

# Caught in the Middle



Unaccompanied children in Greece  
in the Dublin family reunification process





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<sup>1</sup> The introductory part I)1."About Safe Passage and PRAKSIS: Background and Collaboration" has been written jointly by Sandy Protogerou, Beth Gardiner-Smith, Elianna Konialis, Athanasia Stathopoulou. Data and statistics on PRAKSIS has been based on relevant data about PRAKSIS operation as of 20/4/2018 shared by PRAKSIS staff.

<sup>2</sup> Chapters I)3., and II) 1. 2. and 3. apart from the subsection in II)3. "Acceptance by default: legal provisions and observed practice" written by A. Stathopoulou.

\* The above references to Safe Passage staff and PRAKSIS staff relates to their capacity at the time of each person's involvement during the research project implementation.

## About PRAKSIS and Safe Passage

**PRAKSIS** is one of the leading child protection actors and unaccompanied children (UAC) shelter providers in Greece, having run fourteen UAC Accommodation Centres since 2014. The operation of PRAKSIS' shelters is based on a holistic model that ensures access to dignified accommodation, food, education and medical care and includes the in-house provision of caretaking services, psychosocial, psychological and legal support as well as recreational and educational activities.

From January 2014 to 20th April 2018, the organisation has accommodated a total of 2,636 unaccompanied children in shelters where designated PRAKSIS lawyers have legally supported and represented a total of more than 400 UAC 'Dublin III' family reunification cases. As of 20th April 2018, over half (58%) of the cases had been accepted by the requested States, 15% were still on-going, 6% had been definitively rejected and 4% had been closed due to the children's withdrawal from the procedures or for other reasons. In 17% of the cases, the procedures were interrupted as the children absconded and resorted to irregular routes for continuing their journeys.

**Safe Passage** is a charity working to open safe and legal routes for refugees and asylum seekers within Europe through a highly effective combination of legal work, strategic litigation and political advocacy.

The project began in Autumn 2015 with an initiative to identify unaccompanied children in the Calais 'jungle' camp who might be eligible for family reunification under the Dublin III regulation. Working with legal partners in France and the UK, Safe Passage successfully challenged the failure of the UK and French authorities to implement their obligations under Dublin III and to ensure the fundamental rights of unaccompanied children. Our work with legal partners

has expanded from Northern France to Greece and Italy, where the organisation has continued to open and strengthen family reunion routes to other countries in Europe working in partnership with lawyers and local NGOs.

While other organisations provide aid to refugees in transit or explicitly within origin, departure, transit or arrival countries, Safe Passage works across borders to open legal and safe routes for persons in need of protection, predominantly children. The organisation aims to improve long-term solutions for vulnerable people by providing access to safe and legal routes. Through our work, we seek to identify trends, gaps and failings of procedure to inform areas for strategic litigation, campaigns and advocacy.

Safe Passage's work in France, Greece and Italy is underpinned by many vital partnerships, which support the development of a transnational network of professionals working with children on the move. By facilitating collaborative working relationships, delivering training and providing resources to share best practice and expertise, Safe Passage aims to strengthen the response of actors across Europe so more children can reach safety.

Since Safe Passage started working in Greece in 2016, it has actively supported people to be transferred to the UK under Dublin III and other legal routes. We have also supported capacity building on family reunification amongst legal actors and NGOs within Greece. Since Safe Passage Greece started work in 2016, nine training sessions have been delivered in various locations around Greece, training a total of 321 lawyers and caseworkers and thus contributing to the better functioning of Dublin III or other safe and legal routes for unaccompanied children.

## Cooperation between Safe Passage and PRAKSIS

Following the establishment of Safe Passage's presence in Greece in 2016 Safe Passage and PRAKSIS have repeatedly collaborated in complicated UK bound cases of unaccompanied children housed in PRAKSIS shelters and have achieved ultimately positive results through this collaboration. In particular, Safe Passage has connected the PRAKSIS lawyers in charge of the cases with its legal partners in the UK, facilitating this cooperation, as it has also done with several other NGOs active in the refugee field. The intensive cooperation between PRAKSIS lawyers and Safe Passage's legal partners in the UK (sometimes including litigation in the UK) has resulted in children being reunited with their family relations in the receiving country.

This fruitful collaboration between Safe Passage and PRAKSIS coupled with both organisations' acute interest, commitment and action towards the protection of unaccompanied children's family reunification and protection rights have been the basis to proceed with the current joint research project. Given PRAKSIS' leading role in UAC shelter provision, the organisation was considered to be in an opportune position to provide data on Dublin UAC cases. All cases have been selected by PRAKSIS staff from its caseload, based on criteria jointly set by PRAKSIS and Safe Passage. A Safe Passage external consultant and subsequently Safe Passage staff have conducted interviews with PRAKSIS staff based on a questionnaire Safe Passage prepared and agreed with PRAKSIS. Safe Passage also interviewed PRAKSIS mental health professionals in relation to the psychological impact of the Dublin process to children and their relevant vulnerabilities. The analysis of cases and the drafting of the research study and executive summary were undertaken by Safe Passage staff based on an outline jointly

agreed with PRAKSIS. The final product of this joint research study is representative of both organisations, having also incorporated PRAKSIS staff comments and input.

On a daily basis, PRAKSIS and Safe Passage witness how long waits, the deficiencies of the Dublin system and the devastating impact of family separation fuel the distress of unaccompanied children waiting to reunite with their families in Europe. On several occasions, both organisations have raised the need for EU-wide improvements in the implementation of Dublin III which is one of the key challenges for the protection and integration of asylum-seeking children. This study serves as a basis to proceed with joint recommendations on an EU, Interstate and National level and further joint advocacy actions towards securing strengthened protections of children's best interests and their rights to family reunification.



## Research goal and background

Over the first quarter of 2018, Greece received almost half of all migrant children arrivals in Europe. Asylum-seeking children in Greece accounted for 37% of total arrivals to the country, a much more significant percentage compared to other first-arrival Mediterranean countries (in Italy 17%, in Spain 16%).<sup>3</sup> Furthermore, a growing number of children are travelling on their own, without a parent or a legal guardian while seeking to reunite with family members already resident in EU Member States: 17,199 unaccompanied children arrivals were officially recorded in Greece between January 2016 and November 2018. As of 15th December 2018, 3,881<sup>4</sup> UAC were estimated in the country.<sup>5</sup> With a total of only 1,219 spaces across fifty-four NGO-operated UAC shelters and five semi-independent living (SIL) apartments throughout Greece, less than a third of these children have access to long term accommodation, with 2,094<sup>6</sup> of them being completely out of permanent accommodation (shelters and SILs) as well as out of temporary accommodation (safe zones, emergency hotels) as of December 2018.<sup>7</sup>

After the expiration of the EU Relocation Scheme at the end of 2017, the Dublin III Regulation remained the only legal route for asylum seekers to pursue the right to family life. According to ECRE and AIRE Centre, *“Greece’s use of the Dublin procedure has been one of the more successful*

*EU-wide vis-à-vis the number of outgoing requests resulting in effective transfers”*.<sup>8</sup> Despite this, overall implementation has been marked by lengthy procedures, a persistent lack of access to effective protection and other operational deficiencies,<sup>9</sup> which along with the uneven and questionable practices of individual Member States, consistently prevents the effective realisation of the right to family reunification.

This study comes at a crucial time: sustained high numbers of arrivals to Europe’s shores have placed national reception systems under intense strain whilst the Dublin III framework has proved ineffective on its own in easing this pressure. This is particularly true in Greece. First reception sites, such as in Lesbos and Samos, are operating at 250% of their capacity<sup>10</sup> and asylum seekers face prolonged stay under overcrowded and highly precarious conditions as well as restriction of liberty on the islands as part of border and other procedures applied following the EU-Turkey Statement. Meanwhile, refugee and migrant crossings via the Greek-Turkish land border of Evros have been increasing since 2016, reaching 8,300 persons from January to June 2018,<sup>11</sup> further overstressing the reception capacity of authorities in the region. Following the sharp rise of asylum applications lodged since 2016, Greece has the highest asylum seekers to inhabitant ratio amongst European Union Member States

3 UNICEF, Refugee and Migrant Crisis in Europe Humanitarian Situation Report No. 28, January – June 2018, available at: <https://www.unicef.org/eca/sites/unicef.org/eca/files/sitreprandm.pdf> [accessed 10 August 2018].

4 This number includes 310 separated children according to EKKA statistics.

5 National Centre for Social Solidarity (EKKA), Situation Update: Unaccompanied Children in Greece, 15 December 2018, available at: <https://ekkadashboard.files.wordpress.com/2018/12/EKKA-Dashboard-15-12-2018.pdf>.

6 This number includes 310 separated children according to EKKA statistics.

7 National Centre for Social Solidarity (EKKA), Situation Update: Unaccompanied Children in Greece, 15 August 15 December 2018, available at: <https://ekkadashboard.files.wordpress.com/2018/12/EKKA-Dashboard-15-12-2018.pdf>.

8 ECRE & AIRE Centre, With Greece: Recommendations for refugee protection, July 2016, available at: <https://www.ecre.org/wp-content/uploads/2016/07/With-Greece.pdf> [accessed 13 August 2018].

9 See, for example: UNHCR, Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation, August 2017, available at: <http://www.refworld.org/docid/59d5dcb64.html> [accessed 11 August 2018].

10 United Nations Children’s Fund (UNICEF), Refugee and Migrant Crisis in Europe Humanitarian Situation Report No. 28, January – June 2018, available at: <https://www.unicef.org/eca/sites/unicef.org/eca/files/sitreprandm.pdf> [accessed 10 August 2018].

11 UNHCR, Europe Monthly Report – June 2018, available at: <https://data2.unhcr.org/en/documents/download/65078> [accessed 12 August 2018].

and, as noted by the Greek Asylum Service, “*this disproportionate burden results in the unavoidable delays which can be observed in all stages of the asylum procedure.*”<sup>12</sup> In 2017, Greece also ranked third across the EU in terms of the total number of UAC asylum applications lodged in the country, preceded by Italy and Germany.<sup>13</sup> Our research analyses the shortcomings related to unaccompanied children and the family reunification procedures.

This research aims to analyse the effectiveness of the Dublin III family reunification procedures in relation to a specific group – unaccompanied children – who represent some of the most vulnerable applicants. The study analyses eighty cases of children hosted in thirteen PRAKSIS shelters throughout Greece who experienced the ‘Dublin’ family reunification process and plots their different journeys through the system helping to paint a picture of the flaws that lead to children waiting months, often for more than a year to reunite with family. Regarding the **temporal** scope of the research, it covers cases of unaccompanied children having arrived in Greece between May 2015 and September 2017 with the registration of their asylum applications from December 2015 to November 2017, the majority of children having arrived and their asylum applications having been registered in 2016.

By examining the functionality of these procedures for a specific group of unaccompanied children in Greece, this report aims to highlight current practices and consider how these serve or affect the best interests of children. To the extent possible, the study also seeks to highlight any systematic patterns of Member States and to flag any practices (deriving even from isolated cases) which severely impede, or contribute to, the smooth implementation of the Dublin III family reunification procedure. The hope is that issues highlighted by this report will serve to support the full implementation of children’s rights perspectives in the future Dublin IV framework.

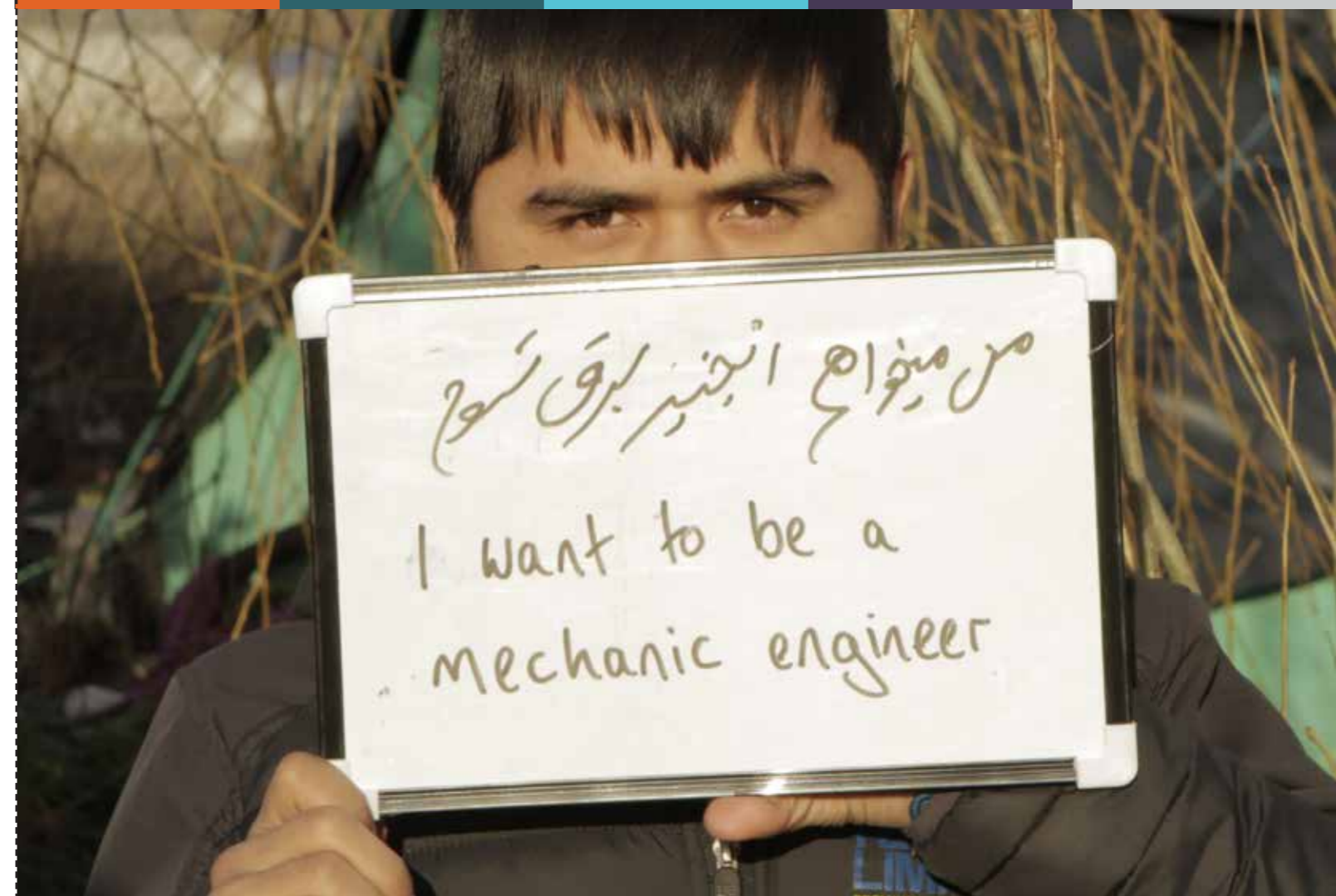
Given the particular research focus on unaccompanied children, the analysis of the cases is based on the general and specific requirements provided by Dublin III for the reunification of unaccompanied children, while also taking into account the international legal framework applicable. Thus, using the sample cases reviewed, the functionality of the Dublin III system is assessed in light of the best interest of the child and the right to family unity to conclude whether or not these factors are indeed a “primary consideration” in the actual application of the Dublin III Regulation conforming with the Regulation’s recitals.

Furthermore, the research strives to provide a better understanding of the main reasons for case acceptances, refusals and delays, varying practices and evidential standards across fourteen receiving States<sup>14</sup>, while at the same time identifying challenges, potential issues and best practices.

<sup>12</sup> <http://asylo.gov.gr/en/wp-content/uploads/2018/01/Press-Release-25.1.2018.pdf>.

<sup>13</sup> Out of the 31,400 UAC asylum applications registered in total across the EU in 2017, the highest number was recorded in Italy (over 10,000 UAC asylum applications, or 32% of the EU total), followed by Germany (9,100, or 29%), Greece (2,500, or 8%) and the United Kingdom (2,200, or 7%). European Commission, <https://ec.europa.eu/eurostat/documents/2995521/8895109/3-16052018-BP-EN.pdf/ec4cc3d7-c177-4944-964f-d85401e55ad9>.

<sup>14</sup> Germany, France, the United Kingdom, Sweden, Switzerland, Norway, Denmark, Netherlands, Belgium, Austria, Italy, Spain, Malta, and Finland.



من ميخايع انيحتير برق شوخ  
I want to be a  
mechanic engineer

## Main findings

The majority of the eighty cases analysed in this study were subject to a re-examination process, most of them more than once, showing that the road to family reunification is far from straightforward and simple, despite all of the children in the sample having had access to care and legal representation<sup>15</sup>. As of April 20th 2018, 66% of the cases had been accepted and either transferred or pending transfer to the receiving State, while 15% were rejected and closed. Of the remaining cases, approximately half were still pending a reply by the receiving State and half absconded<sup>16</sup>. It is interesting to note that only 21 (26%) cases were accepted by receiving States directly<sup>17</sup>. Emblematic of the situation was the case of one child who was rejected five times before his application was finally approved.

### Vulnerability

Regardless of different ages, countries of origins and often very diverse experiences, one common denominator was clear: all children were extremely vulnerable due to their status as children on their own in a foreign country and as asylum seekers. In addition, the research showed that all children had experienced trauma – in their country of origin, during their journey to Greece, or both – a reality which further exacerbated their vulnerability and had extensive and long-term effects on their physical and mental health. The children often developed further vulnerabilities during their stay in Greece due to inappropriate reception conditions. Subsequently, even further vulnerabilities were observed during their stay in the PRAKSIS

shelters, which according to the PRAKSIS mental health professionals, were related to the long delays, uncertainty of the outcome of the reunification process or the rejection of their family reunification requests. All the above had a major impact on their development and well-being as well as adversely affecting the trust that they put in public authorities and the Dublin reunification system itself.

### Capacity

Systemic issues within Greece were also found to impede the implementation of family reunification under Dublin III. The reception system, especially on the islands, is plagued by a lack of human resources capacity. This has a significant impact on the cases of unaccompanied children, who are frequently deprived of an appropriate State response according to their specific needs and whose registrations at the reception centres are not prioritised. The staff shortages and the considerable strain on the Greek asylum system also contribute to numerous issues observed throughout the asylum application processes. The family reunification procedure is rendered more difficult due to a persistent lack of an effective guardianship system and limited possibilities for children to access consistent legal support. On repeated occasions, numerous legal representatives<sup>18</sup> were successively involved, causing serious coordination and efficiency issues. Overall, the Greek context does not facilitate children's immediate access to legal support. However, children placed in shelters, generally have legal aid available to them. All

<sup>15</sup> During their placement in PRAKSIS shelters.

<sup>16</sup> 10% of the children (eight cases) absconded.

<sup>17</sup> Four more were accepted by default. Total of acceptances without a re-examination stage: 25 cases.

<sup>18</sup> In the context of this study the term legal representative describes the capacity of a lawyer acting on authorisation of the Prosecutor for Minors, in the frame of the specific legal support actions included in the authorisation, including also representation actions such as the lodging of the application on behalf of the child. The 'legal representative' serves as the child's lawyer and representative in the Dublin process, as a rule, according to the current practice in Greece.

eighty cases reviewed in the study had access to legal aid during their stay in PRAKSIS shelters.

### Cooperation between States

Limitations in cooperation and information sharing between sending and receiving States were observed on repeated occasions, in several stages of the process. The research repeatedly found shortcomings in cooperation between States, although some examples of positive interstate cooperation were noted. The cooperation between the PRAKSIS lawyers/legal representatives and the Greek Dublin Unit was described generally as positive. It is important to emphasise that even though a formal cooperation between the competent authorities for the protection of minors in sending and receiving States or formal cooperation between the competent authorities/services/NGOs for the assessment and subsequent channelling of information through Member State correspondence was not observed<sup>19</sup>. An informal and flexible type of cooperation between NGOs or other (social and legal) actors involved in the cases in sending and receiving States was noted in almost 20% of cases, without State involvement or initiative.

The research sample highlighted four major clusters of issues encountered during the family reunification process under Dublin III:

- Delays mainly due to either human resources constraints or complicated and exceedingly lengthy administrative practices and evidentiary processes.
- Excessive evidentiary requirements.
- Lack of prioritisation of the best interest of the child.
- Uneven interpretation of legal provisions.

### Timescales

The Dublin III Regulation sets 11 months as the maximum timeframe for States to complete all phases of the family reunification procedure, keeping in mind that in the case of vulnerable, unaccompanied children rapidity is crucial for their wellbeing. The research sample showed that there is a clear need to treat child refugees first and foremost as children, observing all the relevant safeguards, but this is currently the exception and not the rule. The relevant European and international legal framework and case law should be respected at all times. Nonetheless, numerous examples assessed in this report show that the family reunification process was impeded by consistent delays visible at every step of the procedure, more often during access to the asylum procedure and in the re-examination phases. The whole process from arrival to Greece until the transfer took an average of 477 days, around 16 months. In 82% of the 45 cases transferred, the total waiting period exceeded one year and, in almost 30% the children waited over one year and a half. In relation to access to the asylum process, the causes identified related to the asylum system being overstretched due to increased arrivals, which in turn directly impacted the children. In particular, the lack of a functional registration practice in first reception and the absence of a systematic prioritisation mechanism for the asylum lodging of unaccompanied children repeatedly impeded prompt and adequate access to information and legal support and delayed access to the asylum procedure and the commencement of the family reunification process.

<sup>19</sup> This type of cooperation is provided in article 12.1 Implementing Regulation (EC)1560/2003 and article 6.5 of the Dublin III combined with article 1(7) 4, 5. and 6 and Annex VIII, Implementing Regulation (EU) 118/2014.

During the Take Charge Request (TCR) stage, the lack of sufficient resource capacity in the Greek Dublin Unit often affected its ability to promptly send TCRs, but delays exceeding the three-month time limit were observed in a fairly limited number of cases and were to be attributed mainly to the excessive workload of the Greek Dublin Unit or to coordination issues with Regional Asylum Offices, procedural shortcomings in the first reception, late submission of written consents etc. In the majority of cases, receiving States respected the prescribed time limit to respond to TCRs; when this time limit was exceeded, the acceptance by default provision<sup>20</sup> was triggered as a rule only in the cases where there were extremely long delays. In cases showing shorter delays, the Greek Dublin Unit did not invoke this provision and the respondent authorities did not observe it, which resulted in further delays in acceptance, reconsideration procedures and, in a few cases, even final rejections.<sup>21</sup>

It is interesting to note that during the re-examination stage in many instances lengthy setbacks were provoked by the varying, complex and cumbersome administrative practices of the receiving States, frequently accompanied by lack of initiative. The delays observed on the side of the sending State during re-examination were primarily associated with particular evidentiary processes such as DNA and age assessments<sup>22</sup>,

often related to excessive evidential requirements set by receiving States. The research shows that the transfer process even though entailing delays generally was concluded within the six-month time limit, except for in cases relating to the German ‘cap’ imposed in 2017. Furthermore, it is important to note that no case where the family reunification request was accepted directly and swiftly resulted in children absconding. This leads to the conclusion that lengthy delays in the family reunification process and subsequent negative responses is a factor that pushes children into irregularity, such as attempting to join their families on their own.

#### Excessive Evidentiary Requirements

According to Dublin III, the requirement of proof (intending to establish the legal status of the family member/sibling/relative, the family links, and the identity of the applicant) should not exceed “*what is necessary for the proper application of this Regulation*”.<sup>23</sup> In fact, the vast majority of cases that were first rejected on a proof-related basis<sup>24</sup> were accepted after further and often long and cumbersome re-examination processes. The majority of cases fulfilled the requirements of proof regarding identification, legal status of the family relation and family links<sup>25</sup> from the point when the TCR was first submitted. Great disparities were observed in

<sup>20</sup> Automatically entailing the receiving State’s responsibility after the expiry of the two- month timeframe.

<sup>21</sup> In four cases of greater delays, the acceptance by default process was followed (in one of them the request for acknowledgment of ‘acceptance by default’ was sent by the Greek Dublin Unit within two weeks from the expiry of the deadline however the receiving State never responded). In almost all of the 10 cases of shorter delays where Member States’ did not respond to the TCRs within the two-month limit, this did not lead to ‘acceptance by default’ (article 22(7)). In only one of these cases did the Greek Dublin Unit activate article 22(7) almost immediately. The other nine cases resulted in delayed acceptance/transfer procedures, lengthy reconsideration processes or final rejections.

<sup>22</sup> In the described cases of delays, the sending State requested a ‘hold’ (namely more time) in order to proceed with the requested evidence gathering and particular evidentiary processes.

<sup>23</sup> Article 22. 4 Dublin III Regulation.

<sup>24</sup> Exclusively or additionally to other grounds.

<sup>25</sup> Fully or at least partly, requiring in the latter case also that the receiving State makes some checks to fully establish the family links.

evidential standards and practices in the cases reviewed; varying practices and standards occurred between different receiving States as well as in certain cases within the practice of the same country. There is no uniform and standardised system used to assess the evidence. This leads, in turn, to diverse interpretations of what is “necessary” in order to implement the Regulation and provokes further misunderstandings and delays as confirmed by the research findings.

It is worth underlining that in certain cases we have observed an encouraging level of flexibility showing that the requested Member States were willing to cooperate in good faith while taking into consideration the best interests of the child. However, in a number of cases, States required an excessive level of proof – an additional burden frequently put on already vulnerable asylum seekers. The repeatedly noted imposition of high evidential standards and the failure to appropriately assess the evidence submitted have impeded the proper application of the Regulation. Among the excessive requirements noted in relation to proof were also the requirements for translation or authentication of the documentation proving family ties previously submitted by the sending State. In many cases the imposition of excessive requirements prolonged the process unnecessarily, posing an additional burden to the sending State and delaying the process of reunification with family, thus having a major impact on children’s mental and physical health as well as influencing their decision to abscond<sup>26</sup>.

On different occasions, a “hold” practice, namely the request for more time, was used by respondent States to examine the cases even when all necessary evidence was available and sent in a timely manner to the respondent authorities. The direct involvement of a legal actor in the respondent State and the relevant cooperation of PRAKSIS in some of those cases contributed to receiving positive results, even if this occurred after a lengthy period of time due to the holding process. At the same time, children repeatedly experienced lengthy evidentiary processes such as DNA tests and invasive medical examinations as means of age assessment. Recourse to such means of proof was observed even in cases when not absolutely necessary, leading to the conclusion that the Regulation’s provisions with respect to excessive proof are often not respected with States instead resorting to lengthy, frequently invasive procedures without taking into consideration the child’s well-being. Finally, circumstantial evidence submitted mainly in the re-examination stage, such as written statements, family photos and other communications or evidence like BIAs containing information on family links etc. was not treated in a standard way by receiving States with similar evidence accepted in some cases but rejected in others.

<sup>26</sup> It is worth noting that all children absconding had previously invested considerably in the “Dublin” family reunification process and abundant evidence had been submitted. Also, the vast majority of them absconded at the re-examination stage after having received one or more negative responses.

### Best Interest of the Child

Neither the Dublin III Regulation nor the Implementing Regulation provides for a standardised process for the assessment of the Best Interests of the Child. The Dublin III includes only specific factors that should be considered, such as family reunification possibilities, the child's well-being and social development, safety and security considerations, and the views of the child in accordance with his or her age and maturity. Both Regulations also underline the vital role of the child's representative in ensuring that the best interest of the child is taken into account throughout the 'Dublin' process. In the Greek context and in the context of the study, the PRAKSIS lawyer/legal representative served in practice as the representative of the child and the BIA forms were completed in the quasi-totality of cases by PRAKSIS shelter staff, generally covering the factors included in article 6 of the 'Dublin III' Regulation. Furthermore, even though no consistent and systematic practice can be inferred, it is worth underlining that sometimes TCR forms, in addition to available information, included vital elements to be considered in relation to the best interest of the child and in some cases a conclusion that the reunification appeared to be in the child's best interest. BIA forms, social reports or submissions by the legal representative including information and recommendations regarding the best interest of the child were submitted in the overriding majority of cases and predominantly at the reconsideration stage. Yet, despite the representatives being at the core of the procedural safeguards and appointed by national authorities, receiving States repeatedly ignored their views. The study includes cases in which the professional opinion by the BIA assessors or the PRAKSIS lawyer/legal representative was blatantly disregarded

in favour of the receiving State's assumptions. In several cases, the best interest assessment findings or the relevant information provided did not seem to be adequately considered by the respondent States. Also, a request for an assessment of the best interest of the child or a reference to a BIA was included in quite a limited number of cases in Member State responses with varying practices encountered in those cases. The varying practices also denote the lack of clarity with respect to the responsible Member State to ultimately decide on the best interest of the child, as sometimes observed. Among some particularly concerning practices was the practice by some respondent States of invoking irrelevant factors not included in the Dublin III provisions and contrary to the ECtHR case law as a basis for rejection, such as the length of time of separation between family members, siblings etc. which amount to a clear violation of the right to family life. Furthermore, in the very limited number of cases where information or documentation regarding the family relation was unavailable at the time of the registration of the asylum application, no proactive approach for identification was adopted by the competent Greek authorities, which again led to delays.

In more complex cases such as those concerning relatives (namely aunts, uncles, grandparents), extended family relations, or where family or relatives were residing in more than one Member State, we observed that there was no standardised approach applying to all receiving States in the assessment of the relative's capacity to care. Even if provided for in the overall Dublin Regulatory framework, especially in cases of relatives or more than one family members/relatives in different States, there was no evidence of institutionalised cooperation between the

different States' child protection authorities and services.<sup>27</sup> In some occasions, PRAKSIS staff pursued an informal contact and cooperation with social actors abroad. An individual assessment of the relative's ability to care for the child was undertaken in a limited number of cases by some receiving Member States, often not consistently, while varying practices were observed in this context as well. Although in some occasions the emotional capacity to care for the child was considered to outweigh the lack of evidenced material capacity in the respondent States assessment there have also been rejections on the sole basis of lack of the family's material capacity though final rejections on this exclusive ground were the exception.

In cases where more than two States were involved, the coordination and communication with the different States where family relations were present, was virtually non-existent. In particular, inter-State correspondence took place only among the sending State and the State to which a TCR was addressed. The requirement for an assessment in cases of more than one family members/relatives in different States was predominantly addressed in practice by the BIAs submitted in the process by the sending State, which were sometimes complemented with crucial information included in the TCR.

In general, a higher degree of interstate cooperation and information sharing is required to ensure that children's interests are protected.

### Interpretation of legal provisions

Some of the children whose cases we analysed suffered from uneven interpretation of legal provisions related to family reunification. A good example of such discordant practices was observed in relation to article 17.2 of the Dublin III Regulation (discretionary clause on humanitarian grounds): *"The Member State in which an application for international protection is made (...) or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria (...)"* Ten out of the 14 cases in total sent under article 17.2<sup>28</sup> were sent under this legal basis<sup>29</sup> due to the expiration of the prescribed three-month time limit for sending the TCR. Cases sent under this article generally suffered from similar issues in relation to evidential standards and the best interest assessment as those cases sent under article 8<sup>30</sup>. However, the humanitarian grounds in cases sent under article 17.2 were often interpreted in a restrictive manner, while ignoring highly vulnerable applicants and the clear family considerations present in those cases. In a number of cases, the receiving States clearly disregarded article 17.2 humanitarian considerations, which in turn led to approximately half of the cases concerned to be finally rejected. In some of those cases, the rejection was based on the erroneous interpretation that article 17.2 did not apply as the three-month time limit for article 8 had been surpassed, while

27 Any Court or authority responsible for the protection of minors, or public authority, representative services, NGO, IGO responsible for assessing the relative's capacity to care.

28 In one of those cases, a TCR was previously submitted under article 8 and upon the discovery of circumstances that warranted the application of article 17.2, a fresh TCR was sent under article 17.2 on the re-examination stage.

29 Exclusively or as an alternative basis to article 8.

30 A comparative approach is included in the respective subchapter 5B) of the study with examples in similar approaches as well as few different approaches noted.



in others the rejection was based on a very restrictive interpretation of the term 'humanitarian grounds'<sup>31</sup> etc. In relation to two cases concerning more extended family relations, a varying threshold of assessment between the respondent States involved was noted, with one State duly taking into account the best interest of the child and accepting the request and the other not accepting on the basis of its erroneous interpretation of article 17.2 terms.

Another example drawn from the research study focuses on the definition of the legal presence of the child's family relations in receiving Member States as a precondition for family reunification. The research showed that the term "legally present" was misinterpreted or misapplied repeatedly, regardless of the child's vulnerability, resulting in unnecessarily prolonged separation with his/her family relations. The practice was related to the erroneous belief that certain legal statuses of the family relations (resident or citizen status) did not fall under Dublin III, a misinterpretation noted repeatedly but mostly observed in few receiving States' practice and not consistently applied. The other issue raised with respect to the term 'legally present' encountered in few cases among the sample relates to the consideration that the family relation's presence in the respondent Member State doesn't fulfil the requirement of legality. Since all cases in the latter category concerned article 8.1, in particular, a parent of the child, this application could give rise to strong concerns with respect to family unity<sup>32</sup>.



31 Or a combination of those two grounds.

32 Analysis is included in the respective subchapter 4B) of the study.

## Conclusions

The principles of family unity and the rights of the child are enshrined at the very heart of the Dublin III Regulation; family unity is one of its most fundamental and important principles<sup>33</sup>, and the best interest of the child is established as a primary consideration within the regulation, while case law from the EU Court of Justice makes explicit reference to the need to prioritise the cases of unaccompanied children.

Creating a swift process of determination of the responsible Member State with a clear set of rules regarding all stages of the procedure including transfers, legal guardians and unified reception standards should be the goal of the Dublin Regulation. However, the research finds that implementation of the family reunification process is marked by serious systemic failures intrinsic to complex national approaches in sending and receiving States. In this context, the role of the lawyer as it can be deduced from the sample appears to be of pivotal importance for the progress of the children's family reunification process.

Despite some good practices identified in the sample, coordination problems among States, as well as protracted delays, refusals motivated by too high evidential requirements and a consistent failure to duly consider the best interest of the child, have unnecessarily influenced many of the unaccompanied children's lives, physical and mental health and wellbeing. Furthermore, the above practices do not seem to serve any of the basic objectives of the Dublin III Regulation. In the majority of cases, the swift process of determination of the responsible Member State and the subsequent swift access to international

protection processes was not secured nor was the respect to family unity. Likewise, the best interest of the child did not appear to be served in the majority of cases, both due to the aforementioned way of applying Dublin III in practice, often entailing great and/or unnecessary delays, as well as due to final rejections or lack of response by respondent States in several cases, even when there was full evidence to show that the reunification was in the child's best interest. Among the problematic practices repeatedly noted on a procedural level, particularly relevant was the lack of detailed reasoning in refusal letters, vague negative responses and negative responses without an assessment of and reference to the evidence previously submitted or without a request for the required evidence by the respondent State.

The great disparities in the interpretation of the provisions, the assessment of the evidence and lack of consistency impede the functionality of the Dublin III process. Clear misinterpretations or misapplications of the Dublin III Regulation observed in the study,<sup>34</sup> undermine both the proper application of the Regulation as well as the children's right to family reunification.

Furthermore, it is evident that the absence of any independent mechanism to monitor the way States interpret and apply the Regulation resulted in sustaining the disparities in practices and interpretations among different Member States. Likewise, in cases of disagreement between the sending and receiving State in relation to the applicability or interpretation of provisions on individual cases, the absence of this mechanism resulted in reaching a 'dead end' with

33 See for example Recital 14 ("respect for family life should be a primary consideration of Member States when applying this Regulation"); Recital 15 (the processing together of applications...makes it possible to ensure that...the members of one family are not separated); and Recital 16 ("ensure full respect for the principle of family unity") of the "Dublin III" Regulation.

34 An indicative example is the position of some respondent States that there is no applicability of article 8 and subsequently no applicability of the Dublin III process due to the particular legal status of the child's family relation.

regard to the dissolution of the dispute<sup>35</sup> and in the subsequent responsibility remaining with the 'sending' State, in all such cases.

In conclusion, inconsistencies in practices by Member States, delays and excessive evidential standards are exacerbating pre-existing vulnerabilities amongst children pushing some of them into irregular movements across borders and exposing them to new risks such as smuggling and exploitation. Without treating these children as children first, asylum systems and Member States are failing to fulfil their fundamental role – of protecting those who are the most vulnerable group.

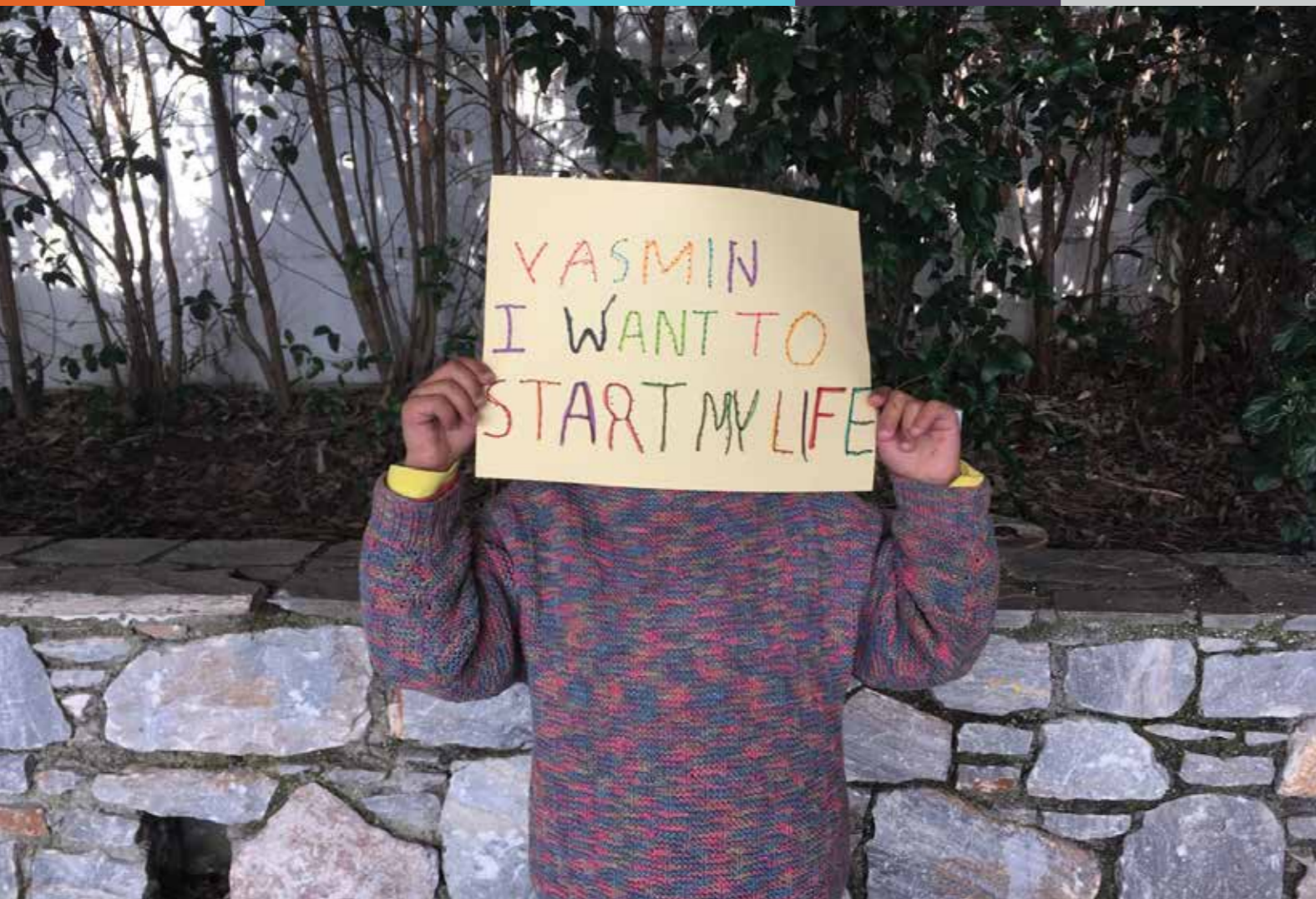
35 It is worth noting that the conciliation process provided in article 37 of the Dublin III does not appear to be applied in practice and does not consist anyhow of an independent external monitoring mechanism/body.

## Recommendations

### A. European (and interstate<sup>36</sup>) level

1. European asylum policies should protect children on the move. Asylum-seeking children are first and foremost children. They should not be detained, punished for secondary movements or prevented from accessing asylum and legal aid.

- Pressure on the countries of first arrival, such as Greece, can be substantially alleviated through the family reunification procedure. Thus, States should process unaccompanied children's reunification requests in an expedited and fair manner at all stages, not prolonging the procedure more than is strictly necessary to clearly and unequivocally determine the responsible Member State.
- Children's rights need to be implemented in all reflections around the future Dublin IV mechanism. States should interpret and apply all Dublin legal provisions, in the current Dublin system as well as the future one, in observance of the letter and spirit of the Regulation, always setting the primacy of the best interest of the child and family unity in the centre of the application and interpretation of the Dublin Regulation.
  - Following consultations with civil societies and experts working in the field, clear and transparent guidelines should be issued on the requirement of proof "necessary for the proper implementation" of Dublin III, best interests assessment processes, evidentiary requirements and different terms (such as 'legally present' or 'humanitarian grounds').
  - Article 17.2 should be applied and interpreted flexibly in cases of unaccompanied children, especially in cases of extended family relations, ensuring that the children's best interest will be served, in case any precondition for applying article 8 is not fulfilled.
  - In the implementation of Article 17.2, the foremost objective should be family unity irrespective of the conditions of the separation.



<sup>36</sup> Interstate referring to cooperation between sending and receiving States throughout the implementation of the Dublin Regulation

2. Member States need to demonstrate more flexibility and engage in creative and efficient cooperation to allow children to reach their family relations in EU Member States in a safe and regular manner within a reasonable timeline.

- Cooperation between Member States and their respective Dublin Units should be monitored by an independent mechanism/body, which would be responsible for monitoring information sharing specifically related to family reunification and unaccompanied children's individual cases and for safeguarding the proper and common application of the Dublin Regulation by Member States, on the basis of the guidelines produced.
- The presence of liaison officers in all Dublin Units should be secured and should be aiming specifically to contribute to smoother interstate cooperation in individual cases that require specific actions and assistance in terms of complexity or vulnerability and minimise the time needed to complete the process for the determination of the Member State responsible.
- Sufficient funds should be allocated to adequately capacitate Dublin Units under considerable strain in both sending and receiving States to support the processing of unaccompanied children's reunification cases in a timely and efficient manner. Funds should be allocated in a way to avoid cumbersome bureaucratic procedures and delays as well as to safeguard the timely association of funds with actual operational needs.
- Receiving States should provide sufficient and detailed reasoning in their negative responses, including an assessment of the evidence submitted. Negative responses should always provide sufficient information to allow the sending State to submit information, evidence or arguments that could lead to an acceptance of the child's family reunification request, thus protecting the child's best interest.
- States should refrain from administering practices such as requesting authentication or translation of the documentation presented, which fall outside the scope and requirement of the Dublin Regulation and process. All Member States' Dublin Units should secure the assistance of translation or interpretation services in order to have access to the content of documentation.
- In absence of formal proof, evidence such as written statements, family photos, conversations between family members, travel tickets, receipts of money transfers, family tree etc. should be considered admissible and sufficient to accept the request if it is verifiable, coherent and sufficiently detailed in accordance with the Regulation's requirements. All circumstantial evidence that can be gathered needs to be considered during all stages of the procedure and taken into account according to the best interests of the child.
- BIA forms should be a strong evidential tool in cases of family reunification. The recommendations and observations included in BIAs should always be taken into consideration when assessing a case. Any decision of the Member States that contradicts and violates the best interests of the child applicant as presented in the BIA form must be expressly and sufficiently justified.

- The information and the views in relation to the best interest of the child expressed by the assessor in BIAs and in social assessments or by the representative in submissions should always be taken into account by the receiving States in their decision-making with respect to the Take Charge Request thereby conforming with the principle of mutual trust and the focal role of the representative in the Dublin Regulation.
- Invasive DNA and age assessment medical tests need to be avoided at all costs. Recourse to such means of proof should be made only in cases where this is objectively and absolutely necessary due to lack of other evidence or in case of contradicting evidence. In relation to age assessment, it should be applied when there is reasoned doubt based on specific indications. Technical and medical restrictions, such as available terms of reference only for Caucasians in age assessment or the requirement of a third-party sample for determining the relation with an extended family member should always be taken into consideration when assessing the results. In case of doubt, the age assessment results should be applied in favour of the child's minority, as defined in the relevant legal framework.
- The absence of material capacity (i.e. financial capacity) of the relative to take care should not lead to rejection of the reunification request when the emotional capacity of the relative is demonstrated and reunification is considered to be in the child's best interest.
- Dublin procedure needs to be done swiftly, without additional administrative burdens and delays, which impact family well-being. Thus:
  - States should refrain from administrative practices such as holding letters, unless this specifically serves the child's reunification request and sufficient reasoning for this is provided. In such cases, the 'holding' period should not be longer than strictly necessary.
  - The sending State should initiate the 'acceptance by default' process promptly and the receiving States should comply with this binding provision of the Dublin III Regulation, irrespective of whether the sending State has made use of its discretion to request a confirmation of acknowledgment of responsibility from the receiving State.
  - No administrative practices that hamper the effective application of the Regulation and the requisite swiftness of the transfer process should be applied. Limiting numbers of arrivals such as the German cap on family reunification only prolongs partitions of families and has disastrous effects on unaccompanied and separated children
  - The sending State should initiate the consultation process with receiving States via the standard form included in the Implementing Regulation (Annex VIII) to exchange information and receiving States should investigate and provide all necessary and requested information through the form. This increased cooperation should apply in fields such as family tracing, establishing family links, assessing the relative's ability to care etc. in accordance with the Dublin and Implementing Regulation.

- States involved should secure the prompt provision of information to the legal representative of the child regarding the course of the child's Dublin case at any stage and in writing if requested.
- Any information provided by the receiving State should be made available to the legal representative via the competent authorities of the sending State following relevant interstate correspondence.
- Relative authorities should provide children with adequate reception conditions such as accommodation, medical and psycho-social support, access to a guardian, legal aid etc. Their best interest should be assessed by a multidisciplinary team, including psychosocial evaluations.

### B. National-level recommendations

- **In order to ensure prompt access to the Dublin family reunification mechanism, accelerate timescales and take into account the best interests and special needs of the children to avoid further traumatising and safeguard their right to family life, the Greek competent authorities are urged to:**
  - Ensure prompt registration of all unaccompanied children during the first reception stage including appropriate reception screening procedures by adequate medical and psychosocial support staff in order to identify and respond to medical and mental health issues as well as provide appropriate support and referral, when necessary. Reception screening procedures should always include screening for Dublin eligibility, by appropriate first reception staff.
  - Secure appropriate temporary stay within reception and identification centres for unaccompanied children meeting their special protection needs and minimise the length of the children's stay in the reception and identification centres to the time absolutely necessary for the completion of the first reception process.
  - Increase shelter capacity and secure prompt access for unaccompanied children to appropriate long-term accommodation facilities such as shelters and provide stable legal and psychosocial support. Actively seek to avoid protective custody and the long-term placement of children in safe zones or the successive transfer of children to different shelters, unless the latter is in their best interest.
  - Secure the provision of appropriate information to children in relation to the family reunification procedure at the first reception and asylum stage, including but not limited to distributing the relevant pamphlet provided in the Dublin III Implementing Regulation.
  - Apply age assessment processes only as a last resort and only in cases where there is reasoned doubt in relation to the applicant's age. Adhere to the gradual and multidisciplinary age assessment approach as required by the processes outlined in the relevant ministerial decisions.

- Ensure adequate staff is deployed in all Regional Asylum Offices and in the Greek Dublin Unit to sufficiently respond to the increased number of 'Dublin' family reunification requests and provide continuous training to staff in relation to the 'Dublin' family reunification process and to the specific needs of children.
- Promptly put into effect Guardianship Law 4554/2018, in view of better ensuring that the children's best interest is taken into consideration in practice.
- Ensure the appointment of a qualified representative during the first reception stage to provide any necessary information to the child and guarantee that his/her best interest is prioritised in all processes, including in age assessment. Likewise, to ensure the appointment of a qualified representative throughout the asylum stage for all unaccompanied children's 'Dublin' cases, in accordance with the Dublin III provisions, to guarantee that his/her best interest is taken into account throughout the process.
- Promptly secure free legal aid for unaccompanied children in the 'Dublin' process in order to safeguard the appropriate application and interpretation of the Dublin III legal provisions.
- Put in place a systematic and functional prioritisation process for unaccompanied children both in relation to their primary vulnerability as unaccompanied children as well as according to their additional vulnerabilities, which will be applicable at all stages (lodging of the asylum application, dispatch of the Take Charge Request and transfer).
- Ensure that respondent States are specifically informed by the Greek Dublin Unit about the role and capacity of the legal representative through all interstate correspondence.
- Ensure the continuity of a functional system for a prompt and smooth transfer of all unaccompanied children, in compliance with the obligation incumbent upon the sending State to cover the cost for the transfer, as it emerges from the Dublin III Regulation.<sup>ww</sup>



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