the persons involved: If minors under the age of 14 have become unaccompanied as a result of the separation, the chances of reunification are much better. It is not possible to make a general statement on how to proceed in these cases; it is important that legal support is consulted in order to be able to assess the possibilities of reunification in the best possible way and to act accordingly.

Unaccompanied minors in Germany

Problems can also arise if unaccompanied minors are in Germany and their family wants to join them from another Member State. In the case of minors, often only a prohibition of deportation (Abschiebungsverbot) is established (if an asylum application has been filed), as the minors concerned might have no grounds of their own for being granted international protection. In addition, it is possible that no application for asylum has been filed for young children and therefore they have been granted a Duldung (toleration, cf. note, chapter III.3.a..iii).

In this situation, Art. 8 cannot be applied, as the minor must be abroad and is supposed to ask for permission to come to Germany under this provision. Art. 9 is also not applicable, , if international protection has not been granted. If the asylum procedure is not yet pending or is no longer pending and a Duldung or a prohibition of deportation (Abschiebungsverbot) has been granted, the general rules for establishing the responsible Member State do not come into consideration.

In this case, too, only reunification under the humanitarian clause of Article 17 para. 2 comes into question. In this case, the humanitarian clause fulfils its fall-back function and is applicable, as the strict requirements for reunification in a similar situation do not apply. As a rule, chances are not bad that the BAMF will be obliged to give its consent in court proceedings at the latest. The chances of success are higher the younger the unaccompanied child is. Here too, however, it depends on the individual case and it is advisable to obtain legal support as early as possible.

Family members with an Abschiebungsverbot (prohibition of deportation)

The situation is similar if a prohibition on deportation (Abschiebungsverbot) has been established for other family members and thus Art. 9 and 10 do not apply.

Practical advice Here, the above-mentioned note (see section III. 3. e, Note: »Initial decision on the merits«) should be recalled, according to which, as a matter of principle, legal remedies should be lodged if family reunification is intended, so that Art. 10 remains applicable.

In the case of prohibition of deportation being granted, reunification under Art. 17 para. 2 can also be considered. The situation is similar to the constellation under Art. 9, in which the reference person was granted national protection instead of international protection. Due to the similar factual situation, it would be unjustified to let reunification fail due to the narrow requirements of Art. 9. Family reunification under these circumstances therefore corresponds to the intention of the humanitarian clause as a catch-all provision.

Just as in the scenarios already discussed, legal support should be sought at an early stage, as here, too, it depends considerably on the individual case and the processing of the case.

Missed deadlines

One situation that can occur in many variations is that of missed deadlines by the Member States involved – be it the deadline for submitting a request to take charge, the deadline for resubmission (especially in connection with the submission of DNA test results) or the transfer deadline. All these missed deadlines can, at worst, lead to the inapplicability of the standard responsibilities which are bound to the rigid deadline regime of the Dublin III Regulation.

In principle, the humanitarian clause of Art. 1 para. 2 can be used in such situations. In principle, limitation of the scope for discretion towards discretion is reduced in these situations to a point at which an obligation to accept the take-charge request arises and thus family reunification has to be permitted. This is due to the fact that the applicants have no influence on whether deadlines are observed, since the procedure takes place between the Member States and compliance with the deadlines must therefore be ensured by the respective authorities. However, the expiry of deadlines caused by administrative failure must not lead to the loss of the right to family unity. Article 17 para. 2 serves as a fall-back clause here, as reunification according to the standard criteria fails due to the narrow requirements.

The BAMF applies the humanitarian clause very restrictively and often denies the existence of humanitarian reasons, even in the case of a previous expiry of the deadline. Here, too, it is advisable to obtain legal support at an early stage and, if necessary, to enforce family reunification in court.

IV. Possibilities for support

1. Support during the procedure

Comprehensive, early support in the Dublin procedure can be crucial to ensuring that family reunification actually takes place. The support of the persons concerned functions as a »control mechanism« in the otherwise purely intergovernmental procedure – and thus ensures that the rights of the persons concerned are respected and enforced.

When counselling in the family reunification procedure under the Dublin III Regulation, the first step should be to establish exactly which persons are involved. In particular, the name, age and date of entry of the person applying for asylum in the other Member State are important. In addition to the date of entry, it is important to find out whether and, if so, when an asylum application has already been filed. Precise questions should be asked here. Many people are not aware that they have applied for asylum because they intended to travel on to Germany. It should be checked exactly what has happened so far, who the person in question has had contact with and where they are accommodated. Often, the form of accommodation can already indicate whether contact with the competent authorities has taken place. In addition, it should be clarified whether the authorities of the other Member State have already been informed that family members are in Germany and that there is a wish to join them.

It should be found out as early as possible whether the person applying for asylum is already being looked after in the other Member State. If so, contact should be made with the person or institution providing care. Cross-border cooperation is strongly recommended, as the person/organisation providing care in the other Member State can contact the competent authorities there. This ensures that the authorities are aware of the procedural support and inform them about the status of the procedure. Documents and evidence can also be submitted in this way.

As the Dublin Regulation provides for a purely intergovernmental procedure for determining the Member State responsible for carrying out the asylum procedure, the persons concerned as well as counsellors cannot contact the BAMF directly to submit documents for family reunification. As described above, the proofs and documents are to be submitted to the BAMF by the authorities of the requesting Member State as part of the take-charge request, or at together with the resubmission at the latest. Only documents sent to the BAMF in this way can be taken into account in the procedure.

If persons do not yet have support, it should be ensured that they are referred to organisations in the respective Member State. Addresses and contact details can be found below in section VII.

In the case of unaccompanied underage asylum seekers, it can be assumed that they are already supported by supporting institutions if they have been placed in a home. It is a good idea to get their contact details at an early stage in order to discuss how to proceed.

If unaccompanied minors are not yet in a care structure and have not yet been provided with legal representati-

on, urgent contact should be made with the competent authorities in cooperation with organisations working in the field in order to ensure child-friendly accommodation and care.

By cooperating with carers in the other Member State, it is possible to find out about the status of the procedure and to be informed about a response from the BAMF. In the event of a rejection, the reasons can be found out. It is then possible to submit further documents within three weeks. In particular, reports can be helpful here, which clarify any discrepancies, refer to existing case law and provide further information.

With a power of attorney from all persons involved, it is also possible to contact the BAMF to find out the status of the procedure. It should be borne in mind, however, that the BAMF only creates a file regarding the Dublin procedure and can thus provide information once the request for admission of the requesting Member State has been sent to the BAMF. Before that, contacting the BAMF and possible enquiries will lead nowhere. It should be pointed out once again that this is a purely intergovernmental procedure for determining responsibility and that an »application for family reunification« under the Dublin III Regulation is therefore not possible. Contacting the BAMF is therefore only possible if a Dublin procedure has already been initiated. In principle, however, such contact is only relevant after a rejection has been received, as it makes sense to obtain the complete file after a final rejection in order to plan the next steps (see section V below).

It should always be ensured that the competent authorities know the current postal address of the reference person and that this person can be reached by mail. In cases of Article 8, i. e. the reunification of unaccompanied minors, the BAMF regularly contacts the family members, siblings or relatives in Germany before accepting a request to take charge. In the relevant letter, the reference person is asked to provide information on who is in the requesting Member State and whether admission is desired. If there is no reply to this letter within the time limit set – usually two weeks – the request will be rejected. A timely reply is therefore absolutely necessary. This should contain the name, date of birth and place of residence of the persons concerned in the requesting Member State. A template for such a reply can be found in the Annex (section VIII. 2.).

It should also be borne in mind that persons with a valid residence permit (and a valid passport – if such a passport is not available, a so-called travel document for foreigners can be issued) can travel for three months without having to obtain permission (cf. Art. 21 para. 1 Schengen Implementing Convention). This can be relevant if it is planned to visit family members in other Member States. It may also be relevant if reunification under the Dublin III Regulation has failed but the person concerned has subsequently been granted protection status by the other Member State. In this case, travel within the EU is also possible without a permit. It should be borne in mind, however, that great caution is required when travelling outside the EU, especially to the country of origin. The recognition of international protection could expire (§ 72 Asylum Act) or be revoked or withdrawn (§ 73 Asylum Act). It is essential that you find out about possible risks in advance.

2. Documents to be submitted – overview

In the course of the procedure – especially with the sending of the take-charge request – some documents and proofs have to be provided. The following is a list of the individual documents that must be submitted for the respective regulations. The asylum seeker should have these ready at an early stage so that he or she can submit them to the respective authorities of the requesting Member State. If possible, this should be done when the asylum application is filed, but in any case as soon as possible.

Copies and (clearly legible) photos of the documents are sufficient. These should be translated into English, alternatively German translations are sufficient.

1. First name, surname, parents' names, date and place of birth of the reference person
2. Legal status of the reference person
   - A copy of the residence permit or proof of arrival (certificate of registration as an asylum seeker) and the registration certificate (Meldebescheinigung) is suitable for this purpose.
   - In order to be sure which status existed at the time of the application for asylum (Art. 7 para. 2), it is advisable to also submit the decision – if such a decision exists – in order to prove the exact date of the granting of protection.
3. Personal documents of the person in the Member State or other evidence of the person's identity (extract from the register, birth certificate, identity card, passport) – if available –.
4. Proof of the family relationships between the persons concerned – if available –.
   - The Dublin Implementing Regulation provides a list of possible means of proof and circumstantial evidence in Annex II, useful documents include, for example: Extract from the civil status register, extract from the family register, birth certificates. See also section II. 5. a.
   - Further extensive circumstantial evidence – statements, declarations, other documents
5. Written request for family reunification of all persons involved in the family reunification (in Germany and in the other Member State or, in the case of

persons who are not capable of proceeding, of the guardian).
   - All persons should be listed as precisely as possible with first names, surnames, names of parents, date of birth.
   - You will find a form in the appendix.
   - Written consent should be submitted in any case, even if it is not legally required (as with Art. 8).
6. If no guardian has been appointed for unaccompanied minors: Consent of the Youth Welfare Office responsible for taking the child into care with a statement on the best interests of the child.
7. Evidence of dependency, if applicable (necessary in the case of reunification with dependent persons, Art. 16 para. 2), and, if applicable, a letter specifying the dependency in more detail
   - An idea of what is required in terms of dependency is provided in Annex II of the Dublin Implementing Regulation See also section II. 5. a.
   - Evidence can be documents such as medical reports, but also other reports and statements.
8. If applicable, a letter regarding the need for reunification under the humanitarian clause
   - This form of reunification rarely takes place and needs to be well justified.
   - Reports and opinions of a medical or social nature are urgently required.

V. Procedure in case of rejection

If the take-charge request is rejected, there are various ways to take action against this – depending on the status and course of the procedure so far. These are outlined below. The respective course of action must depend on the individual case. In addition, other possible activities may come into consideration, in particular political initiatives and further interventions directed at the competent authorities.

1. Resubmission

Especially after the first rejection, there is the possibility to resubmit the application within three weeks (Art. 5 para. 2 Dublin Implementing Regulation, see section III. 2. a). This opportunity – the only one explicitly provided for in the Dublin III Regulation – should always be used. New evidence and documents, but also new reports or statements can be submitted. In addition, any inconsistencies can be addressed and existing case law can be referred to. In principle, it is advisable to seek legal support at this stage at the latest in order to fully address any grounds for refusal that have been raised. Since the refusals are not issued to the persons concerned, the reasons for refusal can only be obtained through close contact with the authorities of the requesting Member State. The BAMF will not provide any information on possible refusals and their reasons without complete submission of the powers of attorney (see following section).

2. Legal representation

In any case, after a second refusal, legal representation in Germany should be considered.[24]

Power of attorney

Regardless of whether persons are represented by counsellors, volunteers or lawyers, all persons concerned must be authorised to contact the BAMF. This is self-evident and easy to do for persons residing in Germany. However, the BAMF often only provides information if a power of attorney from the person concerned in the other Member State is also submitted. Since copies are sufficient, this can also be obtained via WhatsApp or e-mail. However, it is more difficult if the person in the other Member State is an unaccompanied minor. In this case, the power of attorney must be granted by the legal representation. In the best case, there is already contact with this representation, as assistance in the Dublin procedure should, if possible, be provided jointly by all parties (see section IV. 1.). The certificate of appointment of the legal representation together with a translation (into English is sufficient) should also be obtained. If no legal representation has been appointed yet, a power of attorney can be obtained with the support of organisations working locally (they are familiar with the guardianship system of the respective country).

[24] These may be available to clients free of charge, for example through the organisation Equal Rights Beyond Borders e. V.

Access to files

Only after one has received the complete file from the BAMF is it possible to see which documents and evidence have been submitted and which reasons for rejection have been cited by the BAMF. Thus, further steps and possibilities can only be assessed after a complete review.

Remedial letter

In some cases, it may be sufficient to send a letter to the BAMF requesting that the take charge request from the other Member State should be accepted. This is appropriate in cases where all requirements of the respective provision are fulfilled. This should be explained and, if necessary, supported by case law. It should be shown why the grounds for refusal prove to be unlawful.

Legal action

The last option is to take legal action.

The appropriate legal remedy is an application for an interim measure according to Section 123 of the Code of Administrative Court Procedure (VwGO), with the following content:

»It is requested that the Federal Republic of Germany be obliged by way of an interim injunction pursuant to § 123 VwGO to declare itself responsible for the asylum application of XX, annulling the rejections of the take charge request and the resubmission.«

The question of whether a legal remedy against rejections in the context of the family reunification procedure under the Dublin III Regulation was possible at all was long disputed between the Member States. However, the majority of administrative courts in Germany have always held that persons concerned were entitled to lodge a legal remedy. In any case, the ECJ has now ruled that there must be a legal remedy at least for unaccompanied minors, with the reasoning being transferrable to all other persons concerned.[25]

The proceedings are to be conducted at the court of the reference person's place of residence in Germany or – if the application is filed only on behalf of the person who has applied for asylum in the other Member State – at the Ansbach Administrative Court.[26]

For an interim measure to be granted, the individual criteria of the Regulation have to be fulfilled (Art. 8, 9, 10, 16). Therefore it must be asserted that the authorities' discretion is reduced to the point at which only one possible lawful decision within the framework of Art. 17 para. 2 is left.

The reason for the interim measure lies in the fact that after a rejection by Germany, the Dublin procedure is terminated and the requesting Member State enters into the national asylum procedure. However, as soon as a decision is made in the national asylum procedure, the person concerned is no longer an »applicant« within the meaning of the Dublin III Regulation and the Regulation is therefore no longer applicable. This means that the right to family unity under the Dublin III Regulation would no longer be enforceable.

As a rule, a decision can be expected within a few days, but it can also take up to four or five months – depending on the administrative court. The court's decision is final, which means there are no further legal remedies to challenge it. If the decision is positive, you should follow up whether the BAMF accepts the take charge request by the other Member State. If this does not happen within two weeks, an enforcement request should be sent.

A comprehensive collection of court decisions in the context of Dublin family reunification can be found in the case law database of Equal Rights Beyond Borders at: equal-rights.org under Resources / Advocacy / Case Law

[25] Cf. Anne Pertsch, Anmerkung zu EuGH, »I, S gegen die Niederlande«, Rechtsbehelf bei Dublin-Familienzusammenführung, Asylmagazin 9/2022, pp. 299–302.

[26] The Ansbach Administrative Court has local jurisdiction over the BAMF headquarters in Nuremberg. Cf. Anne Pertsch, Dublin reversed vor Gericht, Aktuelle Rechtsprechung zur Dublin-Familienzusammenführung, Asylmagazin 8–9/2019, pp. 287–294.

VI. Further information

https://familie.asyl.net/ (in German)
Further information on all areas of family reunification, constantly updated information, valuable tips and further links are provided by this information on the family reunification procedure of the Informationsverbund Asyl und Migration (Information Network on Asylum and Migration). Further links can be found there under »Materialien« in particular.

www.b-umf.de (in German, with some basic information in English)
For unaccompanied minors, the Bundesfachverband für unbegleitete minderjährige Flüchtlinge (Federal Association for Unaccompanied underage Refugees, BUMF) offers various additional information.

https://equal-rights.org/de/resources/case-law
A comprehensive database regarding the case law of the German administrative courts on Dublin family reunification is provided by the German-Greek organisation Equal Rights Beyond Borders.

VII. Contact addresses

An overview of various contacts in the field of »asylum« is provided by the Informationsverbund Asyl und Migration (Information Network on Asylum and Migration) at https://adressen.asyl.net/.

In the following, only specific contacts are listed that may be relevant in the family reunification procedure under the Dublin III Regulation.

Contacting government agencies

BAMF – Enquiry Point of the Dublin Unit in Dortmund (DU 3)
Bundesamt für Migration und Flüchtlinge
Außenstelle Dortmund
Märkische Straße 109
44141 Dortmund
du3-posteingang@bamf.bund.de
+49 231 9058 755

Address database of the BAMF to search for the competent foreigners authority:
webgis.bamf.de/BAMF/control

Youth Welfare Office
Locally responsible city or district youth welfare office. The Youth Welfare Office at the place of the reference person's habitual residence in Germany is usually responsible.

International Social Service in the German Association for Public and Private Welfare e.V. (Internationaler Sozialdienst (ISD) im Deutschen Verein für öffentliche und private Fürsorge e. V.)
Michaelkirchstr. 17–18
10179 Berlin
isd@iss-ger.de
+49 30 62980 403 (hotline staffed every working day)
www.iss-ger.de

Advice centres in other Member States

The European Council on Refugees and Exiles (ECRE)
ECRE offers an extensive list of currently 110 member organisations: www.ecre.org/members

Informationsverbund Asyl & Migration (Information Network on Asylum and Migration)
Contact addresses specifically for Greece and Bulgaria as well as a list of non-governmental organisations in Germany can be found at: www.familie.asyl.net/links-adressen/

»Welcome to Europe«
Website at: www.w2eu.info

Helsinki Committee for Human Rights
The Helsinki Committee for Human Rights is represented in many Member States, for example in:
Bulgaria: www.bghelsinki.org/en/
Hungary: www.helsinki.hu/en/
Poland: www.hfhr.pl/en/foundation

Danish Refugee Concil (DRC)
https://asyl.drc.ngo
advice@drc.ngo

Equal Rights Beyond Borders
Equal Rights Beyond Borders is a a Greek-German organisation for legal aid. Contact information and website at:
www.equal-rights.org
info@equal-rights.org

Help with the search for family members

Tracing service of the German Red Cross (DRK Suchdienst)
www.drk-suchdienst.de
www.tracetheface.org

Support with Dublin family reunifications

Equal Rights Beyond Borders
www.equal-rights.org
info@equal-rights.org
specifically for family reunions: litigation@equal-rights.org

Asylum procedure counselling centres of the welfare organisations
For overviews, see for example:
www.adressen.asyl.net
www.proasyl.de/beratungsstellen-vor-ort

Refugee Councils
An overview of the Refugee Councils of the various federal states of Germany can be found at
https://adressen.asyl.net/weitere-adressen-und-links/landesfluechtlingsraete

VIII. Appendix

The following are forms for

- the written consent, which in the case of Art. 8 must be sent to the BAMF within a specified period of time upon request by the BAMF (form 1).
- the written request, which is required in some cases of Dublin family reunification cases and is recommended in all cases; it must be given by all persons involved in the persons involved in the reunification (form 2).

Vordruck 1

[Name]
[Adresse]

An das
Bundesamt für Migration und Flüchtlinge
Referat 32b
90343 Nürnberg

[Ort, Datum]

Ihr Zeichen: [Aktenzeichen]

Sehr geehrte Damen und Herren,

hiermit bestätige ich, dass sich [Bruder/Schwester/Vater/Mutter/Sohn/Tochter],

[Name, Geburtsdatum, Nationalität],

in [ersuchender Mitgliedstaat] befindet.

Ich wünsche mir sehr, dass [Bruder/Schwester/Vater/Mutter/Sohn/Tochter] zu mir nach Deutschland kommen kann, und stimme einer Zusammenführung zu. Ich werde mich hier um [ihn/sie] kümmern.

Ich freue mich über Ihre Rückmeldung, vielen Dank.

Mit freundlichen Grüßen

_____
Unterschrift

Form 1

[Name]
[Address]

To
Bundesamt für Migration und Flüchtlinge
Referat 32b
90343 Nürnberg

[City, Date]

Your reference: [File reference]

Dear Sir or Madam,

I hereby confirm that [Brother/Sister/Father/Mother/Son/Daughter],

[Name, date of birth, nationality],

is currently in [requesting Member State].

I very much wish that [brother/sister/father/mother/son/daughter] can come to Germany to live with me, and I agree to a reunion. I will take care of [him/her].

I look forward to your reply, thank you,

Best regards,

_____
Signature

Form 2

To: THE GERMAN MIGRATION BOARD
DUBLIN UNIT

WRITTEN CONSENT FORM

Declaration of consent of [name], national of [country of origin] with date of birth [XX.XX.XXXX], currently residing in [address].

I hereby consent that my [relationship, name, names of the mother, name of the father, date of birth, place of birth]

All persons concerned have to be referred to here.

will join me in Germany in accordance with the provisions of Regulation 604/2013.

_____ _____

Signature Place and date

The separation of protection-seeking families within the European Union has been a longstanding issue for refugee counselling services. For example, many asylum seekers in Greece are still waiting to be allowed to join their relatives who are living in Germany. European law provides a possibility to establish family unity within the EU with several provisions of the so-called Dublin III Regulation. The procedure is fraught with many hurdles, if, for instance, necessary documents are not available or are not accpted by the authorities involved. The adoption of the new Asylum and Migration Management Regulation, which is being discussed at EU level and is to replace the Dublin III Regulation, is currently not in sight. Therefore, we have completely revised and rewritten the guide „Family reunifications for Germany under the Dublin III Regulation to Germany", which Diakonie Deutschland had first published in 2018. This publication addresses frequently occurring problems and provides numerous tips for refugee counselling practice.

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