Caught in the Middle

Unaccompanied children in Greece in the Dublin family reunification process

SAFE PASSAGE
LEGAL ROUTES TO SANCTUARY

PRAKSIS

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[2] 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 references to Safe Passage staff and PRAKSIS staff relate to their capacity at the time of each person's involvement during the research project implementation.

LIST OF ABBREVIATIONS

BIA:	Best Interest Assessment
CEAS:	Common European Asylum System
CFR:	Charter of Fundamental Rights of the European Union (interchangeably as CFR, EU Charter of Fundamental Rights or Charter)
CJEU:	Court of Justice of the European Union
CRC:	UN Convention on the Rights of the Child
Dublin III:	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanism 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 (recast) (interchangeably as Dublin III, or Dublin III Regulation or Regulation)
Dublin II:	Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
EASO:	European Asylum Support Office
EU:	European Union
ECHR:	European Convention for the Protection of Human Rights and Fundamental Freedoms (interchangeably as European Convention on Human Rights)
ECtHR:	European Court of Human Rights
EKKA:	National Centre for Social Solidarity
FRA:	Fundamental Rights Agency
GCR:	Greek Council for Refugees
IOM:	International Organisation for Migration
INGO:	International Non-Governmental Organisation
MSF:	Médecins Sans Frontières
NGO:	Non-Governmental Organisation
RAO:	Regional Asylum Office
RIC:	Reception and Identification Centre
SGBV:	Sexual and gender-based violence
SIL:	Semi- independent living
TCR:	Take Charge Request
UAC:	Unaccompanied child
UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees

USE OF TERMINOLOGY

In this research study, terminology has been generally drawn from the recast Regulation (EU) No 604/2013 of the European Parliament and of the Council 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 (Dublin III Regulation, or Regulation).

Therefore, indicatively, terms such as 'family member' and 'relative' have the meaning included in the definitions of article 2 of the Dublin III Regulation, unless explicitly stated otherwise.

However, the term 'child' instead of 'minor' is used in the context of this study, except for cases of cited passages (e.g. from the 'Dublin III Regulation' and CJEU case law), in case of reference to authorities, such as the Prosecutor for Minors or, finally, in case where the minority (age) of the child needs to be emphasised where the original term ('minor') is maintained.

For convenience, the use of the three terms below is explained, as they are not included in the definitions of the Dublin III:

'Acceptance by default': Automatically entailed obligation for the receiving Member State to accept responsibility for the examination of the international protection application and the transfer of the applicant to its State, following failure to respect the two month prescribed time limit for response to the TCR. [3]

'Take charge request': The request sent by the State where the applicant has lodged an application for international protection to another State requesting from it, on the basis of the Dublin III criteria, to take charge of the applicant for the purpose of examining the international protection application.[4] Also, interchangeably, referred to as family reunification request in the context of the study.

'Member State': This term is used throughout the study to describe all States applying the Dublin Regulation irrespective of whether they are European Union Member States or associated countries.[5]

The terms included below have, for the purposes of this study, the following meaning:

'Applicant': The person who has applied for international protection and is under the Dublin process. In the context of this study this term refers in particular to unaccompanied children.

'Unaccompanied child': This term is in accordance with the definition of the Dublin III and the Greek legal framework applicable during the temporal scope of the study. It therefore refers to a person below the age of 18 unaccompanied by an adult exercising his/her parental care according to the Greek Legislation (parent or appointed guardian by the Court under the circumstances and procedure described by the Law). Separated children whose adult relatives have not been appointed as their guardians under the Law are also referred to as unaccompanied.

'Legal representative': This term is used throughout the study to describe the capacity of lawyers acting on the authorisation of the Public Prosecutor for Minors or First Instance Public Prosecutor, in the frame of the specific legal support actions described in the authorisation, including also representation actions such as the lodging of the international protection application on behalf of the child.

'**Representative'** and '**representation**': These terms are used in accordance with article 2 of the Dublin III Regulation to describe the provision of representation to unaccompanied children, according to the practice of acting as a representative on the basis of authorisation by the Prosecutor for Minors or First Instance Prosecutor, irrespective of whether the person designated as a representative is a lawyer or has other professional capacity.

[3] As analysed in article 22 paragraph 7 of the Dublin III in detail
[4] As analysed in article 21 of the Dublin III in detail
[5] The Dublin III Regulation is applicable to all the 28 EU Member States and four associated countries (Iceland, Lichtenstein, Norway and Switzerland).

'Emotional capacity': This term refers to any or all elements related to the willingness and ability (social and psychological) to care.

'**Material capacity**': This term encompasses any of the elements related to material evidence of capacity to care such as information and evidence of financial status, employment, social security and accommodation.

'Family relation': This term is used to encompass any type of family relation to the child applicant, including family member, sibling, relative or more extended family relation. When specific reference to the type of relationship is of significance, it is expressly stated. In the context of chapter II) 4 in particular (analysis for article 8 requirements) the term family relation is used to include all possible categories falling under article 8, namely family member, sibling or relative.

'Sending State' or 'requesting State': These terms are used interchangeably to refer to the State where the applicant is present and which sends the take charge request. In the context of this report this term will always refer to Greece.

'Receiving State' or 'respondent' or 'requested' State: These terms are used interchangeably to refer to the State that receives and examines the TCR (the 'destination' country).

'Asylum Procedures Directive': Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

'Implementing Regulation': Regulation (EC) No. 1560/2003 as amended by Regulation (EU) No. 118/2014 which sets detailed rules for the application of Dublin III. When specific provisions are cited, there is explicit reference to Implementing Regulation 1560/2003 or Implementing Regulation 118/2014.

'Qualification Directive': Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

'Reception Conditions Directive': Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)

'Eurodac Regulation': Regulation (EU) No. 603/2013 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the recast Dublin Regulation

Where appropriate, the above use of terminology is repeated in footnotes within the study.

EXECUTIVE SUMMARY

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%)[6]. 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[7] UAC were estimated in the country[8]. 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[9] 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.[10]

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".[11] Despite this, overall implementation has been marked by lengthy procedures, a persistent lack of access to effective protection and other operational deficiencies,[12] 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 Lesvos and Samos, are operating at 250% of their capacity[13] 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,[14] further overstretching 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 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."[15] 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.[16] 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

[6] 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].
[7] This number includes 310 separated children according to EKKA statistics.
[8] 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.
[9] This number includes 310 separated children according to EKKA statistics.
[10] 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.
[11] 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].
[12] 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].
[13] 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].
[14] UNHCR, Europe Monthly Report – June 2018, available at: https://data2.unhcr.org/en/documents/download/65078 [accessed 12 August 2018].
[15] http://asylo.gov.gr/en/wp-content/uploads/2018/01/Press-Release-25.1.2018.pdf.
[16] 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/2995521/8895109/3-160 52018-BP-EN.pdf/ec4cc3d7-c177-4944-964f-d85401e55ad9.

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,[17] while at the same time identifying challenges, potential issues and best practices.

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.[18] 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.[19] It is interesting to note that only 21 (26%) cases were accepted by receiving States directly.[20] 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.

[17] Germany, France, the United Kingdom, Sweden, Switzerland, Norway, Denmark, Netherlands, Belgium, Austria, Italy, Spain, Malta, and Finland.
[18] During their placement in PRAKSIS shelters.
[19] 10% of the children (eight cases) absconded.
[20] Four more were accepted by default. Total of acceptances without a re-examination stage: 25 cases.

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 were successively involved, causing serious coordination and efficiency issues.[21] 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 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.[22] 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.

[21] 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.

[22] 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 was triggered as a rule only in the cases where there were extremely long delays.[23] 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.[24]

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 often related to excessive evidential requirements set by receiving States.[25] 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".[26] In fact, the vast majority of cases that were first rejected on a proof-related basis were accepted after further and often long and cumbersome re-examination processes.[27] The majority of cases fulfilled the requirements of proof regarding identification, legal status of the family relation and family links from the point when the TCR was first submitted.[28] Great disparities were observed in 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

[23] Automatically entailing the receiving State's responsibility after the expiry of the two- month timeframe.
[24] 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.
[25] 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.
[26] Article 22. 4 Dublin III Regulation.
[27] Exclusively or additionally to other grounds.
[28] Fully or at least partly, requiring in the latter case also that the receiving State makes some checks to fully establish the family links.

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.[29]

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.

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

[29] 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.

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.[30] 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)[31] were sent under this legal basis[32] 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.[33] 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 in others the rejection was based on a very restrictive interpretation of the term 'humanitarian grounds' etc.[34] 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

[30] 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.
[31] 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.
[32] Exclusively or as an alternative basis to article 8.
[33] 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.
[34] Or a combination of those two grounds.

'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.[35]

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,[36] 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,[37] 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 regard to the dissolution of the dispute and in the subsequent responsibility remaining with the 'sending' State, in all such cases.[38]

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] Analysis is included in the respective subchapter 4B) of the study.
[36] 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.
[37] 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.
[38] 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.

KEY RECOMMENDATIONS

A. European (and interstate)[39] 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.

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

[39] Interstate referring to cooperation between sending and receiving States throughout the implementation of the Dublin Regulation.

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 traumatisation 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.


YASMIN
I WANT TO
START MY LIFE

I) INTRODUCTION

1. About PRAKSIS and Safe Passage: background and collaboration

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.

2. Research purpose, scope, methodology and limitations

Purpose

The purpose of this joint study by Safe Passage and PRAKSIS is to examine the implementation and functionality of Dublin III family reunification procedures in regard to unaccompanied children in the context of Greece. This study examines current practices and considers how these serve or affect the best interests of the children.

More specifically, based on a case-by-case examination of UAC applications for family reunification under the Dublin III Regulation, the study aims at:

- better understanding the main reasons for acceptances, refusals and delays as well as the varying practices and erratic evidential standards across EU Member States;
- identifying the challenges, potential issues and best practices within the process for determining the Member State responsible to examine the asylum application;
- highlighting, to the extent possible, any systematic patterns and flagging any practices (even within isolated cases) severely impeding or contributing to the smooth implementation of the Dublin III family reunification procedure.

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, the functionality of the Dublin III system is assessed with focus on the best interest of the child and the right to family unity in order to determine whether or not these are indeed the 'primary considerations' in the actual application of the Dublin III Regulation, therefore conforming with the Regulation's recitals.

Scope

All the cases analysed concern unaccompanied children housed at PRAKSIS shelters; therefore, the scope of examination is limited to the procedure followed in cases of unaccompanied children benefitting from protected accommodation and access to a legal representative. Nevertheless, reference to broader procedural shortcomings, issues or constraints is made when these derive from the cases reviewed, including issues relating to the children's access to accommodation, caregiving services and international protection (asylum) procedures. In this context, alongside the functionality of the Dublin system in itself, the psychological impact on the children due to obstacles and delays in the family reunification procedure is also considered on the basis of the available data.

This research covers cases of unaccompanied children who **arrived in Greece between May 2015 and September 2017, with the vast majority of children having arrived in 2016**. With regard to the **registration of the children's international protection applications at the Greek Asylum Service** – and thus the commencement of the Dublin III reunification process and the triggering of the Regulation's binding timelines – the dates extend from **December 2015 to November 2017, with the overriding majority of registrations having occurred in 2016**.[40]

The cut-off date for any developments considered and presented for each case was set to be the 20th of April 2018. It should be noted that some practices referenced in the study might have evolved from the time of the finalisation of the research until the publication of the report.

[40] For 50 cases, the international protection applications were registered in 2016 and, for 29 cases, the applications were registered in 2017.

Methodology

The research is based on a sample of **80 UAC family reunification cases,** which were pre-selected by PRAKSIS on the basis of criteria jointly agreed with Safe Passage. The criteria were prescribed to ensure, as much as possible, a representative number of different receiving Member States and of UAC applicants' nationalities and family members or relatives. The selection also strived to strike a representative balance between successful and rejected cases, according to PRAKSIS' caseload and, as far as possible to overall family reunification statistics. The sample selection was further based on the criterion of representativeness in terms of desirable or undesirable practices and the resulting constraints and challenges often faced due to the latter. Additionally, some cases were selected on the basis that they are marked by a distinctive approach to the implementation of the Dublin III Regulation (by either or both the sending and receiving Member States) or because the case raises an important matter that merits comment and further analysis. Receiving Member States within this research project are: **Germany, France, the United Kingdom, Sweden, Switzerland, Norway, Denmark, Netherlands, Belgium, Austria, Italy, Spain, Malta, and Finland**.

In order to achieve as broad a geographical distribution as possible, cases were selected from 13 PRAKSIS shelters around Greece, in particular, nine shelters across the Attica region and shelters in Thessaloniki, Patras, Samos and Lesvos. It should be noted that often the children's cases had been registered and the Dublin family reunification procedure had already commenced at their arrival points (see Chapter II) 3 (Timescales) below). The case-by-case analysis was initially based on anonymised data collection through semi-structured interviews with different PRAKSIS lawyers handling the UAC cases using a questionnaire developed for the purpose of this research (see **Annex 1**).

The questionnaire covered the following elements for each case:

- age, nationality and vulnerabilities of the child
- arrival date in Greece
- receiving Member State
- family member or relative at the receiving Member State
- list and categories of evidence submitted in support of the take charge request (TCR)
- Dublin III article under which the TCR was sent
- reasons for TCR refusal/acceptance
- dates of international protection application, TCR, acceptance, rejection(s) and transfer

The study was further based on the auditing of 68 anonymised case files where documentation was available out of a total of 80 cases. Where relevant and available for each case, the documentation comprised:

- copies of the TCRs, evidence submitted,
- legal notes by the PRAKSIS lawyers,
- Best Interest Assessments (BIAs), and
- copies of acceptance and rejection letters.

Certain key findings in this report are substantiated by case studies whereas the particular aspect of the psychological impact of delays and obstacles in the reunification process is based on the BIAs and psychosocial or psychological reports included in the case files as well as on interviews with PRAKSIS mental health professionals working at the UAC shelters.

Within the framework of the study, specific reference to receiving States is made either in an indicative manner, or by including a reference to the total number of relevant cases.[41] In all cases Greece is the sending State.

[41] Either with reference to the total cases of all relevant receiving States or to the number of cases per State.

Limitations

Some of the main factors that were identified as a limitation to the data collection process and analysis of the cases include the following:

a) Initial lack of legal support and representation often observed at the arrival point before the placement of the children into the PRAKSIS shelter; and/or
b) Successive accommodation of children in different spaces (Reception and Identification Centres, safe zones, different shelters) often leading to different legal and/ or other actors having been involved in each case.

In a number of cases where factors under a) and b) were observed and where the Dublin III procedure was initiated before the undertaking of the case by the PRAKSIS lawyer, it resulted in lack of full information and evidence regarding prior stages of the procedure. This occurred more often when a complete/detailed handover of the case had not taken place.

In some cases, another obstacle hindering the data collection in the research project resulted from the lack of access of the PRAKSIS lawyer to some documentation from the case file held in the Regional Asylum Office (RAO). In particular, according to the lawyer's statements, even though the collaboration with the RAO was very positive and all relevant information for each case was passed by RAO staff to the lawyer, actual copies of TCRs or acceptance, refusal and holding letter received from the receiving Member State were not provided to the lawyer due to the RAO's lack of sufficient resources at the time. This, however, concerned a very limited number of cases, in the context of the research. In a few cases, documentation in the case file was limited or not fully complete as it was considered by the RAOs that there was no ground for the lawyer to receive further copies as the case had been completed or closed.

Finally, given the great variance in actors involved, i.e. different caseworkers handling a certain case and constant changes in practices, even within the practice of a single Member State, it has been very difficult to draw conclusions on systematic country-specific practices except for some constant, systematic practices easily identified in Member States.

The variance in the implementation of the Dublin III Regulation not only across Member States but also within the practice of a single Member State is nevertheless a key finding itself, which is analysed further below in the research findings.

3. Overview of arrival trends and the situation of unaccompanied children in Greece

In the context of rising global displacement, an unprecedented number of people have arrived in Greece over the last years in search of safety and protection within Europe from the Syrian war, protracted conflicts and insecurity situations across the world. In particular, more than one million people have reached Greece irregularly since 2015 after dangerous sea crossings from Turkey, while national systems were placed under considerable strain and continue to be plagued with persistent gaps and shortcomings raising serious reception and protection concerns. With children representing a considerable percentage of these refugee and migrant arrivals, the protection of children on the move stands out as a pressing challenge given their distinct vulnerability – first and foremost as children – and the elevated risks they are exposed to, including abuse, violence and exploitation.

While incoming flows via the Eastern Mediterranean Sea route have been decreasing since the 2015 surge (see Table 1), **primarily as a result of the closure of the so-called 'Balkan Route' to Europe on 8 March 2016 and the entry into force of the EU-Turkey Common Statement of 18 March 2016,** the situation at the Greek islands of arrival remains dire. Reception and identification Centres, notably in Lesvos and Samos, are operating at 250% of their capacity,[42] as asylum seekers face prolonged stay in overcrowded and highly precarious conditions. Further, restriction of liberty on the islands occurs 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[43] thus overstretching the reception capacity of authorities in the region and with the United Nations High Commissioner for Refugees (UNHCR) calling for further efforts to ensure timely access to asylum and registration procedures.[44]

Table 1: Sea arrivals in Greece (2014-2018)

Year	Sea arrivals	Dead and missing
2018	24,821 *(as of 11 October 2018)*	45[45]
2017	29,718	54
2016	173,450	441
2015	856,723	799
2014	41,038	405

Source: UNHCR Data Portal – Greece (last accessed on 11 October 2018) and IOM

Overall, Syria, Iraq and Afghanistan consistently represent the main nationalities of new arrivals in Greece, with women and children comprising a significant percentage of this population approximately 60%. Asylum seeking children, in particular, continue to constitute around 35-40% of annual sea arrivals, considerably higher than the other Mediterranean Sea routes to Italy or Spain. Indeed, over the first quarter of 2018, Greece received almost half of all child arrivals in Europe, which accounted for 37% of total arrivals in the country, compared to 17% and 16% in Italy and Spain respectively. [46]

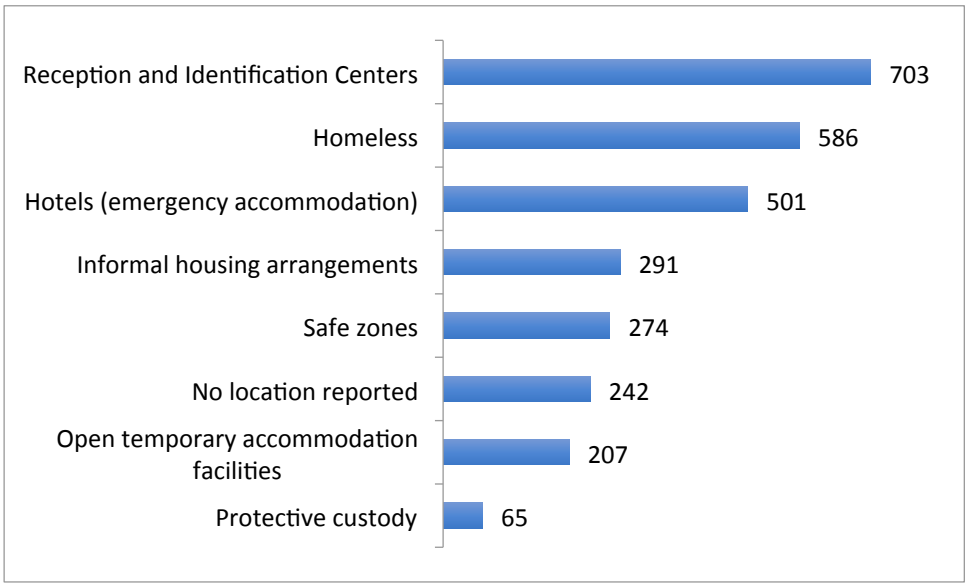
Included in child arrivals are a growing number of unaccompanied children travelling alone without their family or a legal guardian. While a number of UAC were believed to go missing, especially at the early stages of the refugee crisis in 2015-2016,[47] according to the National Centre for Social Solidarity (EKKA) **17,199 UAC arrivals were officially recorded in Greece between January 2016 and November 2018. As**

[42] 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]
[43] UNHCR, *Europe Monthly Report – June 2018,* available at: https://data2.unhcr.org/en/documents/download/65078 [accessed 12 August 2018]
[44] UNCHR, 'Fewer refugees arriving in Greece's Evros region, but problems remain', 12 June 2018, available at: http://www.unhcr.org/news/latest/2018/6/5b1e69744/fewer-refugees-arriving-greeces-evros-region-problems-remain.html [accessed 10 August 2018]
[45] The figure covers Greece and Cyprus. See: International Office for Migration (IOM), 'Mediterranean Migrant Arrivals Reach 47,637 in 2018; Deaths Reach 1,422', 10 July 2018, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/Mediterranean%20Migrant%20Arrivals%20Reach%2047.pdf [accessed 15 August 2018]
[46] 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]
[47] The Guardian, '10,000 refugee children are missing', says Europol, 30 January 2016, available at: http://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees [accessed 13 August 2018]].

of 15 December 2018, 3,881[48] UAC were estimated in the country. Unaccompanied boys account for 93,8% and unaccompanied girls for 6,2% of the latter total, while Afghanistan, Pakistan, and Syria are the top nationalities. Overall, 91,6% of these children are teenagers between 14 and 17 years old, and 8,4% are less than 14 years old.[49]

With a total of only 1,219 spaces across 54 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[50] of them being completely out of long-term accommodation (shelters and SILs) as well as out of temporary accommodation (safe zones[51], emergency hotels) as of December 2018.[52] As a result, 2,094 UAC are in dismal conditions at Reception and Identification Centres (RICs, or 'hotspots') at the islands of reception (Lesvos, Samos, Chios, Kos, Leros) or in the North (Fylakio at Evros) under protective custody (detention) in police stations or are homeless etc. (see Figure 1).[53]

Figure 1: Breakdown per reported place of stay of UAC outside long-term accommodation as of 15 December 2018



Source: EKKA

Given the extreme vulnerability and special protection needs of unaccompanied children, both the European and the national legal framework[54] applicable to children entering a State to request protection include the category of UAC among the vulnerable groups, vested with increased State responsibility towards them. In practice, however, such responsibility does not translate into adequate safeguarding measures and **the majority of UAC in Greece remain without adequate access to the protection they are entitled to**, as enshrined in international, European and national legal instruments, including the UN Convention on the Rights of the Child.

[48] This number includes 310 separated children according to EKKA statistics.
[49] 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
[50] This number includes 310 separated children according to EKKA statistics.
[51] Safe zones are designated spaces for unaccompanied children in accommodation sites in the sense of temporary accommodation see National Centre for Social Solidarity (EKKA) Situation update in detail below.
[52] 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
[53] Ibid.
[54] This includes article 21 of the 2013/33 EU Directive on reception (recast), implemented in Greek Legislation by article 20 of Law 4540/2018 as well as article14 paragraph 8 of Law 4375/2016 and article 11 paragraph 2 of Law 3907/2011, applicable during the temporal scope of the research. The inclusion of UAC among vulnerable groups is not limited to reception but also extends to the asylum procedure according to Law 4375/2016, including with reference to the authorities' ability to prioritise the registration and examination of international protection applications of persons considered as vulnerable which include UAC (article 51 paragraph 6), the exemption from the border procedure (article 60 paragraph 4) etc.

Having fled war, violence and persecution as well as enduring treacherous journeys from their home countries, upon arrival in Greece, UAC encounter substandard and entirely inappropriate living conditions in overcrowded RICs at the Northern Aegean islands or Evros. They have limited access to basic services such as medical care, psychosocial and legal support, and child-friendly activities and are often exposed to safety risks and incidents of violence. As mentioned above, UAC identified in the mainland are often placed under protective custody (detention) in police stations where detention conditions have been widely condemned as appalling and in violation of their rights by the Greek Ombudsman for Children's Rights, the Hellenic Police itself and Human Rights Watch among others.[55]

In lack of sufficient UAC accommodation spaces, children wait in the above settings or in other facilities intended for temporary stay for several months to even as long as one year,[56] in many cases mixed with adult populations. Similar time frames are experienced by UAC reported homeless and completely unprotected vis-à-vis additional safety risks, while remaining without access to any form of services or material support.[57] As reported by numerous actors and NGOs, including PRAKSIS, **the prolonged stay of UAC in detention or other precarious conditions, combined with incertitude and the lack of clear prospects regarding their next steps in Greece and Europe, has a heavy toll and lasting consequences on their well-being and mental health**. Their state of limbo is further compounded by registration delays and protracted, cumbersome international protection procedures that fail to prioritise UAC as a vulnerable group.

Access to asylum procedures and family reunification

Following the striking rise of asylum applications lodged since 2016, including by UAC, (see Table 2) Greece has the highest proportion of asylum seekers to the inhabitants of the country amongst European Union (EU) Member States 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***.[58] 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. More specifically, 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%).[59]

In such context and in the absence of an effective UAC guardianship framework,[60] unaccompanied children endure long waits and profound uncertainty not only until they access asylum procedures but also while their applications are processed, in many cases without receiving legal support. Delays in the registration and submission of UAC asylum applications may reach several months to even one year, [61] and up to 15 to 2 years until the completion of international protection procedures.[62] These waiting periods are equally the case for UAC applying for asylum in Greece as well as for UAC applicants for family reunification with their relatives in other European countries on the basis of the Dublin III Regulation.

[55] https://www.synigoros.gr/resources/20170731-dt-asynodeutoi-b-ellada.pdf, and Letter by the Hellenic Police to the Minister of Migration Policy on the Detention of Unaccompanied Children, 20 July 2017, available at: http://www.poasy.gr/web/index.php?option=com_content&view=article&id=3400:2017-07-20-12-36-41&catid=127:news-poasy-2017&Itemid=120 and available at: https://www.hrw.org/news/2017/08/02/letter-minister-mouzalas-detention-unaccompanied-children-greece [accessed 10 August 2018]
[56] Background Report. Regional Meeting of Children's Ombudspersons: 'Safeguarding and Protecting the Rights of Children on the Move: The Challenge of Social Integration', 12-14 November 2017.
[57] https://www.praksis.gr/en/advocacy/news/item/praksis-msf-save-the-children-για-την-κατάσταση-των-ασυνόδευτων-παιδιών-στην-ελλάδα
[58] http://asylo.gov.gr/en/wp-content/uploads/2018/01/Press-Release-25.1.2018.pdf
[59] Eurostat News Release 84/2018, 'Over 31,000 unaccompanied minors among asylum seekers registered in the EU in 2017', 16 May 2018, available at: http://ec.europa.eu/eurostat/documents/2995521/8895109/3-16052018-BP-EN.pdf/ec4cc3d7-c177-4944-964f-d85401e55ad9 [accessed 11 August 2018].
[60] In July 2018, the Greek government issued Law No. 4554/2018, which includes new provisions and strengthened protection measures for the guardianship of unaccompanied children. At the time of drafting this report, the Law is not yet in effect. During the scope of this study, under Presidential Decree No. 220/2007, the local public prosecutors (Public Prosecutors for Minors or Prosecutors at Court of First Instance) acted as temporary/provisional guardians of UAC identified in their jurisdiction.
[61] Background Report of the Regional Meeting of Children's Ombudspersons: 'Safeguarding and Protecting the Rights of Children on the Move: The Challenge of Social Integration', 12-14 November 2017, available at: http://www.0-18.gr/inclusion/BACKGROUND%20REPORT%20FINAL.pdf [accessed 10 August 2018].
[62] Ibid.

Table 2: Asylum applications in Greece (2014-2018), as of 30 September 2018

	2014	Difference % (2014-2015)	2015	Difference % (2015-2016)	2016	Difference % (2016-2017)	2017	Difference % (2017-2018)	2018
Total	9,431		13,187		51,053		58,642		47,390
Monthly average	786	39.8%	1,099	287.1%	4,254	14.9%	4,887	7.7%	5,266
UAC (included in the total)	420		383		1,978		2,460		1,655

Source: Greek Asylum Service

With the conclusion of the EU Relocation Scheme at the end of 2017,[63] under which 596 UAC from Greece, mainly Syrian nationals, were registered for relocation to other EU Member States since 2015,[64] the Dublin III Regulation provides the only legal route for the transfer of asylum seekers to other European countries pursuant to their right to family life and unity. While, as highlighted by the AIRE Centre (Advice on Individual Rights in Europe) and the European Council on Refugees and Exiles (ECRE), *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*,[65] the overall implementation of Dublin III is marked by lengthy procedures and protection and operational deficiencies,[66] which prevent the effective realisation of the right to family reunification. Such systemic delays and inefficiencies go beyond the national level, as they also stem from the varying practices and responsiveness of individual Member States.

[63] Only those asylum seekers – both adults and children – who had arrived in Greece between 16 September 2015 and 19 March 2016 and who belonged to a nationality with an EU-wide average recognition rate of 75% or above, were eligible to apply for relocation to other EU Member States under the Scheme. Intended as an EU emergency measure in order to alleviate pressure from Greece and Italy, as frontline States, out of its original target of 66,400 relocations of asylum seekers from Greece, the Scheme was concluded with only 21,994 transfers having been implemented as of 25 March 2018. Finland (137) and the Netherlands (81), followed by Germany (57), Spain (46) and Ireland (38), received the largest numbers of unaccompanied children.

[64] Asylum Information Database (AIDA), *Country Report: Greece, 2017 Update*, available at: http://www.asylumineurope.org/reports/country/greece [accessed 12 August 2018].

[65] 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].

[66] 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].

Box 1: The Dublin III outgoing procedure from Greece – key figures*

As a key entry point of asylum seeking populations into Europe, Greece is one of the main EU countries commencing Dublin III procedures through the sending of outgoing TCRs to other Member States, predominantly for the purpose of family reunification. The competent authority is the Greek Asylum Service (under the Ministry of Migration Policy), which includes a National Dublin Unit tasked with the application of the Regulation and all related legislation.

Since early June 2013, the number of outgoing requests from Greece has been mainly following an upward trend – reaching a total of 21,149 requests, as of 30 September 2018 (see Table 3). The starkest numbers were recorded in 2016 and 2017, **indicating also that asylum seekers arriving in the country increasingly reverted to legal pathways to Europe following the definitive closure of European borders (the 'Balkan Route') in early March 2016** as well as the exclusion of Dublin III-eligible applicants[67] from potential return to Turkey as part of the EU-Turkey deal.

Table 3: Summary of Dublin III outgoing procedures from Greece (7 June 2013 – 30 September 2018)

	2013	2014	2015	2016	2017	2018	Total
Outgoing requests to Member States	404	1,116	1,092	4,894	9,591	4,052	**21,149**
Acceptances by Member States	246	837	803	3,217	7,810	1,993	**14,906**
Rejections by Member States	94	234	264	476	1,854	1,939	**4,861**
Transfers to Member States	45	572	838	959	4,786	4,335	**11,535**

Source: Greek Asylum Service

As summarised in Table 4 below, the vast majority of outgoing requests from Greece are sent on the basis of family reasons (Articles 8, 9, 10, 11), followed by requests for humanitarian reasons (Article 17(2)) and requests on dependency grounds (Article 16).

Table 4: Outgoing TCRs by Dublin Regulation Article (7 June 2013 – 30 September 2018)

	2013	2014	2015	2016	2017	2018	Total
Family reasons (Articles 8, 9, 10, 11)	259	740	886	4,313	7,455	2,964	**16,617**
Documentation and legal entry reasons (Articles 12.1, 12.2, 12.3, 12.4, 14)	0	1	11	23	12	4	**51**
Application in a international transit area of an airport (Article 15)	25	19	0	0	0	0	**44**
Irregular entry (Article 13.1)	0	48	0	9	6	10	**73**
Dependent persons (Article 16)	120	80	19	103	136	91	**549**
Humanitarian reasons (Article 17.2)	0	113	119	321	1,463	579	**2,595**

Source: Greek Asylum Service

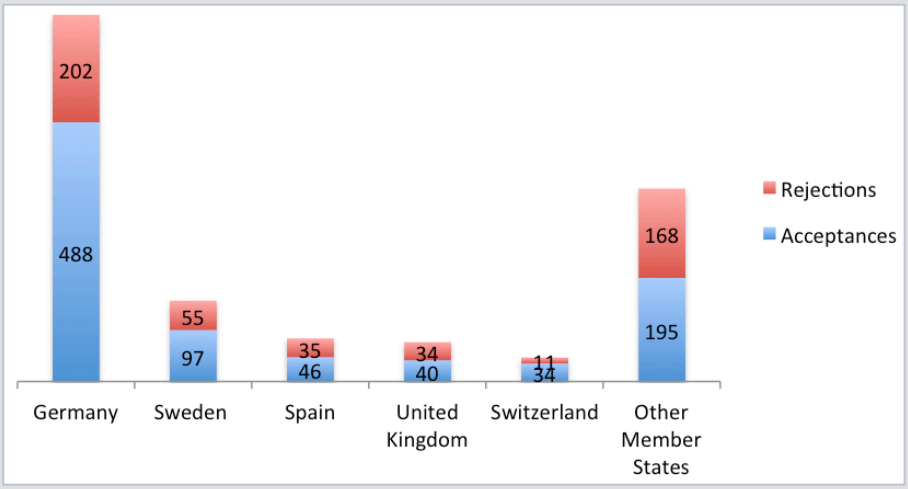
In terms of receiving Member States, **Germany is by far the top recipient of outgoing Dublin III requests from Greece, followed by Sweden, the United Kingdom, Austria and Switzerland**.** More specifically, in 2017 and 2016, Germany alone received 5,788 and 3,600 requests from Greece and issued 5,282 and 2,492 acceptances, respectively. In terms of transfers, only 686 transfers of accepted Dublin III cases were carried out to Germany in 2016; however, transfers picked up in 2017 reaching 3,111.

[67] Applicants falling under articles 8-11 of the Dublin III Regulation (but not articles 16,17(2)) are exempted from the 'border' procedure according to Law 4375/2016 (article 60 paragraph 4).

Over 7 June 2013 to 31 May 2018, 58%, i.e. 11,500 requests, of the total Dublin III outgoing requests from Greece involved children with unaccompanied children accounting for 14 % of the latter figure. 84% of the requests on behalf of UAC involved unaccompanied boys and 16% concerned unaccompanied girls, both predominantly 14 to 17 years old.

Overall, Germany has received the overriding majority of Dublin III outgoing requests on behalf of unaccompanied children identified in Greece. Germany issued the most acceptances as well as rejections, followed by Sweden, Spain, the United Kingdom and Switzerland (see Figure 2).

Figure 2: Acceptances and rejections of UAC Dublin III outgoing request by receiving Member State,
7 June 2013 – 31 May 2018



Source: Greek Asylum

**All the figures and statistics referenced in the Box are official statistical data of the Greek Asylum Service, available on the corresponding website: http://asylo.gov.gr/en/?page_id=110. The figures in relation to child and UAC applicants are derived from an information note of the Greek Asylum Service, as communicated to the Greek Ombudsman for the Rights of the Child and made available to NGOs operating in Greece.*

***The full breakdown of outgoing requests, acceptances and transfers per Member State is available and regularly updated on the above webpage of the Greek Asylum Service.*

4. Overview of the Dublin III Regulation[68]

Pursuant to Article 18 EU Charter of Fundamental Rights[69] (CFR), third country nationals[70] present on the territory of the EU have a right to asylum. The Dublin III Regulation provides that only one EU Member State is responsible for examining applications for international protection[71] lodged within the EU by third country nationals or stateless persons (Article 3(1) Dublin III) and lists the criteria (Articles 7-17 Dublin III) and mechanism (Articles 18-25 Dublin III) for identifying that responsible Member State. The Regulation also contains a number of procedural safeguards for asylum seekers, including a right to information and to a personal interview (Articles 4-5 Dublin III), specific guarantees for children (Article 6 Dublin III) and a right to an effective remedy in respect of transfer decisions (Article 27 Dublin III). It entered into force on 19th July 2013 and applies to all applications for international protection lodged after 1 January 2014.[72] It is binding on all 28 EU Member States and four associated countries (Iceland, Liechtenstein, Norway and Switzerland).[73]

One of the main aims of the Dublin system is to ensure swift access to asylum procedures. Recital 5 of the Regulation states that the method for allocating responsibility *should, in particular, make it possible to determine **rapidly** the Member State responsible, so as to guarantee **effective access** to the procedures for granting international protection and not to compromise the objective of the **rapid processing** of applications for international protection*. **[Our emphasis] An additional objective of the Regulation is to ensure family unity. Pursuant to Recital 14, respect for the right to family life should be a 'primary consideration' for Member States applying the Regulation. Recital 15 states that *the processing together of applications for international protection of the members of one family by a single Member State […] ensure[s] that the applications are examined thoroughly, the decisions taken in respect of them are consistent, and the members of one family are not separated.***

Dublin III is one of **four** EU measures which together form the Common European Asylum System (CEAS). The CEAS seeks to harmonise the interpretation and application of asylum law among EU Member States in order to *establish a system which guarantees to persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States while at the same time dealing fairly and efficiently with those found not to be in need of protection.*[74] Given the lack of internal borders within the EU, Member States adopting the CEAS were also concerned with preventing the secondary movement of asylum seekers within the EU.[75]

The legal basis for the creation of the CEAS is the 1997 Treaty of Amsterdam, which conferred powers to the EU to adopt measures concerning asylum and other forms of international protection.[76] Following the entry into force of the Treaty of Amsterdam in 1999, the European Council held a special meeting to elaborate on the exact contents of the CEAS. It was agreed that the CEAS should include *in the short-term, a clear and workable determination of the State responsible for the examination of an asylum application,*

[68] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanism 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 (recast) *OJ L 180/31 29.6.2013* (Dublin III). The Dublin III Regulation replaces Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, *OJ L/50 25.2.2003* (Dublin II).
[69] Charter of Fundamental Rights of the European Union, *OJ C* 326 26.10.2012 [CFR].
[70] Article 2(a) Dublin III defines a 'third-country national' as any person who is not a citizen of the EU or who is not a national of a State which participates in the Regulation (i.e. Iceland, Liechtenstein, Norway and Switzerland).
[71] Article 2(b) Dublin III defines an application for 'international protection' as an application for refugee status or subsidiary protection.
[72] European Parliament, Briefing EU Legislation in Progress, *Reform of the Dublin System*, 10 March 2017 (available at http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf). Two additional EU legal instruments complete the Dublin system: Regulation (EC) No. 1560/2003 *OJ L 222, 5.9.2003* as amended by Regulation (EU) No.118/2014 *OJ L 39/1 8(2). 2014* which sets detailed rules for the application of Dublin III, (the 'Implementing Regulation'); and Regulation (EU) No. 603/2013 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the recast Dublin Regulation, *OJ L 180, 29.6.2013,*('the 'Eurodac Regulation').
[73] Iceland, Norway, Switzerland and Liechtenstein are bound by the Regulation on the basis of agreements. In particular, Norway and Iceland are bound on the basis of an agreement with the European Community, *OJ L93, 3.4.2001*, Switzerland is bound on the basis of an agreement with the European Community, *OJ L53/5, 27.2.2008* and Liechtenstein on the basis of a protocol between the European Community, the Swiss Confederation and Liechtenstein on Liechtenstein's accession to the agreement between the Swiss Confederation and the European Community, *OJ L 160/39, 18.06.2011*
[74] European Commission, *Evaluation of the implementation of Directive 2003/9/EC of 27 January 2003: laying down minimum standards for the reception of asylum seekers*, 26 November 2007 (available at http://europa.eu/rapid/press-release_MEMO-07-510_en.htm).
[75] European Asylum Support Office, *An Introduction to the Common European Asylum System for Courts and Tribunals - A Judicial Analysis*, August 2016, p.15 (available at https://www.easo.europa.eu/sites/default/files/public/BZ0216138ENN.PDF).
[76] Article 63 Treaty Establishing the European Community (as amended by the Treaty of Amsterdam), *OJ C 325/1 24.12.2002*

common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.[77] Measures adopted to implement the CEAS were to be based on the 'full and inclusive' application of the 1951 Refugee Convention.[78]

In addition to the Dublin III Regulation, the following instruments make up the CEAS:

(i) The *Qualification Directive* which establishes common minimum standards for the qualification for, and loss or denial of, refugee status and subsidiary protection;[79]
(ii) The *Asylum Procedures Directive* which sets common minimum procedures among EU Member States for granting and withdrawing international protection;[80] and
(iii) The *Reception Conditions Directive,* which sets common minimum standards for the reception of applicants for international protection.[81]

The process of determining the Member State responsible under Dublin III starts as soon as an application for international protection is first lodged within a Member State and on the basis of the applicant's prevailing circumstances at the time of lodging.[82] As highlighted above, the Regulation sets out criteria according to which responsibility is to be allocated. In descending order, responsibility is allocated to the following Member State:

(i) if the applicant is an unaccompanied child, the Member State in which he or she has a family member or relative who is legally present, subject to the best interests of the child (article 8);
(ii) the Member State in which the applicant has a family member who is a beneficiary of or applicant for international protection (articles 9-10);
(iii) the Member State which is responsible for the largest number of asylum seeking family members or for the application of the oldest of them, in cases where several family members lodged an application in the same Member State and where the application of the other criteria would lead to their separation (article 11);
(iv) the Member State which issued the applicant with a residence document or visa (article 12);
(v) the Member State whose border has been crossed illegally by the applicant (article 13);
(vi) the Member State where the applicant entered legally and where the need for a visa is waived (article 14);
(vii) in cases where the application is made in the international transit area of an airport, the Member State where the application is made (article 15).

Where no responsible Member State can be identified on the basis of the above criteria, the first Member State in which the asylum claim is lodged shall be the responsible Member State.[83] In addition, in cases where an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in a Member State or vice versa, Member States 'shall normally keep or bring together' the applicant and that individual. Dependency in such cases must be on account of pregnancy, a new-born child, serious illness, severe disability or old age.[84] Finally, the Regulation grants Member States discretion to derogate from the responsibility criteria. Thus, a Member State may examine an application for international protection even if such examination is not its responsibility under the criteria laid down by the Regulation (article 17(1)). A Member

[77] Tampere European Council 15 and 16 October 1999, Presidency Conclusions, paragraph 14 ("Tampere Conclusions") (available at http://www.europarl.europa.eu/summits/tam_en.htm)..
[78] Tampere Conclusions, ibid, paragraph 13
[79] Article 1, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), *OJ L337/9 20.12.2011*) ["Qualification Directive"]
[80] Article 1, Directive/2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) *OJ L180/60 29.6.2013* ["Asylum Procedures Directive"]
[81] Article 1, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), *OJ L 180/96 29.6.2013* ["Reception Conditions Directive"]
[82] Articles 7(2) and 20(1) Dublin III.
[83] Article 3(2) Dublin III.
[84] Article 16 Dublin III.

State may also 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' (article 17(2)).

Unaccompanied children under the Dublin III Regulation

The Dublin III Regulation gives primacy to the right to refugee family unity and to the rights of children.[85] It expressly provides that the best interests of the child shall be primary consideration of Member States with respect to all Dublin procedures and contains additional procedural safeguards for child applicants. [86]

Unaccompanied children are especially protected under Article 8 Dublin III, which appears at the top of the hierarchy of criteria for determining Member State responsibility and therefore trumps all other criteria. The Regulation defines an unaccompanied child as a person under the age of 18 who arrives on territory of the Member State *unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States.*

The routes to family reunification for unaccompanied children under Article 8 Dublin III are as follows:

(i) Unaccompanied children with a **family member** (defined as a parent, spouse or child) or **sibling** who is **legally present** in another Member State **shall** have their application examined in that Member State provided that this is in the **best interests** of the child.

(ii) Unaccompanied children with a **relative** (defined as an adult uncle, aunt or grandparent) who is **legally present** in another Member State shall have their application examined in that Member State provided that the relative is able to **take care** of the child and that this is in the **best interests** of the child**.**

If a Member State where an unaccompanied child lodges an application for international protection considers that another Member State is responsible for examining the claim under Article 8 Dublin III, the following process (which applies to all applicants and can take up to 11 months) applies:[87]

(i) The Member State where the application is lodged requests that the responsible Member State **takes charge** of the minor's application;

(ii) The TCR must be submitted as quickly as possible and in any event **within 3 months** of the lodging of the asylum application, failing which that State where the application is lodged becomes the responsible Member State;

(iii) A decision on a TCR must be made **within two months** of receipt of the request and a failure to issue a decision is tantamount to accepting the request;

(iv) Once a TCR is accepted, the minor must be transferred to the responsible Member State as soon as possible and **within 6 months** of the date of acceptance. If this timeframe is not respected, the Member State where the application is lodged becomes responsible for determining the claim;

(v) The costs necessary to transfer the applicant are to be met by the transferring Member State. Individuals subject to a transfer cannot be required to meet the costs associated with their transfer.

[85] See for example Recital 13 ('the best interests of the child should be a primary consideration of Member States when applying this Regulation'); 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.
[86] Article 6 Dublin III.
[87] Articles 21-22 and 29-30 Dublin III.

5. International legal framework applicable in relation to unaccompanied children and Dublin family reunification

As it derives from the text of the Dublin III itself, several international legal instruments shall be taken into account throughout the implementation of the Regulation's provisions. In this section we will try to summarise the main provisions applicable in cases of family reunification of unaccompanied children.

According to the Dublin III Regulation, three main international legal instruments are referenced and considered to apply in the framework of the Dublin III family reunification for children in particular:

- the EU Charter of Fundamental Rights
- the European Convention for Human Rights[88] (more particularly article 8 of the ECHR)
- the International Convention for the Rights of the Child[89] (CRC)

These three instruments are linked in the Dublin III Regulation's recitals[90] with the **best interests of the child** and the **respect for family life/unity**,[91] both of which are highlighted as a 'primary consideration of Member States when applying the Regulation'.

Best interest of the child

The best interests of the child principle is expressly stipulated in article 24 of the CFR and article 3 of the CRC. Both articles underline that in all actions relating to children, whether by public authorities or private institutions,[92] the child's best interests must be a primary consideration.

Article 24[93] of the CFR is actually based on the CRC, particularly articles 3, 9, 12 and 13 of the CRC.[94] In addition to the explicit provision concerning the best interests of the child, article 24 also stresses:

- the right of the children to the protection and care necessary for their well-being (based on article 3 of CRC);
- their free expression of views and the obligation to take such views into consideration in all matters which concern them in accordance with the child's age and maturity (based on articles 12,13 of CRC); and
- the right of each child to maintain on a regular basis a personal relationship and direct contact with both parents, unless it is contrary to his/her interests (based on article 9 of CRC).

The text of the Dublin III Regulation takes into account various relevant provisions included in the CFR and the CRC, even if no explicit reference to those instruments is made in all cases. Apart from adopting the best interests of the child as a primary consideration for Member States when applying the Regulation, the text of Dublin III also develops from these instruments and in view of the particular personal scope of the Regulation's application,[95] factors and criteria emerging from other legal instruments' provisions regarding child international protection applicants, which should be taken into account when assessing the best interests of the child.[96] Thus, when assessing the best interests of the child, Member States *should take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their*

[88] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950 [ECHR]
[89] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 [CRC]
[90] Recitals 13,16 Dublin III Regulation regarding the best interests of the child and recitals 14,15,16 regarding the respect for family life/unity.
[91] Which is also vested with particular importance in the case of family reunification involving children.
[92] Article 3 of the CRC has a more detailed wording on the types of public authorities and private institutions
[93] 'Rights of the Child'
[94] According to the Explanations relating to the EU Charter of Fundamental rights(2007/C 303/02) available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007X1214(01)&from=EN **for article 24**
[95] International protection applicants. In the context of the personal scope of this study, more particularly, unaccompanied children international protection applicants
[96] I.e. criteria for the Best Interests Assessment described in article 6 of the Dublin III Regulation are also found in article 23 paragraph 2 Reception Conditions Directive. Also, the appointment of a representative in article 6 of the Dublin III Regulation appears to be based on article 25 paragraph 1 a) Asylum Procedures Directive.

particular vulnerability[97] which are included in article 6 of the Dublin III Regulation and are summarised as follows:

- Best interests of the child: a primary consideration for Member States in all procedures in the Regulation.
- Appointment of a representative with appropriate expertise/qualifications to represent/assist the minor in all procedures of the Regulation and ensure that the best interest is taken into account.
- Close cooperation between Member States for the assessment of the child's best interest on the basis of:

  a) family reunification possibilities,
  b) the minor's well-being/social development,
  c) safety and security considerations,
  d) views of the minor in accordance to age/maturity.

- Member States' action to identify family members/relatives in other EU Member States through the potential call of assistance of international or other organisations with family tracing services.[98]
- Competent authorities' appropriate training concerning the specific needs of the children.

Also, in the light of the best interests of the child, the Regulation expressly provides in recital 16 and further developed in the binding article 16, that *when the applicant is an unaccompanied minor, the presence of another family member/relative who can take care of him/her should also become a binding responsibility criterion.*

It thus appears that the Dublin III Regulation concretises the best interest of the child in the particular context of child international protection applicants. It should also be noted that all relevant provisions in the Dublin III relating to the best interest of the child and the rights of the child in general **should be interpreted in the light of the relevant applicable international (including European) legal framework.** Given the explicit reference in article 53 of the applicable CFR[99] regarding the Charter's level of protection according to which the CFR should by no means *be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the Member States' constitutions,* as well as the fact that all EU Member States and States otherwise bound by the Dublin III are party to the CRC,[100] **the level of protection of the best interests of the child in the Regulation should be in compliance and interpreted according to all the relevant provisions in the CFR and in the CRC, which plays a crucial role in guiding EU Law even if the EU is not itself party to the CRC.**[101]

To set an example, the relevant CRC provision of article 22,[102] which specifically refers to the States Parties' positive obligations with regard to asylum seeking/refugee children (accompanied or not), shall also apply. These obligations apply with respect to protection and humanitarian assistance in relation to the rights set forth in the CRC (and other binding international human rights or humanitarian instruments). Furthermore, there are positive obligations in terms of cooperation with the UN/INGOS or NGOs for the protection and assistance of children in the process of tracing parents or other family members in view of their reunification with them. In cases where the above are not found, there is a positive obligation to accord children the same protections as any other child permanently or temporarily deprived of the family environment. Thus, as it clearly derives from the text of the article, the full priority is placed in securing family reunification of children with their parents and/or other family members[103] and should serve as a tool for the interpretation of the relevant Member States' obligations under the Dublin III Regulation. Finally, article 10 of the CRC imposes on States Parties the obligation to deal with the applications made

[97] Recital 13 Dublin III.
[98] This provision appears to be also based on the relevant article 22 paragraph 2 of the CRC https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx
[99] Considering that the Regulation is a text of EU Law, the EU Charter of Fundamental Rights is fully applicable https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/when-does-charter-apply_en
[100] Explanations relating to the Charter of Fundamental Rights (2007/C 303/02) available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007X1214(01)&from=EN **in particular for article 24**, and http://indicators.ohchr.org
[101] See also European Parliament, Briefing December 2016, *Vulnerability of unaccompanied and separated child migrants***,** p.10.
[102] See exact text of article 22 of the CRC available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx
[103] See also European Parliament, Briefing December 2016, *Vulnerability of unaccompanied and separated child migrants***,** p.8 where the reunification of unaccompanied /separated children with their families if in their best interests is considered a positive obligation deriving from the CRC.

by a child or his or her parents to enter or leave a State Party for the purpose of family reunification '**in a positive, humane and expeditious manner'** which should also serve as a guiding provision in the context of the Dublin III Regulation.

Respect for family life/unity

The respect for family life and unity as a primary consideration is included in several recitals of the Dublin III Regulation, guiding through the interpretation of the provisions of the Regulation and making explicit reference to two main international legal instruments: the EU Charter of Fundamental Rights [CFR] and the European Convention on Human Rights [ECHR].[104] Both article 7 of the CFR and article 8 of the ECHR protect the right to '*respect everyone's private and family life, home and communications'* (or correspondence, according to article 8 of the ECHR).[105] **The meaning and the scope of article 7 of the CFR is the same as the meaning and scope of article 8 of the ECHR, which nevertheless does not prevent EU law from providing more extensive protection**.[106] Therefore, it is worth noting that the limitations that may be placed on this right are the ones provided in article 8 paragraph 2 of the ECHR,[107] namely *interference by a public authority in accordance with the Law, necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*[108]In addition, as it derives from the explanations of the CFR, [109] the meaning and the scope of the guaranteed rights are determined not only by the text of the ECHR [and its protocols] **but also by the relevant case law of the European Court of Human Rights and the Court of Justice of the European Union**. [110]

This seems to be of great importance in the particular context of the scope of the Dublin III Regulation and family reunification. In order to interpret the relevant provisions of the Regulation and uphold the respect for family life as a 'primary consideration' while implementing the Regulation, **it does not suffice to comply with the text of the legal instruments mentioned in the recitals of the Regulation, but the relevant case law (ECtHR, CJEU), should also be observed and respected.**[111] In this context, it should be noted that according to settled case law of the ECtHR, during the examination of the relevant factors allowing to limit the right to family life (article 8 paragraph 2), the Court states that *where children are involved, their best interests must be taken into account.* The Court also states that *there is broad consensus, including in international law, in support of the idea that in all decisions concerning children their best interests are of paramount importance and whilst alone they cannot be decisive, such interest certainly should be afforded significant weight.*[112] The ECtHR thus applies the best interest of the child in the striking of the balance between the competing interests in article 8, in light of the international legal context, **even if such right is not expressly protected in the text of the ECHR.** Consequently, in cases where it is believed to be of particular relevance to make reference to case law (ECtHR or CJEU) in the context of the research findings, this will also be included on an ad hoc basis.

It should further be noted that the text of the Regulation makes reference[113] to the respect of fundamental rights and observance of the principles acknowledged in the CFR, explicitly stating that it

[104] Recitals 14,15, and 16 Dublin III.
[105] According to the Explanations regarding article 7 of the EU Charter of Fundamental Rights,(2007/C 303/02) and available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007X1214(01)&from=EN in order to take into account the developments in technology 'correspondence' was replaced by 'communications'. Other than this, the meaning between article 8 and article 7 is the same
[106] As it clearly derives from the text of article 52 paragraph 3 of the CFR: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN
[107] Explanations relating to the Charter of Fundamental Rights (2007/C 303/02) available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007X1214(01)&from=EN
[108] https://www.echr.coe.int/Documents/Convention_ENG.pdf
[109] The text of the explanations maintains that although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the CFR. Also, the binding text of the CFR stresses that they (…)*are drawn up as a way of providing guidance in the interpretation of the Charter, shall be given due regard by the Courts of the Union and of the Member States.* Article 52 paragraph 7 of the EU Charter on Fundamental Rights: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN
[110] Explanations relating to the Charter of Fundamental rights(2007/C 303/02) are available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007X1214(01)&from=EN regarding article 52 paragraph 3
[111] Jurisprudence from European as well as National Courts regarding the Dublin process, including for unaccompanied children, is available at ECRE/ELENA CASE LAW NOTE ON THE APPLICATION OF THE DUBLIN REGULATION TO FAMILY REUNION CASES: http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ECRE%20-%20Case%20Law%20Note%20On%20The%20Application%20Of%20The%20Dublin%20Regulation%20To%20Family%20Reunion%20Cases.pdf
[112] Indicatively ECtHR, Jeunesse v. the Netherlands, 3/10/2014, paragraph 109
[113] Recital 39

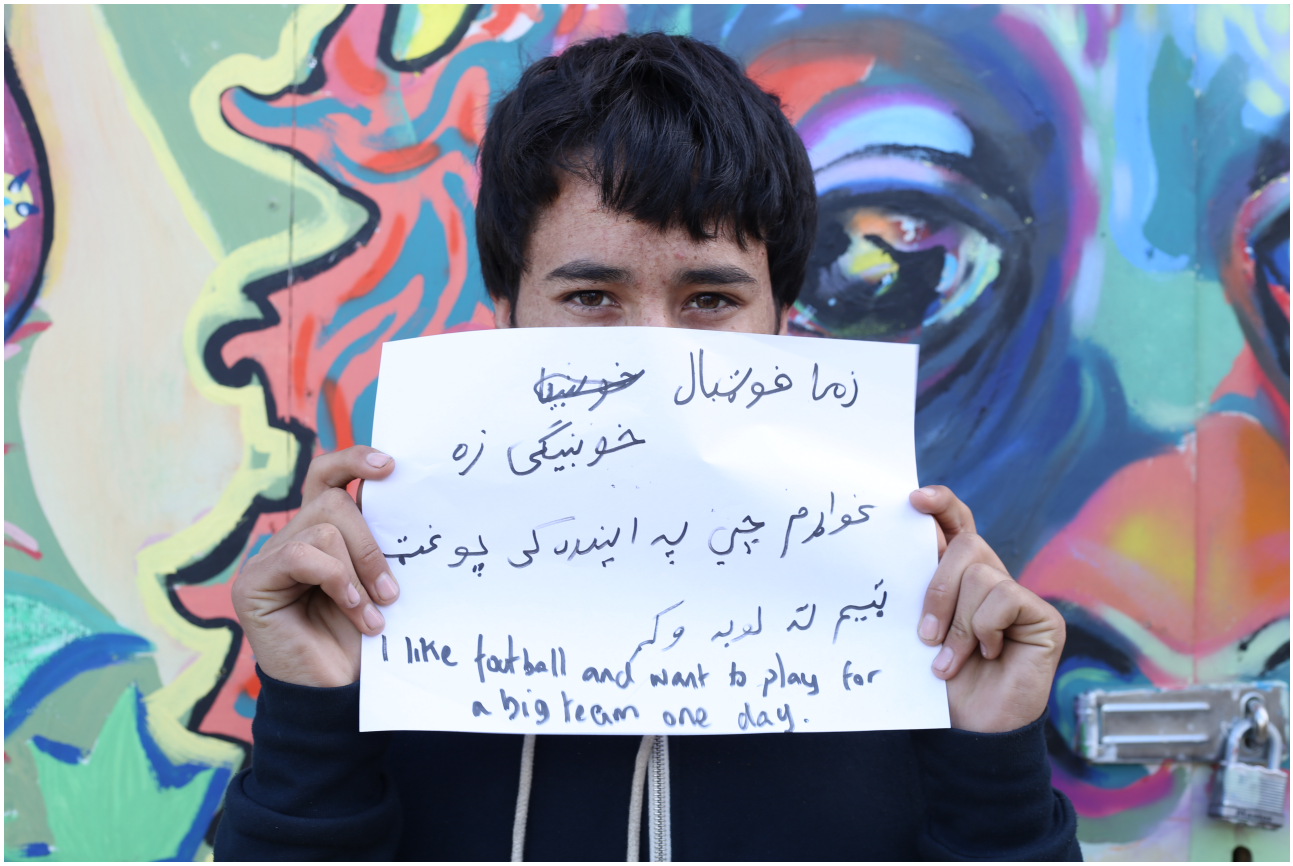
seeks to ensure full observance of specific provisions of the Charter such as the right to asylum (article 18), the right to dignity (article 1), prohibition of torture or inhuman/degrading treatment (article 4), the right to respect of private/family life (article 7) the rights of the child (article 24) and the right to an effective remedy (article 47), stressing that the Regulation should be applied accordingly. In this context, it should be noted that all the above are also applicable, even when not specifically associated with children and family reunification, as well as that all the rights included in the Charter, even if not particularly mentioned in the Dublin III, apply also and may be invoked.

Finally, in the EU[114] secondary law context, the Reception Conditions Directive is considered to apply subject to the limitations of that Directive.[115] Several provisions of this Directive refer to children exclusively[116] or make direct or indirect reference to the particular application in cases of children.[117] Also, the Asylum Procedures Directive applies in addition and without prejudice to the provisions concerning the procedural safeguards under the Regulation, subject to the limitations in the application of the Directive,[118] with child- specific provisions relating mostly to the submission of application (article 7) and guarantees for minor applicants (article 25).[119] As mentioned above, some of these provisions are included in the Dublin III Regulation.[120]

[114] It should be noted that the instruments listed **are not exhaustive**, but only the main ones closely connected to the scope of the research are listed.
[115] Recital 11 Dublin III Regulation.
[116] Such as articles 14,23, 24.
[117] Such as articles 11,17,18,21,22.
[118] Recital 12, Dublin III Regulation.
[119] Also, other references to children among general provisions for applicants are included.
[120] I.e. article 23 paragraph 2 Reception Conditions Directive equivalent to article 6 paragraph 3 Dublin III Regulation.

II) RESEARCH FINDINGS

The findings of the study relate to and analyse issues such as vulnerability considerations, (chapter II) 2) timescales of the process, (chapter II) 3) the requirements and standards for the applicability of article 8 (in particular evidential standards, legal presence of the family relation and the best interest of the child) (chapter II) 4) as well as the exceptional application of the discretionary humanitarian clause to UAC (chapter II) 5).[121] Finally, observations and analysis of particular substantial and procedural aspects are made, such as the question of children absconding while the Dublin III process is ongoing, (chapter II) 6) the main reasons for refusals (chapter II) 7) and systemic constraints and structural issues in the process, (chapter II) 8) culminating in the general conclusions on the research findings (chapter II) 9). The following chapter on overarching statistics and observations serves as an introduction to the findings, providing an overview of some key statistics and key findings.



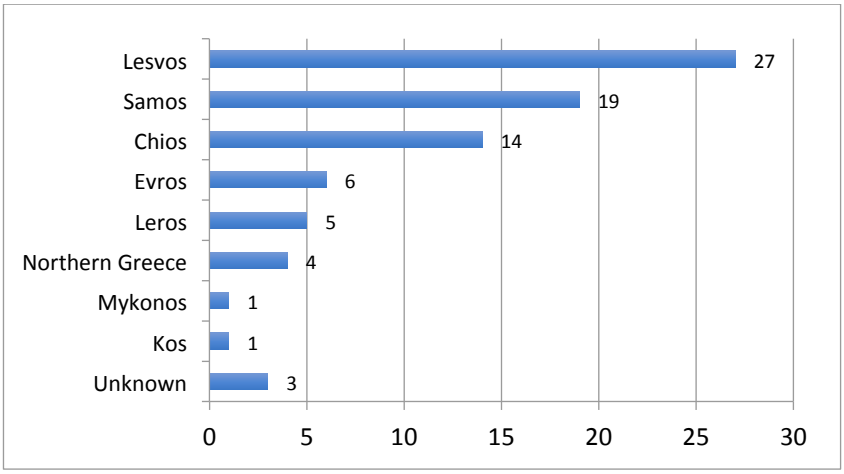
[121] Issues such as evidential standards, the best interest of the child and the family relation's legal status are analysed also under the chapter examining the application of the discretionary clause to UAC and additionally some specific observations are made.

1. The research sample: overarching statistics and observations

As aforementioned, against the backdrop of the recent refugee crisis and with the aim to better understand and highlight current trends and practices in relation to family reunification under Dublin III, the research study focused on **80 cases of unaccompanied children who arrived in Greece from summer 2015 until 2017**. More specifically**,** 64% of the cases concerned arrivals of children during 2016, 12% of the cases concerned arrivals in 2017 and 4% of the cases involved arrivals from summer until late 2015.[122] It is noteworthy that in 2015, as also observed by PRAKSIS shelter staff, most unaccompanied children with family members, siblings or relatives in Europe were less prone to engage with the Dublin III family reunification process, opting instead to continue their journey irregularly. This was attributed *inter alia* to the long timelines associated with the Dublin III procedure and uncertainty of the outcome which often discouraged the children. Following the closure of the 'Balkan Route' in early 2016, absconding rates from the shelters dropped considerably as irregular crossing into Europe became more difficult and costly compared to 2015.

In terms of entry points in Greece, most of the cases covered by this study involve unaccompanied children having arrived on the island of Lesvos (34%), followed by Samos (24%) and Chios (18%), while 8% entered via the Northern border at Evros, 6% arrived on the island of Leros and 5% were identified in other locations of Northern Greece, including Thessaloniki, Alexandroupoli and Kilkis (see Figure 3).

Figure 3: Breakdown of cases by point of arrival in Greece



With regard to gender, **73 of the cases examined concerned unaccompanied boys and seven cases involved unaccompanied girls**. The overriding majority of the children were 15 to 17 years old at the time of arrival/identification in Greece,[123] while the study also looked into cases of younger unaccompanied children of 14 years old (eight cases) as well as from 8 to 13 years old (11 cases) (see Figure 4). Concerning nationalities, most of the cases involved asylum seeking children from Syria (34%), followed by Afghanistan (31%), Pakistan (13%) and other nationalities (see Table 5).

[122] For one out of the 80 cases, the exact date of the child's arrival in Greece is unknown.
[123] For the purposes of the study, the arrival dates correspond to the dates on which the children were first identified and registered by the Greek authorities, as these derive from their registration documents (i.e. first reception documentation) or other official documentation (i.e. TCR forms), as available. In the majority of cases, children usually report that they entered Greece prior to their official arrival/registration date.

Figure 4: Ages of UAC upon arrival in Greece

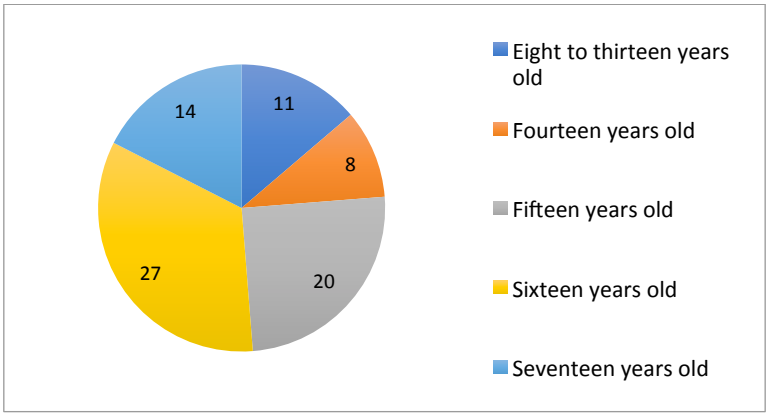


Table 5: Breakdown of cases by UAC nationality

Nationality	Total cases
Afghanistan	25
Algeria	1
Burundi	1
Cameroon	2
Democratic Republic of Congo	3
Eritrea	1
Guinea	1
Iran	2
Iraq	1
Morocco	1
Pakistan	10
Palestine	2
Somalia	3
Syria	27
Grand total	**80 cases**

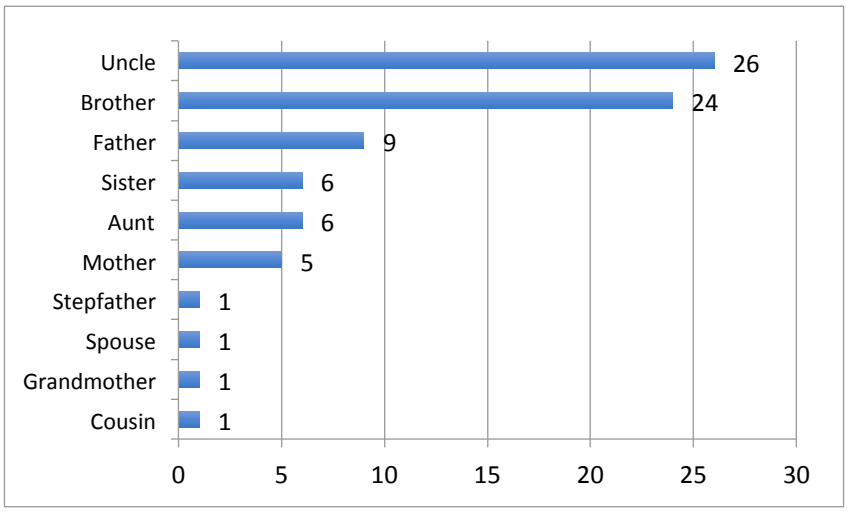
The majority of the family reunification applications examined were lodged by unaccompanied children seeking to reunite with family members, siblings or relatives in Germany, followed by France, the United Kingdom, Sweden, Switzerland and other Member States (see Table 6). Overall, most of the applications concerned reunification requests with an uncle (26 cases)[124] or brother (24 cases), followed by requests to reunite with a father, sister, aunt, mother and other relatives (see Figure 5). Two of the sibling cases involved children requesting to reunite with a sister or brother who were also unaccompanied children at the receiving Member States.

[124] In one of these cases, the reunification request was changed during the re-examination process from the uncle to the child's grandmother and, finally, the request was accepted under the grandmother. In a second case, as part of the re-examination process, it was discovered that the family relation does not qualify as an uncle in the framework of article 8 of the Dublin III Regulation (the relative was the first cousin of the applicant's parent).

Table 6: Breakdown of cases by receiving Member State

Receiving Member State	Total cases
Austria	3
Belgium	1
Denmark	3
Finland	1
France	10
Germany	27
Italy	3
Malta	1
Netherlands	4
Norway	4
Spain	3
Sweden	7
Switzerland	5
United Kingdom	8
Grand total	**80 cases**

Figure 5: UAC's family members siblings and relatives present in the receiving Member States



Regarding the legal basis of the family reunification applications, the majority of the TCRs were sent under article 8(1) of the Dublin III Regulation, followed by article 8(2) and article 17(2) (see Table 7). In six cases, the TCRs were sent under both article 8 (8(1) or 8(2)) as well as article 17(2), in most instances due to the fact that the TCR was sent late by Greece to the receiving Member State. In certain cases that were submitted under article 8(1) or 8(2) but were initially rejected by the receiving Member States, the children's **legal representatives** and the Greek Dublin Unit proceeded with submitting reconsideration requests also on humanitarian grounds under article 17(2)[125] and, in one case, on the basis also of article 16, the so-called 'dependency clause' of the Regulation.

[125] In one case, due to its particular circumstances, the legal basis of the TCR switched from article 8(2) to article 17(2) only, with the completion of a new TCR form. Also, in one case the legal basis of the TCR (sent under article 17(2)) was switched to article 8(1) during the re-examination stage.

Table 7: Dublin articles under which the TCRs were submitted

Dublin article under which the TCRs were sent to the receiving Member States	Total cases
8.1 (family members and siblings)	41
8.2 (relatives)	26
17.2 (humanitarian clause)	7
8.1 or 17.2	3
8.2 or 17.2	3
Grand total	**80**

As to the final outcome of the cases, as of 20th April 2018, 66% of all the cases reviewed had been accepted and either transferred or were pending transfer to the receiving Member State, 15% of the cases were rejected and closed (in most cases, following multiple rejections) 9% of the cases were pending a reply by the receiving Member State to reconsideration requests in response to one or more rejections. In 10% of the cases, the children absconded to continue their journey irregularly due to disappointment and complete loss of trust in the family reunification procedure, long waiting periods and anxiety to reach their family (see Table 8).

Table 8: Final outcome of cases, as of 20 April 2018

Outcome	Total cases	Receiving Member States
Accepted – transferred to Member State[126]	45	Austria (1 case), Belgium (1 case), Denmark (3 cases), Finland (1 case), France (1 case), Germany (15 cases), Italy (3 cases), Malta (1 case), Netherlands (3 cases), Norway (2 cases), Spain (1 case), Sweden (4 cases), Switzerland (4 cases), United Kingdom (5 cases)
Accepted – pending transfer to Member State	8	France (1 case), Germany (5 cases), United Kingdom (2 cases)
Accepted – child absconded	1	Germany (1 case)
Rejected – child absconded	7	Austria (1 case), France (2 cases), Germany (1 case), Norway (1 case), Sweden (1 case), Switzerland (1 case)
Rejected – closed	12	Austria (1 case), France (2 cases), Germany (4 cases), Netherlands (1 case), Spain (1 case), Sweden (2 cases), United Kingdom (1 case)
Pending reply from Member State	6	France (4 cases), Germany (1 case), Spain (1 case)
Pending re-examination request from Greece[127]	1	Norway (1 case)
Grand total	**80 cases**	

However, only 21 (i.e. 26%) of the 80 cases analysed were accepted by Member States directly without undergoing a reconsideration procedure, while four other cases involved so-called 'acceptances by default' due to the fact that the receiving State failed to reply to the TCR within the two month period mandated by Dublin III. It is noteworthy that **negative replies to the TCRs were issued by Member States to 55 of the 80 cases, which then underwent lengthy reconsideration processes** on the basis of

[126] These include cases that had actually been transferred to the receiving Member States as well as fewer cases for which transfer dates had been set and travel arrangements had been completed as of 20 April 2018.
[127] In this case, a first rejection by Norway had been issued but, as of 20 April 2018, the legal representative of the child was in the process of preparing the reconsideration request for submission at the Greek Dublin Unit and subsequent official transmission to Norway.

requests and submissions by the children's legal representatives from the PRAKSIS shelters. In the context of these reconsideration rounds, the majority of the cases additionally received second, third or even further rejections (see Table 9) until ultimately the cases were either accepted, rejected, closed (including due to the child absconding), or pending reply.

Table 9: Number of times each case was rejected by the receiving Member States

Number of rejections per case	Total cases
Zero	25 cases (accepted directly or by default)
1	20
2	21
3	12
4	1
5	1
Grand total	**80 cases**

2. Vulnerability considerations: pre-flight, flight and post-flight

The importance of the right to family life and reunification, as it pertains to unaccompanied children, cannot be examined without a parallel consideration of their distinct vulnerability and special protection needs, as these are intrinsically linked to assessing and serving their best interests. In the context of this study, an examination of the BIAs or psychosocial and psychological reports prepared by PRAKSIS shelter staff in support of the children's family reunification applications points to a range of vulnerabilities faced by the children, while affirming *inter alia* the devastating impact of family separation on their psychological state and well-being.[128]

Overall, unaccompanied children are widely and uncontestably acknowledged as a *de facto* vulnerable group on the basis of three inherent characteristics:

1. First and foremost, their status as children,
2. Travelling alone without any family or legal guardian, and
3. Seeking safety and protection in a foreign country.

Additionally, each child's individual vulnerability extends far beyond the above features, as it is marked by (often repeated or chronic) exposure to different traumatic experiences and stressors throughout all stages of their migratory route. The review of the BIAs and psychological and psychosocial reports for the UAC cases covered by the study indeed allows for a categorisation of such traumatic events and stressors under the different phases of their displacement experience, leading to additional vulnerabilities, as follows:

1. **'Pre-flight'**: stressors and traumatic events experienced at their home country or country of residence.
2. **'Flight'**: stressors and traumatic events experienced during their journey and stay in transit locations prior to reaching Greece.
3. **'Post-flight'**: stressors and traumatic events experienced upon (i) arrival and reception in Greece and (ii) during their stay at the shelters.

'Pre-flight': uprooting for a safer future

The overwhelming majority of the children describe experiences of war, extreme violence, persecution and profound insecurity in their home countries. On the basis of the nationalities of the children covered by this study it is indeed understood that they fled from some of the most violent wars, protracted conflicts and insecure settings in countries in the Middle East and Africa. In the BIAs and psychosocial reports PRAKSIS professionals often present accounts by the children themselves reporting living in constant fear for their lives, fearing involuntary recruitment by armed forces or groups, witnessing killings and bomb explosions or even been victims of explosions and extreme violence themselves. 6% of the cases concern children who were victims of torture, while additional cases involve children who had been kidnapped, detained, ill-treated or consistently threatened by armed groups or gangs.

> *"The situation in Syria was very difficult. Almost every day, there were bombings and we were very afraid for our lives. You see on the news what happens there."*

[128] The examination of the BIAs and the reports was carried out on an anonymised basis. It was complemented by interviews with PRAKSIS' lead child psychiatrist and psychologists working with unaccompanied children at the shelters. Details included in this study regarding children's stories emerge from these documents.

Loss of family members or other loved ones also emerged as a recurring traumatic event. More specifically, 25% of the 80 children covered by this study are orphan formed by the death of one or both parents and 11% of the cases involve children with missing parents whilst still at their country of origin. 'Deliberate' family separation already 'pre-flight' is another relatively common experience, including due to the fact that one or both of the parents, as well as siblings, had been forced to flee their country due to war, persecution or poverty, often when the children were at a very young age. Additionally, experiences of different forms of violence and physical and psychological abuse are particularly widespread, including a few cases of sexual abuse. Domestic abuse, abandonment and neglect are also reported for a considerable number of children, while in many cases, children had to assume caregiving roles and responsibilities disproportionate to their young age. Regarding the cases of unaccompanied girls, five out of the seven girls experienced extreme forms of sexual and gender-based violence (SGBV) including being at risk of forced marriage for two of them.

In total, 15% of the 80 cases concern children facing serious medical vulnerabilities or a disability already in their home countries. Inadequate or inaccessible health care services due to war or in settings of extreme poverty is, moreover, consistently reported in the BIAs and psychosocial reports. Furthermore, disrupted education is common for the overriding majority of the children. The main reasons for disrupted education include schools having been destroyed by war or used as forums for radicalisation, fear of attending due to risk of abduction, or impossibility of attending school as children were forced to work from a young age in order to provide for themselves and their families.

Finally, prior to undertaking the journey to reach Europe, a number of children, especially those belonging to minority or persecuted ethnic groups such as the Hazaras or the Kurds, of a history of prior displacement during which they were exposed to further discrimination and social exclusion.

Table 10: Exposure of UAC to traumatic experiences and stressors

Pre-flight	Flight	Post-flight
War, violence and persecution At risk of recruitment by armed forces or groups Torture, ill treatment and abduction/atypical detention Extreme poverty Death of parents and other family members Family separation Racial discrimination, social exclusion Domestic violence, abandonment and neglect SGBV Disrupted education Serious medical issues or disability Prior experience of displacement/migration Child labour	Violence, abuse and exploitation at the hands of smugglers Witnessing shootings at border areas and deaths Travelling under harsh conditions, sometimes deprived of food and water Arbitrary and involuntary family separation at the borders Homelessness at 'transit' locations Child labour Pushbacks, arrests and deportations Detention and ill treatment Dangerous sea crossings, experiences of sinking boats	Protracted stay under detention and precarious conditions at first reception sites or police stations, unsuitable for children Poor identification and age assessment practices Lack of adequate access to basic goods, information and protection services Homelessness and exploitation Long registration waits and asylum procedures Protracted family separation Prolonged uncertainty and anxiety over the outcome of their legal cases Constant sense of being in 'limbo' and stranded in a transit situation, causing emotional fluctuations and mental health deterioration

‘Flight’: unsafe passage and harrowing journeys

The children repeatedly regarded the journey from their countries of origin towards Europe as the most harrowing part of their migration experience during which feelings of intense fear and anxiety prevailed. Indeed, the research findings corroborate the widely recognised fact that asylum seeking children travelling alone are not only at greater risk but, in fact, fall prey to all sorts of abuse and exploitation.

87% of the children covered by this study arrived in Greece by sea and 13% crossed via the land borders with Turkey. In most cases, their journeys from their home countries to Greece lasted several months and comprised long stays in ‘transit’ locations, particularly in Turkey, where some had to work in order to ensure basic survival items or to finance their crossing to Greece. Harsh working conditions are described in certain cases, including of children as young as 8 years old. Homelessness in ‘transit’ locations is another experience reported in a few of the BIAs and reports.

While most children started the journey alone, others initially fled together with their parents or other family members but were unexpectedly and violently separated at border areas – leaving them highly distressed. In almost all cases, children recount having travelled under unsafe, agonising and exhausting conditions, walking for days with groups of strangers, in bad weather conditions and often deprived of food and water. Experiencing shootings by police or armed groups, being threatened at gunpoint when trying to cross interim border areas as well as witnessing deaths along the way is also reported in many cases. Other experiences include police violence, pushbacks, kidnappings, and getting arrested in efforts to cross borders. Deportation or being detained in Turkey under appalling conditions including ill treatment are also reported.

> *“The initial plan was to go to Germany with my family. When I realised that I lost them, I lost the earth; I was devastated, petrified, I didn’t want to go on but the smuggler was hitting me and forcing me to do so. I was feeling loneliness and fear. I survived very difficult situations, I saw people being killed during my journey and I was also threatened.”*

Repeated physical and psychological abuse as well as exploitation by smugglers was consistently encountered by the children, for example, getting beaten when asking for water or food or not following orders *e.g.* to embark the boats. In one case, the child told of being tortured by smugglers. The sea crossing from Turkey to Greece stands out as a particularly distressing and fearful part of their journeys, with children recollecting over-crowdedness in precarious rubber boats, harsh weather conditions, and violence by smugglers as extremely agonising. Some children also experienced their boats sinking and being rescued by coast guard authorities, as well as pushbacks mid-sea.

> *“The second time that I tried to reach Greece via boat, the Turkish coast guard tried to sink our boat by throwing water to us and by trying to ram our boat. It was terrible and I was really scared for my life.”*

‘Post-flight’: a state of limbo

With regard to the children’s **arrival and reception in Greece**, their experiences illustrate not only the gaps and shortcomings of the identification, reception and protection frameworks in place **but also how these exacerbate pre-existing vulnerabilities while exposing them to new risks and precarious situations.** As underlined in the BIAs and psychosocial reports, instead of receiving the care and protection they need – and are entitled to – as lone asylum-seeking children, the children who arrived at the Greek islands (Lesvos, Samos, Chios, Leros and Kos) found themselves in detention centres under ‘protective custody’, or facing restriction of liberty, within over-congested RICs. Their stay under these highly inappropriate conditions was often prolonged, *e.g.* from two to even as long as ten months (see Table 11). Such cases included children with serious health issues and whose medical vulnerability was not

identified or properly assessed during first reception procedures, resulting in the children becoming further distressed and burdened without access to the requisite medical attention and care.

The children recall living conditions at the RICs as extremely poor and unsafe with exposure to violent incidents and, in some cases, fires erupting in the sites. While in detention, some children externalised their feelings of stress and despair by self-harming, and in one of the cases covered by this study the child attempted suicide. Furthermore, in certain cases, the lack of access to information on asylum procedures and poor age assessment procedures are referred as sources of great stress and anxiety.

After their arrival, a smaller percentage of unaccompanied children, especially some of those who entered via the land borders or who left 'irregularly' from the islands to the Greek mainland, faced detention in police stations on the mainland and deprived of access to essential services or any form of support while held under appalling circumstances. A few children who fell through the cracks of the identification and reception system found themselves homeless for months in the streets of urban areas on the mainland. One case involved a child who was identified as unaccompanied after having been taken to a hospital on the mainland due to serious deterioration of his health as a result of working informally in Greece under exploitative and harsh working conditions. Finally, in two cases, the children experienced family separation in Greece as their parents left to continue their journey irregularly, leaving them extremely unsettled.

Table 11: Average waiting period from arrival in Greece to placement at UAC shelters

Placement trajectory	Number of cases	Average waiting time from arrival in Greece until access to UAC shelters
Placement from the RICs, detention centres or homelessness directly to PRAKSIS shelters	64 cases	126 days (approx.)
Placement from the RICs or detention centres to PRAKSIS shelters, following interim placement to emergency or transit/short-term accommodation schemes (e.g. safe zones)	9 cases	225 days (approx.)
Placement from the RICs or detention centres to other UAC shelters, prior to PRAKSIS placement	7 cases	Data not available

In addition to the above experiences encountered over the initial arrival phases of identification and reception, **another set of 'post-flight' experiences and stressors emerges from assessments and observations during the children's stay at the shelters**. Overall, for the 80 cases covered by this study, the average length of stay at the PRAKSIS shelters is estimated at approximately 340 days; thus the assessments and remarks by shelter professionals also consider fluctuations in the children's behaviour and psychological state over time, including in relation to the pace, progression and outcome of their legal cases of family reunification.

An overarching observation is that, although the children attest that the shelters provide them a protected and supporting environment, they feel in a constant state of limbo and that their lives have been put on hold, as they await to reunite with their families, i.e. they consider themselves to be in a protracted 'transit' state in Greece. From the BIAs and psychological assessments, it can be inferred that the pace of their legal cases and uncertainty over the outcome compound this state of limbo and constitute key stressors that negatively impact the children's psychological state, well-being and developmental process. At the same time, as noted by PRAKSIS' mental health professionals, the uncertainty and unpredictability experienced by the children represent two dominating factors, which often inhibit efforts to integrate them into the life of the shelter and engage them in a recovery path

following the haunting traumatic events they experienced at their home countries and during their journeys. Prior transfers and placements from first reception sites to transit/emergency accommodation schemes or other shelters before reaching the PRAKSIS shelters are also referred to as destabilising experiences for the children,[129] which challenge adjustment and integration efforts.

"I want to be with my father. Then I will start living again. Now I feel like a robot or dead, there is no difference."

Albeit in a safe and caregiving setting at the shelters, it is observed that a number of children, especially of younger ages, continue to lack a sense of safety and emotional stability that is very difficult to restore as they remain separated from their primary attachment figures. Loss of trust and hopelessness as a result of family separation are also widely reported, in addition to patterns of non-attachment and disassociation in their caretaking environment at the shelters. However, over time and following concerted daily efforts by shelter professionals based on individualised care plans for each child, it is observed that the majority of children covered by this study started to adapt to different extents as well as to develop trust towards their (temporary) caregivers.

Education, including enrolment at public schools and tutoring offered at the shelters, is a key part of the children's adaptation and integration process as well as for restoring a sense of 'normalcy' in their lives. However, while a number of the children consistently attended public school as well as educational and recreational activities offered within the shelters, other children regarded such efforts as futile or pointless while they waited to re-start their lives once they were reunited and settled with their family members in other European countries. This finding is particularly important when taking into account that the longer children remain outside educational processes the more their vulnerability increases, especially as a lower education level is found to be a maintenance factor for PTSD associated with feelings of inadequacy and lower self-esteem when faced with the demands of Western societies (Smid et al, 2011).[130]

Moreover, **fluctuations in the children's psychological state and behaviour are overall very common during their stay at the shelters**, and concern the pain, losses and other traumatic events and hardships they experienced in the past as well as the profound uncertainty and intense stress about their future. Such fluctuations include PTSD symptoms such as sleep onset insomnia, nightmares, flashbacks, loss of appetite, depressive mood, negative thoughts about the self and the world, social withdrawal, diminished interest in activities, reactive, aggressive or self-destructive behaviour, feelings of helplessness and despair, panic attacks as well as headaches, physical pain, trembling and other (in some cases, debilitating) somatic symptoms. A few cases required psychiatric treatment or even resulted in hospitalisation for mental health reasons. Throughout the children's stay at the shelters, it is observed that communication with their family members at their home country or in Europe was, at times, comforting and encouraging for the children while, at other times or cases, it constitutes a source of stress and anxiety, especially in cases of worry about the family members' safety and well-being.

Mental health professionals at PRAKSIS notice a clear, causal relationship between the long waits and/or rejections to the children's family reunification applications and deteriorations in their psychological state. As described in a number of cases covered by this study, these rejections heighten the children's sense of insecurity and hopelessness, triggering or exacerbating symptoms described above and even pushing them to new disruptive ways of acting and thinking. In many instances, children interpret any negative development or rejection to their legal case as a form of 'social' rejection, as they feel an acute sense of injustice and are unable to comprehend why they are not allowed to reunite with their family. Moreover, rejections, case difficulties and long waiting periods can have such a profound

[129] Transfers between different UAC shelters were found to be as destabilising for the children due to multiple changes of environment and (re-)adaptation difficulties.
[130] Geert E Smid, Gerty J. L. M. Lensvelt-Mulders, Jeroen W. Knipscheer, Berthold P. R. Gersons & Rolf J. Kleber (2011) 'Late-Onset PTSD in Unaccompanied Refugee Minors: Exploring the Predictive Utility of Depression and Anxiety Symptoms', *Journal of Clinical Child & Adolescent Psychology*, 40:5, 742-755.

impact on the children that they often reverse any progress that has been attained during their stay at the shelters in terms of stabilisation, adjustment and integration. At times, their feelings of anger and despair are directed towards the shelter staff, compromising relationships of trust that have been built.

Overall, for the overwhelming majority of the cases, it was noted through the interviews with the shelter child psychiatrist and psychologists that **children fully lost their trust in the family reunification procedure**. As a result, many children considered or unsuccessfully attempted to continue their journey irregularly, while 10% of the children, including unaccompanied girls, absconded from the shelters following rejections of their cases or long waits, exposing themselves anew to the risks of irregular, unsafe crossings.

Untapped strengths and impediments to development

'Post-flight' stressors induced by delays and shortcomings of family reunification procedures merit particular attention, especially in light of numerous studies which find that these can be *at least as detrimental to mental health as the traumatic experiences in pre- and peri-flight* (El-Awad et al, 2017:1).[131] The empirical experience of PRAKSIS mental health professionals indeed suggests that these often have disruptive and irreversible effects on the children's developmental process, impeding current and future integration prospects. Moreover, the longer the children remain separated from their families the harder the actual reunification and re-integration into family life becomes – often leading to cases of family 'breakdown'.

At the same time, as widely recognised, unaccompanied children have developed tremendous resilience as well as unique strengths and capabilities to survive the traumatic events they have experienced. However, efforts to nurture and further develop such skills and potential are significantly hindered, as they remain anxious and unsettled about reaching their family environment.

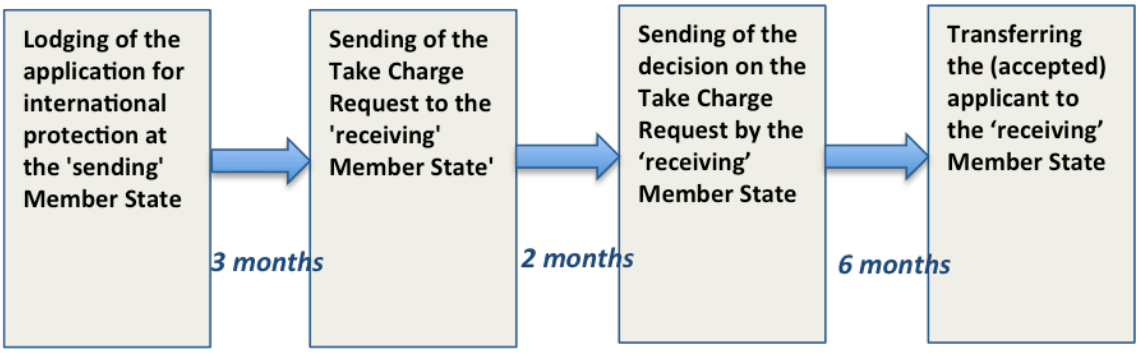
"I hope one day I feel healthy, happy and safe, able to study like every child of my age. I also want to be a good and famous football player and to help the whole world like Christian Ronaldo. I will never forget what I passed and how important it is to help the people who are in need. I miss my family. I am looking forward to seeing my mother again and have a normal life as every child of my age. I deeply desire to start a new life without pain, war and fear."

[131] El-Awad U, Fathi A, Petermann F, Reinelt T. Promoting Mental Health in Unaccompanied Refugee Minors: Recommendations for Primary Support Programs. *Brain Sciences*. 2017;7(11):146.

3. Timescales

Under the overarching aim of guaranteeing **rapid and effective access** to international protection procedures, the Dublin III Regulation specifies the timeframes that States must adhere to for sending, examining and replying to TCRs for family reasons as well as for transferring the applicants upon acceptance. As already outlined in chapter I) 4 (Overview of the Dublin III Regulation), Figure 6 below provides a snapshot of the binding timescales applicable to the Dublin III family reunification procedure, which can take up to 11 months. It is important to highlight that these timeframes are regarded as the **maximum** implementation timelines, while the best interests of unaccompanied children and their specific vulnerabilities should be accorded the necessary primacy for determining reasonable durations of the procedure.

Figure 6: The family reunification procedure under Dublin III – key steps and timescales



The analysis of the 80 UAC family reunification case files covered by this study allows for an assessment of whether the above timescales are respected in practice across the following stages of the Dublin III process:

1) From the children's arrival in Greece until the lodging of their international protection applications.[132]
2) From the lodging of the children's international protection applications in Greece until the sending of their family reunification application (TCR) by the Greek Dublin Unit to the receiving Member States where their family members are present.
3) From the sending of the TCRs until the replies of the receiving Member States.
4) Throughout the TCR re-examination procedure in cases of negative replies to the TCRs.
5) From the acceptance of the TCRs until the transfer of the children.

3A) Accessing Dublin III

The lodging of the children's asylum claims before the Asylum Service is a prerequisite – and the first step – for accessing and commencing the Dublin III family reunification procedure. Over the time period covered by this study (2015-2017), unprecedented arrivals of refugee-seeking population in Greece, combined with persisting challenges and gaps related to reception, registration and asylum processing,[133] resulted *inter alia* in significant delays in the registration of asylum applications, including of UAC and other vulnerable groups. Indeed, for the 80 UAC cases examined, the average waiting period from their arrival date in Greece until the date of their asylum claim registration, and thus access to Dublin III procedures, is estimated to be approximately **4 months (120 days)**.

More specifically, only 19% of the children's international protection applications were lodged at the Greek Asylum Service within 50 days upon their arrival, while over 50% of the children had to wait from 50

[132] Although the above Dublin III provisions obviously do not apply here, this stage is considered in terms of timescales in practice, as the lodging of an asylum application is a precondition for accessing the Dublin III process.
[133] See, for example, related recommendations by the UNHCR: http://www.unhcr.org/58d8e8e64.pdf

to 150 days, and 13% waited as long as 150 to 200 days until lodging their applications (see Table 12). In six cases (8%), waiting periods even reached 200 to 250 days.

In terms of the few cases for which the waiting period exceeded 300 days, these can be considered as somewhat exceptional in the context of the study. For example, one case concerned an eight-year-old unaccompanied boy whose registration was delayed considerably due to his having absconded and been transferred multiple times between different shelters and an UAC safe zone prior to his placement at the PRAKSIS shelter. In another case, the child's asylum application was registered 754 days after his arrival, as he was identified as being homeless and alone after his parent abandoned him and left Greece irregularly.

Table 12: Waiting periods from UAC's arrival in Greece until asylum claim registration

Days from the children's arrival in Greece to the lodging of their applications for international protection	Total cases
0-50 days	16
50 – 100 days	26
100 – 150 days	15
150 – 200 days	10
200 – 250 days	6
250 – 300 days	3
300 – 350 days	2
> 350 days *(754 days)*	1
Unknown[134]	1
Grand total	**80 cases**

Overall, the long waits are predominantly attributed to the **lack of a functional and prompt registration practice as part of UAC first reception procedures and/or any systematic and effective prioritisation mechanism for the registration and processing of UAC international protection applications** at both the islands of arrival and on the Greek mainland. At the same time, as a result of the sharp increase of asylum applications lodged in Greece over 2015 to 2017 and following the implementation of the EU–Turkey Statement, the asylum system was significantly overstretched, **despite considerable capacity and structural improvements. This resulted in delays – often at the expense of UAC.** A further conclusion from this study is that, such delays were particularly notable for children who arrived on islands such as Lesvos, Samos and Chios. The RAOs there faced exceptionally high volumes of asylum applications[135] as well as a number of challenges related to the introduction of fast-track border procedures (UAC excluded) in the context of the EU–Turkey deal. Other key factors contributing to delayed access to asylum procedures relate to the children's lack of adequate access to information as well as to effective guardianship or legal support and representation, especially during their stay at the RICs. Furthermore, gaps in the identification and protection of UAC led to some cases of children who were found to be homeless, either not identified by the authorities or having absconded from the RICs, and thus having no access to asylum procedures for a prolonged period of time.

Another observation emerging from this study is that, in many cases, children's access to legal support and asylum procedures was ensured only after their placement to protected accommodation at the UAC shelters. Indeed, in 49 out of the 80 cases, the children's international protection applications were lodged following their placement at the PRAKSIS shelters with the support of the shelter lawyers, having often waited for prolonged periods of time at the RICs, detention centres, transit sites or being homeless. In the other 31 cases, the children's applications were lodged during their prior stay at the reception centres, UAC safe zones on the mainland or in shelters run by other NGOs.

[134] In one case, the exact date of the child's arrival in Greece is unknown. However, as officially stated in the respective TCR, the boy arrived in Greece in the summer of 2015 and his international protection application was lodged on 20 January 2016; thus having waited 4 to 5 months, at minimum.
[135] According to official statistics by the Greek Asylum Service, over 2017, the RAO of Lesvos registered 11,952 asylum applications, while asylum application registrations at the RAO of Chios reached 6,513 and at the RAO of Samos 5,115.

3B) Dublin III implementation timelines

From the lodging of the application for international protection to the outgoing take charge request (TCR)

The first binding Dublin III time limit triggered since the date of the lodging of an application for international protection is the **three month period** within which the family reunification request (TCR) must be sent from the sending to the receiving Member State. In terms of the 80 UAC cases reviewed, **85% of the TCRs were indeed sent by the Greek Dublin Unit to the receiving Member States within the time limit,**[136] i.e. within 92 days though in none of the cases earlier than 30 days from the date of the children's international protection applications and, in the vast majority, towards the end of the three month period (see Table 13).

Table 13: Number of days from asylum claim registration until the sending of the TCRs

Days from the lodging of the international protection applications to the outgoing TCRs	Total cases
Within the time limit:	
<30 days	0
30-60 days	7
60-92 days	59
Beyond the time limit:	
95-150 days	7
150-200 days	2
200-250 days	1
250-300 days	0
300-350 days	2
Unknown *(exact dates unknown, but TCR sent within the 3 month period)*	2
Grand total	**80 cases**

In 15% of the cases (12 in total), the TCRs were sent after the expiry of the three month time limit – in most cases from 95 to 150 days after the lodging of the asylum application. Recurring reasons for such delays include the excessive workload of the Greek Asylum Service, internal coordination and communication issues which occurred in some instances between the RAOs and the central Dublin Unit in Athens, errors in the registration of the children's names and personal details etc. **In some cases, the Asylum Service officially acknowledged internal administrative errors vis-à-vis the receiving Member States, stating that the delayed sending of the TCRs should not be held against the child applicants.**

In two other cases for which the TCRs were sent 300 to 350 days after the dates of the international protection applications, the reasons relate more to the children's personal circumstances than to systemic or capacity issues. More specifically, in both cases, the family members had not reached the receiving Member States (either through resettlement from Turkey or other routes) at the time of the children's asylum claim registration in Greece. Thus, the family reunification requests were sent late as soon as their families had arrived in the other EU States and the applicants had submitted the necessary evidence in support of the TCRs.

[136] All timescales evaluated in this overall section have been calculated on the basis of article 42 of the Dublin III Regulation.

From the outgoing take charge request (TCR) to the first response by the receiving Member State

In terms of responsiveness to the outgoing TCRs from Greece, **in 77.5% of the UAC cases reviewed,** [137] **the first replies (acceptances and refusals) by Member States were issued within the two month deadline provided by the Dublin III Regulation**, i.e. within approx. 60 days from the dates that the TCRs were sent from Greece. As summarised in Table 14, most of these replies (37 out of 62) were sent in the second half of the timescale.

Table 14: Days from the outgoing TCR to Member States' replies

Days from the date of the outgoing TCR to the 1st reply by the receiving Member State	Total cases
Within the time limit:	
0-30 days	25
30-62 days	37
Beyond the time limit:	
65-90 days	3
90-150 days	7
162-226 days	4[138]
Unknown	4
Grand total	**80**

In 17.5% of the cases (14 in total), Member States replied to the TCRs after the Dublin III time limit. As per Table 14 above, in three of these cases, the receiving Member States responded to the family reunification requests within a month after the expiration of the two month timescale (65 to 90 days since the date that the TCRs were sent) while in seven cases the responses were sent with delays of over one to three months (90 to 150 days since the dates of the outgoing TCRs). **Overall, these 10 delayed responses were received from countries such as Germany (5 cases), Italy (3 cases), Spain (1 case) and Sweden (1 case). Italy's practice of replying to the TCRs beyond the time limit was consistently observed in all the three Italian-bound UAC cases covered by this study, while no such pattern can be inferred for the other aforementioned countries.**

It is notable that, in almost all of the above ten cases, the failure of Member States' to respond to the TCRs within the two month time limit was not interpreted as tantamount to acceptance of the requests (so-called **'acceptance by default'**) which is contrary to article 22(7) of Dublin III. In fact, in only one of these cases did the Greek Dublin Unit activate article 22(7) almost immediately after the expiration of the two month time limit and, while the receiving Member State later proceeded with accepting the specific case, it is unclear whether the acceptance was based on article 22(7) or on a substantive consideration of the request on the basis of the family provisions for unaccompanied children (article 8). In all the other nine cases, **the fact that article 22(7) was not proactively applied resulted in delayed acceptance/transfer procedures, lengthy reconsideration processes or final rejections at the expense of the children.**

With regard to the **four other cases to which respondent Member States first reacted with delays surpassing three months (over 150 days since the date of the TCR), these were indeed processed as 'acceptances by default on the basis of article 22(7)**. However, as further analysed below, these acceptances were acknowledged[139] well beyond the expiry of the two-month deadline, sometimes following

[137] In four cases (5% of the total), the response times could not be calculated, as the exact dates of the TCRs or of the Member States' responses were not available.
[138] In one case, the respondent State never replied, neither to the TCR nor to Greece's ensuing letter of request for acknowledgment of the 'acceptance by default' .The date deemed as the date of response for the purpose of table 14, is the date on which Greece sent the decision of non-admissibility to the respondent State (178 days from the TCR dispatch) to successively organise the transfer. See the sub-section below on 'Acceptance by default'.
[139] In one case, there was no response by the requested Member State acknowledging the acceptance by default.

reminders sent by the Greek Dublin Unit to the concerned Member States for the acknowledgment, including upon the insistence of the children's legal representatives at PRAKSIS.

Case Study

A 16-year old boy from Iraq arrived on the island of Lesvos in early spring 2016. The boy reached the shores of Greece alone, without his parents and was thus identified as unaccompanied. The boy's father and one of his siblings were missing in his country of origin, while one other older brother was an international protection applicant in another EU Member State. Having fled war and violence, the boy's desire was to reunite with him and get a chance to a safe life.

After staying under precarious conditions in Lesvos and then in a refugee camp in the Greek mainland, the boy was finally transferred at a PRAKSIS shelter for unaccompanied children. His asylum application had already been lodged 5 months after his arrival in Greece, and his request to reunite with his brother was sent to the receiving Member State 3 months after the registration of his asylum claim. While his request was finally accepted, the response by the receiving Member State was not received until 4 months after the sending request from Greece, without any justification or reasoning for such delay. The boy was reunited with his sibling two whole years after his arrival in Greece. While exhibiting great patience and courage all that time, the boy was not attending school or any other educational activities in Greece, finding it futile to do so given his prospective transfer. It was only when he would reach his sibling that he believed he would be able to re-start his life.

**Some data, such as the country of origin, have been altered in order to maintain anonymity.*

'Acceptance by default': legal provisions and observed practice

The applicable legal framework of Dublin III (article 22(7)) clearly provides that failure to reply to a TCR within the two month period (or within a one month period, in cases of TCRs pleading urgent reply for reasons specified in article 21(2) of the Regulation)[140] *shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival*. Therefore, such failure automatically results in the obligation to take charge of the applicant, and the requested Member State becomes the one responsible. In these cases, following the expiration of the two month (or one month)[141] period and according to article 10 of the Implementing Regulation (EC) 1560/2003, the sending Member State has two options, either to:

i. initiate the consultations needed (with the Member State responsible) in order to organise the transfer of the applicant, *or*
ii. request a written confirmation by the Member State responsible, which *must confirm in writing, without delay, that it acknowledges its responsibility as a result of its failure to reply within the time limit.* Under this option, the Member State responsible should also proceed with the necessary consultations and cooperation with the sending Member State regarding the transfer of the applicant.

The relevant research sample of the five cases[142] which were actually processed or, at least, initiated as 'acceptances by default' involved Germany (predominantly) or Malta, and included TCRs that were sent under article 8 and/or article 17(2).[143] From the analysis of these cases, it appears that, in practice, the second of the above options is adopted. Namely, the Greek Dublin Unit sends to the receiving State a request for acknowledgment of the 'acceptance by default', including an initiation of consultations

[140] The research sample did not include any cases pleading urgent response to the TCR.
[141] Which applies only in cases of TCRs pleading urgent reply.
[142] In one case, although the acceptance by default process was initiated by the Greek Dublin Unit, it is unclear whether the subsequent acceptance of the case by the respondent Member State was based on an 'acceptance by default' or on a substantive provision of the Dublin III criteria.
[143] These cases are in substance article 8 cases but were sent under article 17(2) due to the fact that the TCRs were sent late by Greece, i.e. after the three month timeframe. It should also be noted that although article 17 does not replicate the 'acceptance by default' provision of article 22(7), it nevertheless also provides for a binding timeframe for a response, thus interpretation by analogy may apply.

regarding the transfer of the children.[144] To allow for the chance that a response to the TCR may have been sent but not registered in the system, the request alternatively asks for the re-sending of the Member State's response to the TCR and proof of delivery. This practice seems to serve the purpose of cooperation between Member States as well as of 'double-checking' the status of a case, given the Greek Dublin Unit's high workload.

In terms of timescales, in the majority of the five cases, the Greek Dublin Unit dispatched the letters of request for acknowledgment of the 'acceptance by default' approximately 2.5 to 3 months after the expiry, considerably beyond the expiry of the two month deadline. In the rest of the cases, the letters were sent fairly quickly, i.e. approximately two weeks after the expiry, in one case following the initiative of the legal representative from PRAKSIS. The acknowledgment by the respondent Member State is also of relevance, in terms of timelines. In particular, in most of the cases, the acknowledgment of the 'acceptance by default' was sent late, from over 3 months to even as long as 5.5 months after the expiry of the two month time limit. In the majority of cases, the interim time period that elapsed from the Greek Dublin Unit's request for acknowledgment[145] also involved delays, lasting on average 2 months, which is contrary to the aforementioned legal requirement to acknowledge *without delay*.

One of the five cases stands out as there was no acknowledgment at all. In this particular case, even though the request for acknowledgment of the 'acceptance by default' was sent by Greece within a couple of weeks, a response by the requested Member State was never received thus resulting in uncertainty for an extended period of time. In the absence of an acknowledgment, the Greek Dublin Unit proceeded with sending relevant documentation, including transfer details of the child, approximately three months after its request for acknowledgment, ultimately organising and effectuating the transfer. Due to these exceptional circumstances in relation to the respondent State's lack of cooperation, the case required excessive support by the child's legal representative who organised legal support to be available upon the child's arrival in the receiving Member State. Although this is not a representative example of positive cooperation between Member States for the proper application of the Regulation, it nonetheless highlights that, given the automatic effect of the lapse of the two month time limit without a timely response entailing the responsibility of the respondent Member State, even without an acknowledgment,[146] the process may ultimately go forward.

In the rest of the nine cases for which there was no activation of the 'acceptance by default' provision by the Greek Dublin Unit,[147] Member States subsequently sent responses regarding the substantive provisions forming the basis of the TCRs – albeit the automatic effect of article 22(7) rendering them responsible. The time range of the responses varied considerably from just a few days after the expiry, in some cases, to even more than two months in other. As already mentioned, this led to delays in acceptances or, often, lengthy reconsiderations processes until the final acceptance or even to the final rejection of a few cases.

Finally, in very few cases, article 22(7) has been referenced in Member State responses for purposes that are irrelevant to the provision. In particular, this practice was observed only in responses from Germany concerning two cases, which is indeed a very limited number compared to the overall case sample as well as vis-à-vis the total number of German-bound cases reviewed (27 cases). Essentially, in these two responses, Germany references article 22(7) of Dublin III in order to temporarily reject them, stating that the response is sent in order to respect the timeframe of article 22 (7) but a final response requires additional investigation. This seems to be a misapplication of article 22(7), which provides for an 'acceptance by default' if no response to the TCR has been sent within two months. By sending a 'temporary' rejection within this two month time limit and requesting more (unspecified) time to consider the case, it appears that the article is invoked in a sense of preventing its enactment (accepting the case

[144] In two cases the relevant documentation was not available.
[145] In one case, information and details regarding the letter for request of confirmation by the Greek Dublin Unit were not available (information was only available for the final acknowledgment by the receiving Member State).
[146] Or even a request for acknowledgment according to the aforementioned provision.
[147] As mentioned above, section 'From the outgoing take charge request (TCR) to the first response by the receiving Member State'.

by default).[148] It is also noteworthy that in one of these two cases, the TCR response was sent after four months had elapsed since this 'temporary rejection'. The response was finally sent following a reminder by the Greek Dublin Unit and despite the fact that the written consent and full proof of the family links and the family member's legal status had been made available in the TCR.

Nevertheless, according to the Regulation, the observance of the two month time limit for a TCR response is binding and applies in general (UAC cases included). This time limit should even be respected in cases that include the exchange of information on unaccompanied children,[149] and sets the obligation to provide within this time limit, a response 'stating full and detailed reasons for the refusal',[150] when negative. It should also be noted that, in the specific occasion of TCRs pleading an urgent response – the only context under which there is a provision for an extension of the time limit initially set by the requesting Member State for the urgent response – the Regulation sets a maximum extension of the time limit initially set, which can occur if *it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex.*[151] Thus, the extension of the (urgent) time limit is not indefinite and requires a justification by the respondent Member State.

Case Study

A 17-year old unaccompanied boy from Palestine arrived in Greece. His parents had been missing for years, with no indication as to whether they were still alive. Blind in one eye and with impaired vision in his other eye, he fled his home country alone finally arriving on the Greek island of Lesvos, after a treacherous journey. Upon arrival in Greece, he was identified as unaccompanied and placed under protective custody at the UAC detention area in Moria where he stayed with hundreds of other children. The site was severely overcrowded and episodes of unrest and violent tensions were frequent, causing him further stress and anxiety. While his medical vulnerability was identified by the authorities in Moria, no steps were taken for further medical care and assessments.

The boy was one of the 80 children that PRAKSIS and other NGOs transferred to an emergency accommodation scheme on Lesvos, as an alternative to the children's prolonged stay under appalling detention conditions in Moria. Given his medical condition, PRAKSIS took urgent steps to subsequently transfer him to one of the organisation's UAC shelters as well as to register the boy's request for family reunification with his older brother who was a recognised refugee in another EU Member State.

While the family reunification request sent by the Greek Dublin Unit included medical documents illustrating the pronounced vulnerability of the child, including the need for specialised surgery to prevent ongoing deterioration of his vision in one eye, no response was received by the receiving Member State within the two month time limit expected by Dublin III. As a result, at the request of the boy's lawyer, the Greek Asylum Service sent a request for 'acceptance by default' of the boy's application, which was only acknowledged by the receiving Member State four months after the expiry of the two month timeline. His transfer was effectuated three months after that, again based on an urgent prioritisation request submitted by his PRAKSIS lawyer.

The failure to ensure swift access to the family reunification procedure, along with delays in the processing of his application, were a source of great anxiety for the boy, leading him to become more and more hopeless and socially withdrawn, while preventing any planning for the arrangement of an eye surgery that required delicate decisions and follow-up care which would be best ensured in a family environment.

**Some data, such as the country of origin, have been altered in order to maintain anonymity.*

[148] See also the very recent CJEU judgment X. and X. C-47/17 and C-48/17 (joined cases) 13 November 2018 which emphasised that the consequences of the acceptance by default provision (article 22 (7)) *cannot be circumvented by sending a purely formal reply to the requesting Member State* [see in detail: http://curia.europa.eu/juris/document/document.jsf?text=&docid=207681&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1441445 **paragraph 67**]]
[149] See article 1(7) (6) Implementing Regulation 118/2014.
[150] Article 5(2) Implementing Regulation 1560/2003
[151] Article 22(6) of the Regulation 604/2013.

The re-examination procedure for cases of negative replies to the take charge requests (TCRs)

Only 21 of the 80 cases examined were accepted by means of a first reply and four other cases were accepted by default. The other **55 cases were initially rejected by the receiving Member States and then all, except one case in which the child absconded prior to receiving the first rejection, underwent a re-examination procedure** to which interim response times apply on the basis of the Implementing Regulation to Dublin III.

In particular, article 5 of the Implementing Regulation (EC) No 1560/2003 provides that in case of a negative reply to a TCR, which is considered to be based on a misappraisal or if additional evidence can be provided, the sending Member State can ask for re-examination of the TCR. Article 5 further states that this 'option must be exercised **within three weeks following receipt of the negative reply**' and that, in turn, the receiving /requested Member State '**shall endeavour to reply within two weeks' [Our emphasis**]. In any event, the latter article stipulates that this additional reconsideration procedure shall not extend the time limits laid out in article 22 of the Dublin III Regulation namely the two month timescale within which Member States must send a response to a family reunification request. According to the relevant interpretation in a recent CJEU judgment, the requesting State is entitled to send a re-examination request even if the two week period for the requested State to respond would elapse **after the expiry of the time limit provided for in article 22 (i.e. two month time limit).**[152]

As summarised in Table 15, 35 out of the 55 cases that first received a negative reply by the receiving Member States were then rejected for either a second, third or even fourth, and fifth time in the context of the ensuing re-examination procedures further leading to response times that significantly exceed the time limits defined by the Dublin III regulatory framework. Regarding the 19 cases that received one negative response and underwent a single re-consideration round, the average duration of the overall TCR consideration period is estimated at **127 days** (ranging from 22 to 459 days), **including re-examination procedures which lasted, on average, 83 days** again, considerably beyond the timescales provided by Dublin III and the Implementing Regulation (see Table 15). In terms of the final outcome of these 19 cases, 13 TCRs were accepted following the first re-examination round, while in three cases Member States' replies to the first re-examination requests were still pending as of 20th April 2018 and one case was pending re-examination, as analysed in Table 15. In one case, the child absconded while the first re-examination procedure was underway and, in another case, the child absconded having lost trust in the process albeit having received a final acceptance of his case.

Twenty-one out of the 55 originally rejected cases were refused twice by the receiving Member States, undergoing one or two re-examination rounds that lasted on average **148 days** (ranging from 23 to 373 days) **thus resulting in overall TCR consideration periods (including the re-examination stage) of an average duration of 188 days**. After the second re-examination request, 12 of these cases were subsequently accepted, one case was rejected and closed, and three cases were still pending a reply by the receiving Member State as of April 20th, 2018. In five cases, the children absconded either before or after the second rejection of their case.

As regards to the 12 cases which received three negative replies, nine of the cases were closed following the third refusal and referred for national asylum proceedings in Greece, while three cases were accepted on the basis of new re-examination requests or additional evidence sent to the receiving Member States. The average duration of the TCR consideration across the 12 cases is estimated at approximately **239 days, including re-examination procedures unfolding, on average, for 204 days**. In terms of the two

[152] CJEU judgment X. and X., (C-47/17 and C-48/17) 13 November 2018, paragraphs 88-89 available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=207681&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1441445. According to this judgment (issued at a time exceeding both the temporal scope and the cut-off date of the study for updates in cases, namely the 20th of April 2018), the requested Member State shall endeavour to reply in the spirit of sincere cooperation in the two week prescribed timeline. In case of non-reply, the re-examination process terminates with the requesting Member State assuming the responsibility, unless there is still time available to send a new TCR within the Dublin III mandatory time limits. [paragraph 90] This judgment concerns two joined cases with particular circumstances not relevant to family reunification and where the primary consideration for family unity and the best interests of the child did not apply and therefore were not taken into account in this interpretation from the Court.

cases that received either four or five rejections in total, the overall durations of the TCR consideration periods reached 228 and 300 days, respectively.

Table 15: Average duration of the TCR consideration and the inclusive re-examination procedures

Number of rejections per case	**Total cases**	**Final outcome of the case, as of 20 April 2018**	**Average duration of the overall TCR examination** *(from the date of the outgoing TCR to the last reply by the receiving Member State)*	**Average duration of the re-examination procedure** *(from the date of 1st negative reply to the last reply by the receiving Member State)*
1 rejection with no re-examination round)[153]	1 case	Absconded: 1 case	**22 days**	**Not applicable**
1	19 cases	Accepted: 13 cases	**127 days**	**83 days**
		Absconded[154]: 2 cases		
		Pending reply[155]: 3 cases		
		Pending re-examination[156]: 1 case		
2	21 cases	Accepted: 12 cases	**188 days**	**148 days**
		Absconded: 5 cases		
		Rejected/ closed: 1 case		
		Pending reply: 3 cases		
3	12 cases	Accepted: 3 cases	**239 days**	**204 days**
		Rejected/closed: 9 cases		
4	1 case	Rejected/closed: 1 case	**228 days**	**179 days**
5	1 case	Accepted	**300 days**	**270 days**

It is evident from the above that the re-examination time limits for the response to the re-examination request are not observed in practice leading to excessively long and cumbersome procedures. According to the review of the case files, **delays are marked throughout all stages of the re-consideration procedure, less though in the sending of re-examination requests from Greece than in the issuing of the corresponding replies by the receiving Member States**. More specifically, the analysis of the 55 case files[157] finds that, in the overriding majority, the re-examination requests were sent by the Greek Dublin Unit, based on submissions by the children's legal representatives, within the three week timeline (21 days) since the receipt of the negative reply as indicated by the Implementing Regulation.

[153] In this case, the child absconded from the shelter approx. 10 days before receiving the first rejection of her case. A re-examination procedure was thus not initiated.
[154] In one case, the child absconded after his case had been accepted following the first re-examination request. In the other case, the child absconded as a response to the re-examination request was pending by the Member State. The case was closed, and no response was received.
[155] As of April 20th 2018, in three cases, re-examination requests had been submitted and pending reply by the receiving Member States.
[156] As of April 20th, 2018, a re-examination request was pending submission by the child's legal representative following a first negative reply to the TCR
[157] In seven cases, the dates of the re-examination requests or the first negative replies were not available.

Nonetheless, in six cases, significant delays[158] of 49 to as long as 173 days since the receipt of the negative reply, were noted with regard to the above time limit.[159] In most of these cases, the delays are due to the onerous nature of the additional evidence required as part of the re-examination request including age assessments and the submission of original or authenticated copies of documents such as birth certificates or DNA tests. In some cases, the delayed sending of the TCR re-examination requests relates to the lack of the children's access to legal support at the RICs or other transit reception sites as the rejections had been issued and remained unanswered prior to their placement at the PRAKSIS shelters.

In terms of the ensuing replies by the receiving Member States,[160] in the majority of cases these significantly exceeded the two week timeline from the date of the re-examination request with the overall average duration estimated at 38 days.[161] In certain cases, countries such as France, Austria, the Netherlands and Italy replied with delays of over 90 days despite reminders sent by the Greek Dublin Unit. In other cases, countries such as the UK and Germany sent holding letters/temporary rejections requesting additional time for re-examining the TCRs without specifying the reasons. In cases involving multiple rejections and re-examination requests the examination periods became increasingly protracted, interim response times were generally not respected and procedures were carried well outside the timelines foreseen by the Regulation.

Overall, the re-examination delays across all 55 cases with negative first replies compounded the already stretched timelines for accessing and completing the TCR process. For the 30 cases that were accepted following one or additional re-examination rounds **the average implementation period since the start of the Dublin III family reunification procedure, i.e. from the lodging of the children's international protection applications until the acceptance of the TCRs is estimated at 260 days**. Given the prior delays in the registration of the children's international protection applications the average waiting period from their arrival in Greece until the acceptance of these 30 cases is estimated at 368 days (see Table 16).

Table 16: Waiting periods for cases accepted following re-examination

Cases accepted following re-examination request(s)			
Days from the children's **arrival** in Greece to the acceptance of their TCRs	Total cases	Days from the **lodging of the international protection applications** to the TCR acceptance	Total cases
130 – 200 days	4	130 – 200 days	3
200 – 250 days	2	150 – 200 days	7
250 – 300 days	3	200 – 250 days	4
300 – 350 days	4	250 – 300 days	7
350 – 400 days	7	300 – 350 days	3
400 – 450 days	3	350 – 400 days	4
450 – 500 days	3	400 – 450 days	1
500 – 565 days	3	510 days	1
745 days	1	-	
Grand total	**30 cases**	**Grand total**	**30 cases**

With regard to the 25 cases that were either definitively rejected and closed or pending reply, the average waiting period from the lodging of the children's asylum applications until the final rejection of their TCRs

[158] According to the information available in the sample, generally in those cases the Greek Dublin Unit sent holding letters requesting more time to provide the additional type of evidence provided.
[159] In total, 11 cases exceeded the three week time limit. Apart from the six cases included in the text entailing significant delays, in the remaining five cases the request was sent from 23 to 34 days since receipt of the negative reply.
[160] In five cases, the dates of the first re-examination request and/or the ensuing reply by the receiving Member States are not available.
[161] This estimation concerns the time elapsed between the date of the first re-examination request sent by Greece until the date of the corresponding reply by the requested Member State. Overall, the relevant dates were available for 45 cases that underwent a re-examination process and for which a reply from the requested Member State had been issued. Out of these 45 cases in only 18 did the requested Member States respond to the re-examination request within the 14-days timescale. For the remaining 27 cases, the requested Member States took from 15 to as long as 302 days to respond to the first re-examination request sent by the Greek Dublin Unit.

or pending reply as of 20th April 2018, is calculated at approximately 295 days; while the average waiting period since their arrival in Greece reached 425 days (see Table 17).

Table 17: Waiting periods for cases rejected or pending reply following re-examination

Cases rejected/closed or pending reply following re-examination request(s) as of 20 April 2018			
Days from the children's **arrival** in Greece to the conclusion of the TCR process (or pending reply)	Total cases	Days from the **lodging of the international protection applications** to the TCR rejection (or pending reply)	Total cases
130 – 200 days	1	80 – 150 days	4
200 – 250 days	2	150 – 200 days	2
250 – 300 days	2	200 – 250 days	3
300 – 350 days	7	250 – 300 days	4
350 – 450 days	2	300 – 350 days	5
450 – 500 days	6	350 – 400 days	1
500 – 600 days	2	400 – 450 days	4
750 – 900 days	3	500 – 550 days	2
Grand total	**25 cases**	**Grand total**	**25 cases**

Cases pending reply as of 20th April 2018

The cases awaiting reply as of 20th April 2018 merit attention in terms of their response times as Member States' replies to the last re-examination requests sent from the Greek Dublin Unit were pending for 34 up to 395 days (see Table 18). The delays noted by France stand out as particularly pronounced and emerge as a pattern in the context of this study both for cases pending reply as well as in cases having received a reply by France although after exceptionally long timelines. In addition to the six cases below, a seventh case in this study was pending a reply by France as part of the re-examination procedure but the child absconded and a reply was never received.

Table 18: Delayed pending replies to re-examination requests by Greece

Receiving Member State	**Number of cases**	**Days pending reply since the sending date of the last re-examination request, as of 20 April 2018**
Spain	1 case	32 days
Germany	1 case	57 days
France	4 cases	44 days
		172 days
		273 days
		395 days

Transfer of the applicants

The final Dublin III binding timescale considered by this study and marking the completion of the TCR procedure for family reunification is the six month period since the TCR acceptance within which the sending Member State must arrange to carry out the transfer of the applicants after consultation with the receiving Member State[162]. Out of the 54 UAC cases which were accepted, as of 20th April 2018, 45 cases had been transferred to the receiving Member States, eight cases were pending transfer and, in one case, the child absconded despite the acceptance of his request. **84% of the 45 cases were indeed transferred within the six month time period**, though most transfers were implemented towards the later part of this timescale, i.e. from 100 to 183 days since the TCR acceptance (see Table 19).

[162] Article 27 Dublin III

It is noteworthy that all five cases transferred to the UK were carried out under relatively swifter timelines as compared to transfers to other States- albeit having undergone lengthy TCR determination periods- on the basis of a specific arrangement involving the UK authorities.[163] Such a procedure, applied during the temporal scope of the study, only pertained to UAC Dublin transfers to the UK and is considered good practice both in terms of faster implementation of the transfers as well as in providing additional safeguards for the children. In all other cases, the children were transferred to the receiving Member States without dedicated escort, apart from one exceptionally vulnerable case who was escorted by PRAKSIS in the absence of any such provision by the State.

Table 19: Cases transferred per receiving Member State, as of 20 April 2018

Days from TCR acceptance to transfer	Receiving Member States	Total cases
Within the time limit:		
< 50 days	Germany (1 case), Malta (1 case), UK (2 cases)	4
50 – 100 days	Denmark (1 case), Germany (1 case), Norway (1 case), Sweden (1 case), UK (3 cases)	7
100 – 150 days	Austria (1 case), Denmark (1 case), Germany (5 cases), Netherlands (3 cases), Spain (1 case), Sweden (2 cases), Switzerland (1 case)	14
150 – 183 days	Belgium (1 case), Denmark (1 case), Finland (1 case), France (1 case), Germany (1 case), Italy (3 cases), Norway (1 case), Sweden (1 case), Switzerland (3 cases)	13
Beyond the time limit:		
183 – 200 days	Germany (1 case)	1
250 – 300 days	Germany (1 case)	1
350 – 410 days	Germany (5 cases)	5
	Grand total	**45 cases**

Significant delays were specifically noted with transfers to Germany. Indeed, all the transfers implemented beyond the six month deadline involved Germany-bound cases. In five of these seven cases the delays even reached 350 to 410 days since the TCR acceptances. Additionally, the six month timeline had elapsed in four other cases that had been accepted and were pending transfer to Germany as of 20th April 2018 (see Table 20). These delays were part of a wider practice recorded since April 2017, following a cap that the German authorities introduced limiting the number of Dublin III transfers from Greece to 70 people (adults and children) per month.

As a result of the above cap, the pace of transfers to Germany was considerably slowed down for administrative purposes and the expiration of the six month timeline became systematic in breach of the Dublin III Regulation (article 29) and affected more than 2,500 adult and child applicants awaiting transfer[164] including vulnerable cases. As reported by the Greek Council for Refugees (GCR),[165] following pressure on the competent authorities Dublin transfers to Germany picked up from September 2017 onwards though a considerable backlog had been created which continued to affect the pace of transfers. At the same time, in September 2017 a ruling[166] by the German Administrative Court of Wiesbaden affirmed Germany's obligation to comply with the six month transfer timeframe provided by Dublin III.

[163] In all these five cases, the transfers of the children were implemented based on travel arrangements, including pre-departure health checks and personal interviews, coverage of travel costs as well as with escort by the International Office of Migration (IOM), on the basis of an agreement between the UK government and IOM.
[164] https://www.proasyl.de/wp-content/uploads/2015/12/Background-Note-Family-Reunification-Dublin_RSA_PRO-ASYL-August-2017.pdf & https://www.solidaritynow.org/en/asylum-seekers-transfers-greece-germany-family-reunification-eu-regulation-6042013/
[165] http://www.asylumineurope.org/reports/country/greece/asylum-procedure/procedures/dublin
[166] http://www.asylumlawdatabase.eu/en/content/germany-bamf-must-comply-dublin-timeframes-transfer-applicants-greece-despite-agreement

Table 20: Cases pending transfer per receiving Member State, as of 20 April 2018

Pending transfer to	Total cases	Days pending transfer since TCR acceptance
France	1 case	▪ 52 days
United Kingdom	2 cases	▪ 38 days
		▪ 67 days
Germany	5 cases	▪ 80 days
		▪ 224 days
		▪ 254 days
		▪ 339 days
		▪ 351 days

Case Study

A 16-year old unaccompanied boy from the Democratic Republic of Congo (DRC), arrived on the Greek island of Chios. His journey from the DRC to Greece lasted approximately nine months during which he was separated from his mother. He remembers embarking the rubber boat from Turkey as one of the most frightening parts of his journey as there was barely space for the 70 people on a boat which could not fit even half of this number. His main goal and desire was to be reunited with his sister who was a beneficiary in another EU Member State.

The boy waited at the Reception and Identification Centre (RIC) on Chios for 8.5 months, before finally being transferred to a protected, dignified and child-friendly environment at one of PRAKSIS' UAC shelters on the mainland. His international protection application had been registered in Chios seven months after his arrival in Greece and the family reunification request to the receiving Member State was sent shortly after he was transferred to the PRAKSIS shelter.

Already in a highly vulnerable psychological state and in a generalised state of insecurity and anxiety the boy became increasingly distressed and despairing as he received multiple rejections to his request to reunite with his sister. A highly committed boy, he consistently attended school during his stay at the shelter as well as foreign language classes and other recreational activities. His main hope was to live with his sister to re-start his life with his family and each rejection and further delay in the reunification process led to moments of great psychological distress and unpleasant feelings that impacted his psychological stability and overall functionality.

Overall, his case was rejected four times, following various re-examination rounds and with the receiving Member State questioning different elements of proof on different rounds including the authenticity of documents such as the boy's birth certificate as well as the validity of age assessment tests conducted in Greece as part of the proof requested to consider his case. Following repeated efforts and submissions by the boy's lawyer at PRAKSIS, in close collaboration with the Greek Dublin Unit, his case was finally accepted and his transfer was carried out two years after he had arrived in Greece.

**Some data, such as the country of origin, have been altered in order to maintain anonymity.*

3C) Overall waiting periods and prioritisation of vulnerable cases

As a result of the delays observed throughout all the stages of the family reunification procedure from accessing asylum registration until the transfer to the receiving Member State, **the children had to wait on average 477 days to reach their families since their arrival in Greece**. More specifically, as summarised in Table 21, in 82% of the 45 cases transferred, the total waiting period exceeded one year and, in almost 30% of the cases, the children waited over one year and a half.

Table 21: Overall waiting period from arrival in Greece to transfer

Days from children's arrival in Greece to transfer to receiving Members States (cases accepted and transferred)	Total cases
250 – 300 days	3
300 – 350 days	5
350 – 400 days	7
400 – 450 days	5
450 – 500 days	6
500 – 550 days	6
550 – 600 days	6
600 – 650 days	1
> 700 days	5
Unknown[167]	1
Grand total	**45 cases**

In terms of the eight cases that were transferred in less than a year since their arrival in Greece, the relatively faster implementation timelines can, to a certain extent, be attributed to swifter TCR consideration procedures especially as most of these cases were directly accepted without a re-examination procedure. Moreover, in one of the eight cases the child's legal representative requested an expedited transfer to the respective Member State on the basis of his specific medical vulnerability.

However, based on the interviews with PRAKSIS' lawyers and analysis of the 80 case files, no overall pattern or best practice can be inferred as contributing to faster procedures as these heavily rely on varying, overstretched and cumbersome administrative practices of Member States. These point to a practical failure to prioritise UAC as a particularly vulnerable group and to apply relevant case law of the Court of Justice of the European Union (CJEU) in this respect, which has highlighted that *since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible.*[168]

Notwithstanding the fact that UAC are an overall *de facto* vulnerable group the research findings confirm that there is **a lack of systematic, institutionalised practice for prioritising exceptionally vulnerable UAC cases throughout the different stages of the Dublin III procedure**. Rather, prioritisation efforts for particularly exceptional cases, *e.g.* for registration at the Asylum Service, urgent consideration of the TCR or expedited transfer, are ad hoc and without any continuity relying entirely on the legal representatives or other protection actors of NGOs depending on the stage that they receive and are called to support each individual case.

[167] In one case, the exact date of the child's arrival in Greece is unknown. However, as officially stated in the respective TCR, the boy arrived in Greece in the summer of 2015 and his transfer to the receiving Member State took place on 7 February 2017 – thus having waited 1,5 years, at minimum.
[168] CJEU, C-648/11, M.A. B.T. D.A, judgment 6/6/2013, available at: http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130da5e7b89c9631a4da9aa37aeba32883a40.e34KaxiLc3eQc40LaxqMbN4Pb3uMe0?text=&docid=138088&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=459151

4. Requirements and findings on the application of Article 8: proof, legal presence, best interest of the child[169]

4A) Evidence: a summary of the legal requirements and practice

Overview of the legal requirements

According to the applicable legal framework, the assessment for the determination of responsibility will be based on two possible types of evidence: formal proof (probative evidence) and circumstantial (indicative) evidence. As to the value placed in each, formal proof determines responsibility, as long as it is not refuted by proof to the contrary, while circumstantial evidence refers to indicative elements which while being refutable may be sufficient in certain cases according to the evidentiary value attributed to them, which (value) shall be assessed on a case-by-case basis.[170] The particular categories of each type are included in Annex II of the Implementing Regulation (EU) 118/2014[171] and, for the reunification of unaccompanied children in particular (article 8 of the Dublin III Regulation), include as **formal proof** the following:

a) written confirmation of the information by the other Member State,

b) extracts from registers,

c) residence permits issued to the family member,

d) evidence that the persons are related, if available,

e) failing this and if necessary, a DNA or blood test.

As to the type of **circumstantial evidence**,[172] categories acknowledged include:

a) verifiable information from the applicant,

b) statements by the family member concerned, and

c) reports/confirmation of the information by an international organisation, such as UNHCR.

Thus, as it appears to derive from the above framework, the means of proof and circumstantial evidence apply in particular to the establishment of the legal status of the family member/sibling/relative, the identification of the applicant and the establishment of family links.

It should be noted that not all of the above elements of proof and circumstantial evidence need to be available, but according to the rule, circumstantial evidence submitted should in principle be followed by an item of probative value (formal proof).[173] It is nevertheless provided that even in cases where there is no formal proof, the requested Member State is obliged to acknowledge responsibility if the circumstantial evidence **is coherent, verifiable and sufficiently detailed to establish responsibility.**[174]

As to the procedure followed, the requesting Member State ought to include copies of all proof or other evidence, which demonstrate that the requested Member State is responsible and, where appropriate, include the circumstances in which it was obtained and the probative value attached to it by the requesting Member State.[175] Also, where necessary, a copy of any written declarations/statements by the applicant should be included.[176]

Concurrently, the requested Member State should assess all arguments in law and in fact, on the basis of the provisions of the Regulation as well as the lists of proof and circumstantial evidence and **check**

[169] For the purpose of this chapter, the term 'family relation' is used to include all possible categories applicable to article 8, namely family member, sibling and relative.
[170] Article 22 (3) Dublin III Regulation.
[171] Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:039:0001:0043:EN:PDF
[172] Implementing Regulation 118/2014 Annex II, List B 1. (circumstantial evidence for unaccompanied children's reunification cases article 8). There is no explicit reference to the sibling or relative in the title - only to family member or guardian. However, List A (formal proof) includes siblings and relatives and there is no explicit distinction of required evidence of the family relationship between family members on the one hand and siblings or relatives on the other in the text of the Dublin III Regulation or the Implementing Regulation 118/2014. Therefore, in our view List B appears to apply, at least by analogy, in cases of siblings and relatives too.
[173] Annex II List B, Implementing Regulation 118/2014
[174] Article 22 (5) Dublin III.
[175] With reference to the lists in Annex II Implementing Regulation 118/2014
[176] Article 1(1) Implementing Regulation 1560/2003.

exhaustively and objectively on the basis **of all the information directly or indirectly available** to it whether its responsibility is established.[177]

At this point, it is important to note that, as explicitly provided: ***the requirement of proof should not exceed what is necessary for the proper application of this Regulation.***[178] [**Our emphasis**] This is quite an important provision that sets the framework of the evidential requirements and standards, which should be applied by the Member States and serves as a guiding principle in the application of the Regulation. How this is put in practice by the Member States in the course of their assessment of responsibility is examined further below.

Another point of relevance is the need for cooperation between Member States, which is of great importance in the application of the Regulation as a whole, but vested with particular significance in unaccompanied children family reunification cases.[179] This cooperation applies in the context of establishing the family links, among other points. In particular when, in possession of information that makes it possible to start identifying or locating a member of the family/sibling or relative, the Member State carrying out the process for the determination of the responsible Member State (for the examination of the asylum application) shall consult other Member States as appropriate and exchange information in order to identify the family relation, **establish the existence of proven family links** and assess the capacity of a relative to take care of the unaccompanied child.[180] This process is formalised through a standard form for the exchange of information on the family members, siblings or relatives of an unaccompanied child,[181] which, according to the relevant provision,[182] shall be used in such cases. This procedure is meant to be initiated before the TCR is dispatched and should not in principle extend the prescribed timeframes of the Dublin III.[183]

Furthermore, as it clearly emerges from the above, it initially serves the purpose to identify/locate[184] the family relation as well as to exchange further information for the purposes of the application of article 8. As it derives from the cases considered in this research study and analysed further below, this procedure does not seem to be generally initiated in practice by the Greek Dublin Unit. It appears that in the vast majority of cases included in the sample, the family relation's identification and contact details are already available at the time of the lodging of the asylum application, therefore the need for location and identification is not present in these cases. Still, considering that this process is not limited only to identification and location of the family relation, as stated, it can be presumed that the high workload, time constraints and understaffing of the Greek Dublin Unit may also be of relevance in the absence of initiating this procedure in practice in general. **However, it should be underlined that according to the Regulation's provisions, the above process is a State responsibility, whereas the need to apply it becomes particularly evident and pressing in cases of children who do not benefit from legal representation in the process**.

Furthermore, even if this process is not generally applied in practice, it is important to highlight that according to the prescribed abovementioned procedure, the cooperation of the requested Member State is considered appropriate. The respondent State has the responsibility not only to act for the identification/location of the family relation, but also to give information about a) his/her legal status, b) the type of family relationship and the documentation on which it is established.[185] **This demonstrates**

[177] Article 3(2), ibid.
[178] Article 22 (4) Dublin III.
[179] As provided for in recital 3 of the Implementing Regulation (EU) 118/2014 *In order to increase the efficiency of the system and improve the cooperation between national authorities, the rules regarding (…) the cooperation on reuniting family members and other relatives in the case of unaccompanied minors…need to be amended*
[180] Article 1 (7) (4) Implementing Regulation 118/2014.
[181] See article 6(5) Dublin III Regulation and Annex VIII Implementing Regulation (EU) 118/2014, the latter available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:039:0001:0043:EN:PDF
[182] Article 1 (7) (6) Implementing Regulation 118/2014
[183] Ibid, it is provided that the requested Member State shall endeavour to reply within four weeks from the receipt of the request and when compelling evidence indicates that further investigations would lead to more relevant information, it will inform the requesting State that two additional weeks are needed. The request for information shall be carried out ensuring full compliance with the deadlines presented in the Dublin III article 21 (1) [three months for the TCR] and 22 (1) [two months for the response to the TCR]. However, according to the applicable article 34(5) of the Dublin III Regulation, if the requested Member State does not respect the time limit set for responding to the request for information, and the research carried out withholds information showing that it is responsible it may not invoke the expiry of article 21 (TCR) for refusing to comply with the TCR and the time limit provided in article 21 shall be extended to the time equivalent to the delay in the reply by the requested Member State.
[184] Provisions relating to the identification and location process are included in articles 6(4) and 6(5) of the Dublin III, as well as article 1(7)(3) and 1(7)(4) of the Implementing Regulation 118/2014.
[185] *Please provide information on the type of data used to establish the relation (e.g. administrative certificates or other types of official documents found in possession of the person*)(Also, the submission of attachments is provided for in this Annex): Annex VIII, Implementing Regulation 118/2014 available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0118&from=GA

that the requested Member State is considered responsible, according to the applicable legal framework, to proactively contribute to establishing the family links and make available this information to the requesting Member State[186] within the time limits prescribed.

The summarised legal framework in terms of evidence in this section may serve as the basis for comparison in relation to the research findings regarding the practice depicted below.

Evidential standards in practice

As a preliminary remark, it should be noted that in this chapter (II) 4) the analysis is focused on cases in which the TCR is sent by the Greek Dublin Unit under article 8 exclusively[187] and to evidence in relation to the identification of the applicant, the legal status of the family relation as well as to the family links. Furthermore, the assessment of the evidence by the respondent Member States, evidence submitted during the re-examination and particular types of evidence (such as BIAs, age assessments, DNA) submitted, are analysed. Evidence concerning the ability of the relative to care or other issues relating to the BIA procedure are analysed in the respective parts of the study further below.

Evidence sent with the take charge requests (TCRs)

According to the research sample, in 64 of the 67 cases sent under article 8, evidence was available[188] regarding the identification of the applicant, the legal status of the family relation as well as evidence relating to the family links and submitted with the TCR.

In all the above cases, the **legal status of the family relation** was established by relevant proof in the TCR. In particular, in all cases, both under article 8(1) and 8(2), the TCR included documents regarding the legal status such as residence permits/identity cards or international protection applicant cards (depending on the status of the family relation). Sometimes further documents, such as travel documents/passports, identity cards in receiving Member States were included. There were few cases where only the family relation's passport in the receiving State was provided as document proving the legal status. Thus, the legal requirement, generally set as the rule as stated above of requiring at least one element of formal proof, appears to be observed in the TCR procedure.

With regard to the **identification of the applicant**, in the majority of cases (**51[189] out of 64** cases) the TCR included identification documents of the applicant from the country of origin. These included identity cards from the country of origin, birth certificate, passport (sometimes original) or, in a few cases, other documents from which their identity could be established such as family books or certificates. Sometimes, multiple identification documents from the country of origin were submitted. Only in 13 cases was the identification of the applicant based solely on the registration of the international protection application.[190]

Regarding the substantiation of **family links** in the TCR, a large proportion of cases (**53 out of 64)** included directly available documentation from the country of origin,[191] which fully or partly established the family links. If partly established, the respondent Member State's authorities would also have to check the evidence available to them (i.e. through the asylum records of the family member, sibling or relative) in accordance with the abovementioned relevant legal provision of the Implementing Regulation 1560/2003[192] and combine it with the evidence submitted through the TCR in order to fully substantiate

[186] Which is responsible for carrying out the procedure of determination.
[187] Cases where the TCR is sent under article 17(2) exclusively or alternatively will be analysed in chapter II) 5. The present chapter includes cases, however, where the reexamination request was sent on the basis of article 8 and additionally on article 17(2)
[188] Out of 67 cases sent under the legal basis of article 8 (the remaining 13 cases were sent under article 17 paragraph 2 exclusively or alternatively), in two cases the information sent with the TCR regarding identification of the applicant and family links were not available. In one of them the information regarding the legal status was not available either. Both concerned cases where PRAKSIS was not involved at the time of the TCR. In another case, the Greek Dublin Unit had not attached the documentation at the time of the TCR by mistake and attached it at the re-examination stage. Therefore, the sample in this subsection is 64 cases.
[189] In two of those cases the documentation was considered illegible, included also in the family links analysis (see below).
[190] Ten 8(1) cases and three 8(2) cases. In one of them the sibling submitted documents later in the receiving Member State.
[191] Namely available with the TCR.
[192] To check exhaustively and objectively on the basis of all the information directly or indirectly available to it. Article 3(2) Implementing Regulation (EC) 1560/2003

the family link.[193] In an exceptionally limited number of cases (two), 'partly' substantiated family links refers to evidence from the country of origin concerning only the family member/sibling,[194]not the applicant, whereas the opposite (evidence concerning the applicant) is the rule in partly substantiated family links. **It is worth noting that the majority of the above cases (34 [195] out of 53) had full proof of family links directly *available through* the TCR,** whereas the remaining cases had partly established family links.

There is a wide variety of evidence from the country of origin, sometimes originals,[196] submitted to substantiate the family links, including family books or certificates for either or both the applicant and the family relation and even sometimes the intermediate family member's[197] family book. In other cases, identity cards, birth certificates and passports from the country of origin for either or both the applicant and the family relation are submitted and sometimes, in cases of reunification with relatives, the intermediate family member's identification documentation from the country of origin is provided. In some cases, the above types of evidence may be combined such as a family certificate of the relative and birth certificate/identity card of the applicant and intermediate family member. It is also worth mentioning that in several cases, there are multiple types of documentation substantiating the family links such as family books on both sides and, in addition, identity cards/passports on both sides.

Regarding the remaining number of **11[198] out of 64 cases where no documentation from the country of origin** was submitted to establish the family links, it should be noted that in all cases, including the ones described in this category, the TCR always contained: a) documentation regarding the legal status of the family relation, issued by the respondent Member State which often includes some relevant indicative information regarding the family links (i.e. surname) as well as b) the registration data according to the international protection applicant card of the applicant (the child).

In relation to cases with no documentation of family links from the country of origin, there was one case with a BIA form, four cases with a written consent[199] from the family member/sibling[200] and one case concerning reunification with a relative where the relative's written consent was submitted.

Furthermore, although article 8 does not explicitly provide for a written consent of the applicant to be submitted, this is always the case in practice and is included with the TCR.[201] Even though there is no provision for consent by the family relation in article 8,[202] we have seen a relatively high number of cases where the written consent of the family relation was included in the TCR (29 cases). [203] In three other cases, the written consent was requested directly by the respondent authorities in contact with the family relation, or directly submitted by the family relation to the authorities.

Also, in five cases written statements of the family relations' in the respondent States have been submitted in the TCR procedure.[204] In three of those cases, there was evidence for family links from the country of origin partly available with the TCR, therefore the written statements could be considered as circumstantial corroborative evidence especially considering that an element of proof (regarding the legal status of the family relation) is always included in the TCR.[205] Also, in the vast majority of cases, contact details of the family relation in the respondent Member State were included in the TCR.

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[193] I.e. in case of siblings, when the applicant's identification document from the country of origin is sent specifying parents' names, the authorities might have to crosscheck their records for the relevant statement/documentation submitted by the sibling, as the documentation regarding legal status in the respondent Member State does not, in principle include the parents' names, only surname, which is however indicative.
[194] Both 8(1) cases.
[195] In two of those cases the documentation was considered illegible therefore further documentation was supplied in the reexamination procedure in one case, and other evidence in the other.
[196] In a limited number of cases the documentation proving family links/ identification of the applicant is also translated.
[197] In cases of reunification with relatives.
[198] Eight article 8(1) cases and three article 8(2) cases in total. In one of those cases the evidence was submitted after the TCR directly by the family member to the competent authorities of the respondent Member State.
[199] In practice, written consents are sometimes submitted as indicative evidence that the persons involved are related. Also, in some cases where evidence for family links was partly established directly, written consents were included.
[200] In one of those cases the BIA was also included.
[201] Individually or through his/her representative if the child is below 15 years old.
[202] Potentially because this is considered to be included in the responsibility of the respondent Member State to check the relative's willingness and ability to care a procedure deriving from the abovementioned standard form for the exchange of information between Member States included in Annex VIII of the Implementing Regulation 118/2014. This is a procedure not often observed in practice.
[203] 19 8(1) cases and 10 8(2) cases.
[204] Also, in one other case, a written statement by the mother declaring her willingness for her child's reunification with his aunt was submitted.
[205] As already mentioned, it is provided that circumstantial evidence submitted should in principle be followed by an item of probative value (formal proof). The written statements are considered circumstantial evidence and the residence permits of the family relations are considered formal proof according to Lists A and B included in Annex II of the Implementing Regulation 118/2014 available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:039:0001:0043:EN:PDF

Finally, in relation to the remaining types of evidence submitted with TCRs, in a limited number of cases medical documents were included regarding health problems of the applicant and/or the family relation, while other types of evidence (BIAs as a means of evidencing family links, psychosocial reports, age assessment, legal note by the legal representative) were in few cases included in the take charge procedure and are further analysed below.

Overall, according to the above findings, it derives that a substantial number of cases fulfilled the requirements of proof provided in the Regulation in terms of evidential requirement regarding the identification of the applicant, the legal status of the family relation and the family links submitted with the TCR. More particularly, even in cases when family links were not fully proved from the evidence submitted with the TCR, the threshold of full proof could be attained in the vast majority of those cases via a combination of the submitted evidence from the country of origin (partly proving the family links) with the evidence available to the authorities of the respondent Member State (i.e. through asylum records).[206]

Assessment of evidence by the respondent Member States

This subsection mainly aims to put forward the different practices encountered regarding the assessment of evidence by the receiving Member States according to the research findings, even if often one cannot draw a conclusion that it is a consistent systematic Member State practice. Besides, the varying number of cases per receiving Member State in the research sample would not allow for general conclusions on practices attributed to each Member State.

It should be pointed out that there is no uniform practice in the assessment of evidence, both in terms of practices and in evidential standards, observed between the different Member States. Often no standardised practice is observed even within cases concerning one receiving Member State.

Additionally, it was noted among directly accepted cases (those without a re-examination process) that there have been cases accepted even when family links were partly proved with the TCR, both for articles 8(1) and 8(2). Nevertheless, this cannot be considered to apply in a consistent manner as the same Member States in other cases of family links partially (or even fully) proved through the TCR did not, initially at least, consider the family links to be established.

This serves as just one example of a lack of a consistent, systematic practice.

The research sample indicates that a considerable number, 34[207] out of 45 cases in total[208] that underwent a re-examination procedure, initially or at a later stage, received a rejection relating to proof concerning family links or sometimes the age of the applicant either exclusively or additionally to other reasons. Observations regarding the different practices followed by Member States in the context of the assessment and the evidentiary standards noted are analysed below on the basis of the refusal letters.

As mentioned in the section concerning the overview of legal requirements for the means of proof and circumstantial evidence, a cooperation process between Member States through the standard form for the exchange of information is provided for the purpose of the establishment of family links, among other objectives. This stipulated process underlines the respondent Member State's responsibility and role in also participating in the substantiation of family links. Another legal obligation for respondent States in the framework of assessment of evidence is to assess all the evidence **directly or indirectly** available to them.

According to the information available in the research sample, **the cooperation of Member States for the establishment of family links through the standard form is generally not encountered in practice.**[209]

[206] In only 11 out of 64 cases there were absolutely no documents for family links from the country of origin (not even partly establishing the family links).
[207] In one case the request for proof of family links (submitted after the TCR was sent) did not take the form of a formal rejection but was sent through a more informal, email correspondence.
[208] As a reminder, this subsection analyses only cases where the TCR was sent on the exclusive legal basis of article 8, for cases sent under article 17(2) exclusively or additionally see below chapter II) 5.
[209] In one case from the total research sample the form was submitted to the receiving Member State when the case was sent anew with a TCR on the basis of article 17 paragraph 2 this time (the first TCR was on the exclusive basis of article 8)).

The responsibility of the receiving Member State to establish family links and thus the relevant cooperation with the sending State has been observed in a limited number of cases.[210]

In few cases, there have been practices such as: an effort to contact the family relation after the TCR and the acknowledgment on behalf of the receiving Member State that it was unable to establish the family links due to an inability to reach the family relation.[211] This reference demonstrates that the Member State acknowledged a responsibility to establish the family links. In another case, another Member State requested more time in order to establish the family links (in practice this referred to a check on its relevant asylum records).[212] Other relevant practices noted included: a) the practice of direct contact with the family relation in order to gain the consent[213] or b) direct contact with the family relation in order to ask for the translation of documents submitted [214] c) interview with the family relation and direct submission of documentation by the family relation in this procedure.[215] Finally, another example consists of the receiving State requesting from the Greek Dublin Unit to proceed with an interview with the applicant in the phase of the re-examination process, in order to ascertain the family links, based on a questionnaire that it sent and requested to be filled out.[216]

The above examples indicate that there is a varying understanding between receiving Member States regarding their method of involvement concerning the establishment of family ties. **In any event, the very limited number of cases in which any such practices have been observed - and again not systematically and consistently applied by each Member State - demonstrates a substantially limited approach of the respondent Member States regarding their role in establishing family links.**

It was frequently noted that the respondent Member States accessed their own immigration/asylum records to check statements made by the family relation regarding his/her link to the applicant.[217] This practice appears to fall under the abovementioned legal provision according to which respondent States are obliged to check on the basis of all **the information directly or indirectly available** to them. This involves checking family links from information in the TCR, in their own asylum records or information submitted directly to them by the family relation in order to assess whether their responsibility is established.[218] In practice, the checking of asylum records could conceivably serve two different objectives: one would be to fully substantiate the family links in cases of evidence partly proving ties through the TCR, the other, to 'crosscheck' the consistency between the evidence submitted via the TCR and the statements or documentation provided by the family relation during their asylum interview at the respondent State.

It should, however, be pointed out that reference to this practice in refusal letters is made only in cases where there was any kind of discrepancy between the evidence submitted with the TCR and the statements in the asylum records of the receiving Member State, or, in few cases, where the respondent Member State makes a mere reference that the family links are not established by the records.

It is also worth noting that sometimes the same Member State in some cases relied on evidence in records in order to reject the TCR and in others made a general statement that no evidence has been provided to demonstrate the family links,[219] therefore, in the latter case not following or not making explicit reference to the practice of record checking in order to confirm the family links. Consequently, no general conclusion could be drawn that this practice is followed in all cases including the ones where no reference is made to the practice, where the rejection is based on other grounds, or where there is a positive response.

In this respect, it should be noted that the relevant provision regarding positive replies stipulates an obligation for the receiving States to include the declaration of the acceptance of the request, the article

[210] In practice, this cooperation, in the limited number of cases where it was observed, generally took place without the use of the standard form for the exchange of information. The exchange of information through the standard form is in accordance with the prescribed procedure referenced in article 6(5) Dublin III, article 1(7)(6) Implementing Regulation 118/2014 and the form is included in Annex VIII.
[211] I.e. the Netherlands
[212] I.e. Switzerland
[213] I.e. Germany, France
[214] I.e. France
[215] I.e. Austria
[216] I.e. Switzerland the questionnaire was completed following an interview between the PRAKSIS legal representative and the child and subsequently it was submitted to the Greek Dublin Unit.
[217] I.e. UK quite often, as well as sometimes France, Switzerland, Sweden etc.
[218] Article 3(2) Implementing Regulation 1560/2003.
[219] Although evidence for family links had been provided with the TCR in many of those cases.

of the Regulation which forms the legal basis for the acceptance, as well as practical details regarding the transfer.[220] As a rule, Member States' positive responses do not provide any additional information.[221] However, considering the abovementioned lack of exchange of information in the context of the standard form,[222] including in the field of family links establishment, there seems to be a gap when there is a positive response without any reference to the substantiation of the family links through checks by the respondent States. This becomes an issue in cases of TCRs including evidence that only **partly** proves the family ties. Thus, this could be considered a gap in the context of unaccompanied children, where increased cooperation and information exchange are necessary.

The abovementioned practice of record checking and reliance on the evidence therein, is observed regardless of the strength of the evidence submitted with the TCR, as it has been applied in cases where the TCR included evidence from the country of origin which fully substantiated the family links, partly substantiated them or when evidence from the country of origin was not available with the TCR.[223]

In relation to the value placed in the statements made by the family relation regarding his/ her family links as they emerge from the respondent State's asylum records, it appears that receiving Member States often place a very high value on this, overriding all other types of documentation submitted with the TCR. For instance, there have been cases where the requested Member State concluded that the documentation regarding the date of birth of the applicant submitted with the TCR must be forged because there was a discrepancy with the family relation's statements based on an asylum interview conducted in the past and registered in its asylum records. The respondent Member State maintained its negative response even after the submission of a written statement by the family relation providing clarifications. Even though any discrepancy between the records of the requested Member State and the information or documentation submitted with the TCR creates an issue in terms of proof, it should be noted that in none of the above cases was the family relation invited by the authorities of the requested Member State to provide clarifications, which was often a suggestion included in the legal representative's submissions. It appears the receiving States do not take into account the difficult circumstances under which family relations' asylum interview statements were made, for example, often many years previously, upon arrival after fleeing their country of origin for fear of persecution, or in the case of siblings, where the sibling was still himself or herself an unaccompanied child.[224] The receiving States place a very high evidentiary value on these statements from their asylum records without pursuing any kind of clarification through an interview with the family relation. The rigid approach, maintained in some cases even when evidence is subsequently submitted, appears to be highly problematic.

[220] Article 6 Implementing Regulation 1560/2003.
[221] Rarely, we have seen further elaboration such as a mere reference to the family links establishment being satisfied (after previous rejections, i.e. UK)
[222] Annex VIII Implementing Regulation 118/2014.
[223] Namely in cases where the TCR included only data according to the registration/ international protection applicant card and documentation regarding the legal status of the family relation in the receiving Member State.
[224] Or culture related issues noted sometimes during the process of the lodging of the asylum application, such as the declaration of the nickname in records instead of the name.

Case Study

A 15-year old boy from Cameroon, with the additional vulnerability of a missing parent and traumatic experiences during his flight, including detention in an intermediate country, arrived on the island of Chios unaccompanied. One week later he left and wandered alone in different cities in the mainland. He managed to submit an international protection application approximately six months after arrival, seeking reunification with his brother who had refugee status in an EU Member State. In the meantime, the boy was placed at a PRAKSIS shelter on the mainland approximately eight months after arrival. The TCR was sent a few days before the expiry of the three month time limit, attaching documentation which established the brother's legal status in the respondent State, the written consents of the persons concerned, contact details and a BIA form. The latter included extensive information about the child's family members as well as the close relationship with his brother in particular, the child's views and the importance of the reunification for the child's well-being. Detailed information was provided regarding his past traumatic experiences in his country of origin and his journey. Around two weeks later, a negative response on the TCR was sent, on the ground that there was one year of difference between the stated age of the child and the relevant statement of the brother in his asylum interview a few years before and no information to support the claimed age had been provided. A request for information/documentation regarding the establishment of family links was also included. Almost three weeks after the negative response, a re-examination request was submitted to the respondent authorities, attaching copies of the child's identity card and passport from the country of origin, establishing his stated age and family links with his brother (father's name was included).

A new negative response was received the next day, on the grounds that a) there was no possibility to verify the authenticity of the documents submitted and b) the documents submitted were not considered to prove the family links, concluding that no information had been provided regarding the child's stated age. A 'hold' request was submitted within a couple of weeks by the Greek Dublin Unit attaching a note concerning the appointment for a DNA test. A lengthy evidentiary process commenced, and the boy underwent a medical age assessment with a result in favour of his minority. However, the boy absconded around four months after the latest negative reply, a little while before the DNA test took place. The PRAKSIS legal representative noted that there was great resemblance between the brothers, apart from the documentation proving the family links already submitted, and the absconding seemed to be related to a loss of trust in the reunification process, rather than any concern related to the scheduled DNA process.

**Some data, such as the country of origin, have been altered in order to maintain anonymity*

However, in some cases, we have seen flexibility and good faith practiced by the requested Member States following satisfactory explanations emerging from the family relation's written statement or explanations provided by the Greek Dublin Unit about discrepancies being due to bureaucratic factors, ultimately leading to the request being accepted. [225]

This cannot be considered a general rule though, as often explanations deriving from family relations' written statements submitted in the re-examination procedure are not considered sufficient evidence to result in acceptance.

Another crucial finding is that in cases where the requested Member State's rejection is based on a lack of establishment of family ties or identification of the applicant, regardless of the basis for this rejection,[226] the practice of requesting further information or documentation in order to reassess, though observed sometimes, cannot be considered a consistent practice. In particular, other times the respondent Member States do not request any further evidence. This is concerning as it shows that increased cooperation in terms of proof provided for by the Implementing Regulation in the case of unaccompanied child applicants does not appear to be fully comprehended and applied by Member States.

Another practice sometimes observed, albeit not consistently and in a limited number of cases, is the inclusion in the negative response of a request to the Greek Dublin Unit (or in rare cases, a request made

[225] This case concerned an erroneous registration of the intermediate family member's name in the Reception and Identification Service in Greece and even though there was correct registration in the asylum procedure, there was inability to correct it in the absence of original documentation. This resulted in showing a different name of the intermediate family member than the one registered in the asylum records of the requested Member State.
[226] Namely, whether due to inconsistencies between the evidence submitted and the family relation's statements in the asylum records or due to insufficient evidence submitted with the TCR.

directly to the family relation) to provide a translation of the documentation proving identification of the applicant and/or family ties from the country of origin previously submitted with the TCR. This again has been observed regarding some Member States and has not been consistently applied by each of them in all cases.[227] **This request far exceeds the threshold of requirement of proof provided in the Regulation and places an unreasonable burden to the sending Member State, since there is no relevant provision or requirement in the regulatory framework (Dublin III and Implementing Regulation applicable, as amended).**

All Member States' Dublin Units do (or should in principle) have access to interpretation/translation services. Interpretation services are indispensable considering that the determination of the Member State responsible is a procedure applying to applicants of international protection within the context of the asylum process. This requirement, when observed, has ranged from simply requesting a translation of the documents to even repeatedly rejecting the reunification request on this basis (by posing new requirements regarding the translation and certification) or as mentioned, requesting a translation of the documents submitted with the TCR directly from the family relation residing in the Member State in question. These varying practices do not contribute to the smooth and rapid determination of the Member State responsible for the asylum application as they unnecessarily delay the process by sending the request back to the sending Member State for translation or by placing the burden directly to the family relation. It should be noted that in some cases, the request for translations considerably delayed the procedure as it was placed after the respondent Member State had repeatedly requested a 'hold' to examine the case. Within one of those 'hold' requests, the respondent State also requested translation of the documentation, which was however not considered sufficient when subsequently submitted,[228] resulting in a new request for an official translation and certification by the Greek Dublin Unit. **Considering that these cases concern the vulnerable group of unaccompanied children, often with additional vulnerabilities, the imposition of unnecessary requirements and the ensuing long delays raise concerns**.

Another alarming practice of the receiving States applying to a limited number of cases[229] consists of requesting authentication of the documents submitted[230] or rejecting on the basis that the respondent authorities cannot verify the authenticity of the document submitted by the sending State. Other times, this practice takes the form of questioning the authenticity of the documentation submitted with the TCR, on the basis that it is a copy, even if there is no discrepancy arising between the document and asylum records of the requested Member State. Additionally, in an isolated case, the respondent Member State requested the original birth certificate of the applicant from the country of origin even though the applicant only had a copy upon arrival in Greece and during the registration of the international protection application.

The above receiving State practices seem to impose an overly high requirement regarding proof which is incompatible with the context of the Dublin III Regulation, namely with its application on international protection applicants. Taking this into account, the Dublin III and the Implementing Regulation applicable have not imposed any such requirement regarding the means of proof or circumstantial evidence as it applies to the special category of international protection applicants. Furthermore, the procedure of uploading documents through the 'Dublinet' system, and thus sending them electronically, could not allow the respondent Member States to authenticate the documentation received. Therefore, such argumentation for rejecting the cases seems to be totally unfounded.

In conclusion, in the process of assessment of proof receiving States sometimes reasonably require further evidence in order to accept the TCR when the evidence provided with the TCR does not establish family links. However, other times, even when the evidence submitted more than complies with the requirements of the Regulation, States are not satisfied with the evidence provided, thus posing excessive evidentiary requirements.

This is turn leads to the Greek Dublin Unit to supply further evidence based on what is submitted by the child's legal representative for the re-examination process, which will be briefly described below.

[227] I.e. UK, France, Norway.
[228] The translation was performed by the legal representative and submitted to the Greek Dublin Unit which subsequently submitted it to the respondent authorities.
[229] I.e. cases involving France, Austria, Sweden etc.
[230] Sometimes, even if the copy included a previous authentication, before arriving to Greece

Evidence submitted in the re-examination process

During the **re-examination procedure (ranging from one re-examination request up to five according to the sample)** various types of evidence are submitted in order to attempt to overturn a negative response based on lack of proof. As such, in some cases, documentation from the country of origin regarding identification or family links (birth certificates, family certificates, family tree etc.) is submitted at this stage if it had not been available and therefore not submitted previously. Sometimes, additional evidence of this type is submitted at this stage when the requested Member State considers the family links were not established by the previously submitted documents. In some cases, translated documents are submitted at this stage, even if this has not specifically been requested by the receiving Member State in order to avoid any future potential rejection on this basis, or copies from originals.

Where no further documentation from the country of origin is (yet) available, other types of evidence are submitted such as statements from the family relation[231] and/ or written consents serving sometimes in the process both as evidence regarding the family links as well as proof that the family relation wishes to have the applicant reunited with him/her. In few occasions, following the relevant request by the receiving Member States included in their rejection letters, the eurodac results were sent when this had not been sent with the TCR. Additionally, other types of evidence are submitted all showing the genuine nature and continuity of the familial relationship, such as photos depicting the applicant and the family relations concerned, communications through applications (whatsapp etc.), travel tickets to visit the applicant in Greece.[232] Finally, evidence submitted during this stage includes BIAs, psychosocial reports or legal notes by the legal representative in order to provide information available about the family links, DNA tests, age assessments etc. **It is worth stressing that all such evidence is either edited or translated into English.**

Particular types of evidence

During the procedure to establish family links and the identification data of the applicant (such as age) factors like the lack of sufficient evidence sometimes and high evidential requirements insisted on by receiving Member States lead to the inclusion of particular evidence which will be summarised below.

Best Interest Assessment (BIA) as a means of evidencing family links[233]

The purpose of submitting BIA forms in the Dublin III family reunification procedure relates to the assessment required in Dublin III as a safeguard in cases of unaccompanied children. The BIA consists of submitting a relevant report following an assessment regarding the best interest of the child, including crucial information concerning the child and /or the family relation in the destination Member State as well as the closeness of their actual ties which will be analysed in subchapter II) 4 C) (Best interest of the child).

Detailed information is provided as a rule in BIA forms regarding the family links between the persons in question as well as names of the child's family relations and categories of family connection. Therefore, BIAs have often been submitted as evidence regarding family links when there is a lack of documentation proving the family ties from the country of origin.

As a general observation, we should note that BIAs have been submitted to a greater extent in the re-examination process compared to the TCR stage. Regarding the BIAs submitted in the TCR for the purpose of evidencing family links, this was observed in only one article 8(1) case, and was submitted in absence of any evidence whatsoever from the country of origin concerning the identification of the child and family links.[234]

In the context of the TCR stage, the submission of BIAs as evidence in absence of documentation from the country of origin is practiced in a very limited way. In relation to the assessment by the respondent

[231] Sometimes this type of evidence serves the purpose of providing clarifications about discrepancies noted between asylum records of the family relation in the requested Member State and the documentation submitted by the applicant, as above stated
[232] In case the family relation is a beneficiary of international protection, resident or citizen, thus able to travel
[233] BIAs are not explicitly included in the Lists of the Implementing Regulation 118/2014 (Annex II) regarding means of proof and circumstantial evidence but have been used as an evidential tool as this subsection highlights.
[234] The other cases where a BIA form was submitted in the TCR will be analysed in subchapter II) 4C) further below, as here only BIAs that serve as evidence in absence of the establishment of family links by other means or additionally to them are examined.

Member State at that stage, from this case it emerged that the BIA form submitted in the TCR in a lack of documentation from the country of origin, was not considered sufficient.

In general, a considerably higher number of BIAs were submitted in the re-examination stage.[235] In the vast majority of those cases, an issue related to proof was present.[236] Either, a proof related issue was objectively there (no documentation from the country of origin in the TCR)[237] or was raised in the rejection by the respondent Member State.[238] It should be noted that in all cases where there were issues related to proof, even if any relevant evidence was submitted at the re-examination stage (i.e. birth certificate, age assessment, family photos etc.), often a BIA was submitted additionally, thus serving as corroborative evidence regarding family links, regardless of whether or not any issues related to the best interest of the child had also been raised by the respondent Member State.

According to the research sample, varying practices at this stage have been noted, such as additionally submitting a BIA to evidence either already submitted with the TCR or to further evidence co-submitted at the re-examination stage. In the few cases where no documentation from the country of origin was previously submitted, sometimes the evidence required by the respondent Member State[239] and additionally the BIA were submitted or, in absence of any documentation from the country of origin,[240] only a BIA as evidence for family links. Often other evidence was co-submitted in those cases such as family photos/relative's statement/communications etc.

It is worth noting that in **four cases in total the respondent Member States explicitly requested 'a report by social services/NGO' or 'information' for the substantiation of family links**, either due to lack of substantiation of family links by other means or because additional information was considered necessary for the assessment of evidence regarding family ties, even though the TCR included partly or fully available proof of family links.[241] [242] In all other cases, this type of evidence was submitted on the initiative of the applicant (through his/her legal representative) in the procedure.

In assessing whether this type of evidence is taken into account by the respondent Member States, it appears that there are definitely varying practices both regarding 8(1) and 8(2) cases. Practices include:

a) not taking into account a BIA submitted at this stage in absence of the exact type of evidence requested by the receiving Member State (i.e. original birth certificate etc.) or in absence of evidence in the form of documentation from the country of origin.
b) accepting the information in the BIA regarding the family links as relevant evidence, in lack of substantiation by the other evidence submitted.
c) accepting the corroborative evidence submitted in the BIA additionally to the documentation submitted in the TCR partly proving family links, as well as to other evidence submitted along with the BIA (i.e. family photos/relative's statement etc.).
d) accepting the information in the BIA regarding the family links as relevant evidence additionally to the full proof of family links through documentation previously submitted.

In some cases, the acceptance was made long after the submission of the BIA and of other corroborative evidence (family photos/statement/legal note etc.). In particular, it was sent after the fulfilment of specific requirements set by the respondent State such as official translation of documentation submitted previously and the subsequent legal intervention of a legal actor in that Member State. Thus, even though information in BIA and other corroborative evidence might have been conducive to the positive result, it does not appear the above would be sufficient evidence for a positive response without the fulfilment of the specific request concerning proof (official translation of the documentation in these cases).

Similarly, no conclusions can be drawn regarding the assessment of BIAs as evidence in cases where the BIA was submitted additionally to the proof requested by the respondent Member State and the case was

[235] A BIA has been submitted at this stage in 12 8(1) cases (in one of those also an updated BIA in later re-examination) and in 11 8(2) cases. The grand majority of them, were submitted in the first re-examination.
[236] Nine cases regarding 8(1) and ten cases regarding 8(2).
[237] In a very limited number of cases
[238] In some cases though among other grounds regarding the best interest of the child in general/legal status of the family relation etc.
[239] In those cases, the receiving States required probative (hard) evidence in the sense of the List A, included in Annex II Implementing Regulation 118/2014
[240] In some cases, until the documentation could become available
[241] Italy (two cases), Norway, Denmark.
[242] Two 8(1) cases and two 8(2) cases.

accepted, or in cases where the subsequent rejection was mainly attributed to other reasons (i.e. legal status of the family member/relative, age of the applicant according to age assessment performed etc.), without any reference as to whether the evidence submitted was considered sufficient or not.

Finally, it should be noted that in several of the above cases a legal note and/or a psychosocial report was also submitted, predominantly at the re-examination stage, while in the vast majority of cases where a BIA form was not submitted in the re-examination stage, psychosocial reports and/or legal notes were submitted along with other types of evidence (documentation from the country of origin, DNA results etc., or circumstantial evidence). In terms of evidentiary value and additional to the legal arguments presented, legal notes often include information available about the family links often attaching any relevant documentation/evidence. Psychosocial reports may be focused primarily on describing past experiences and present conditions regarding the child's emotional/psychological status and views but may also include some information available about the child's family links.

Age assessment

The grounds and procedure for age assessment are not provided for in the Dublin III Regulation.[243] Thus, any potential application is based on the legal provision relating to age assessment in the Asylum Procedures Directive[244] and is regulated by these rules and preconditions as incorporated into national Law.[245]

In the context of the research sample, in **10% (eight cases)** of the total cases, an age assessment procedure was either requested by the respondent Member State and/or took place in the framework of the family reunification process. In all cases, the legal basis for the TCR was article 8(1) of the Dublin III Regulation, with the vast majority concerning reunification with siblings. Four respondent Member States[246] were involved in age assessment related cases, with the overriding majority of cases concerning Norway (three cases) and Sweden (three cases). Furthermore, it is worth noting that Norway[247] was the only Member State explicitly requesting an age assessment in order to reconsider the TCR, **including in cases where there was no doubt raised regarding age based on the evidence available** while the other Member States did not request it explicitly (only requesting information/documentation or other evidence supporting the claimed age). As a rule, age assessment occurred in the re-examination stage, either in the first re-examination following the relevant request by the respondent Member State or in posterior re-examination stages, when the additional documentation or evidence submitted in order to support the claimed age was still considered insufficient by the respondent Member States. **In six[248] cases medical age assessment results were submitted to the respondent Member State authorities, four of them were ultimately accepted, while two were finally rejected.[249]**

Age assessment procedures in the context of the Reception and identification Service[250] and the asylum procedure are regulated by ministerial decisions (92490/2013[251] and 1982/2016 [252] respectively, for each procedure). Both provide that the procedure may be followed only after the competent authorities

[243] The only reference to age assessment is in article 31 of the Dublin III Regulation regarding the exchange of information in the framework of transfer where – if age assessment is conducted according to national law it should be included and in Annex VIII Implementing Regulation 118/ 2014 (the standard form for exchange of information) where the requesting Member State, relating to the child's age may tick the box (yes or no) as to whether an age assessment has taken place, and if so, the method used.

[244] Article 25(5) Asylum Procedures Directive in conjunction with recital 12 Dublin III Regulation

[245] In Greece, the Asylum Procedures Directive is incorporated by Law 4375/2016, as amended by Law 4540/2018.

[246] Norway, Sweden, Switzerland, Malta. Regarding the case concerning the latter Member State, the age assessment took place complementarily to the TCR without a rejection of the family reunification request

[247] The Norwegian authorities requested an age assessment in three of four Norway-bound cases in the sample. In the one case where they did not request, no age assessment was performed, and the case was ultimately accepted.

[248] Regarding the rest of the cases, one case is pending re-examination and the second one absconded after the age assessment took place (the assessment result was in favour of minority of the applicant)

[249] Both cases, analysed below, were rejected on the basis that the applicant was an adult, one in accordance with the result of the medical age assessment.

[250] The Reception and Identification Service was established by L. 4375/2016 of 2 April 2016, previously First Reception Service by virtue of previous chapter B of L. 3907/2011. The temporal scope of the study being 2015-2017 covers both the implementation of both legal instruments.

[251] Article 14 paragraph 9 L. 4375/2016, concerning age assessment in the Reception and Identification Service stage makes a general reference regarding the applicable regulatory framework to 'the provisions in force'. Ministerial decision 92490/2013 has been established by virtue of L.3907/2011.

[252] Article 45 paragraph 4, L. 4375/2016 makes reference to the ministerial decision 1982/2016 for the rules regulating the process. Further, it provides that a guardian should be appointed to ensure the best interest of the child throughout this process, **the consent for the age assessment should be given by the guardian or the child**. The process should be implemented respecting gender and cultural particularities and the child should be informed about the possibility and method of age assessment, the consequences in the asylum application and the consequences of refusal to be subjected to the test. Also, any potential negative decision on the asylum claim could not be based solely on a refusal to be subjected to age assessment. Finally, according to the legal framework, throughout the process, the applicant is to be treated as a child and in case the medical test cannot safely indicate that the person is an adult, he/she is to be treated as a child.

present **'specifically reasoned doubt on the age' and that the stages to be followed should only follow if the previous is inconclusive regarding age. The stages are:**

a) a clinical examination by a paediatrician.
b) an interview with a social worker and psychologist.
c) a medical examination, including x-rays of the left upper limb to determine bone age and clinical dental examination and dental radiography.

In practice however, it appears from the sample provided that only the final stage of medical examination is followed (exam regarding bone age, dental exam and radiography or a combination). Regarding the consent given for the age assessment, from the cases where relevant information and/or documentation was available, it emerges that the Prosecutor for Minors, in his/her capacity as a temporary guardian by the provisions of Law, granted consent for the age assessment to take place.

It also appears that the age assessment procedure is generally quite lengthy, involving several actions including the request for consent by the Prosecutor for Minors, official translation into English etc. In some cases, it also involved transfers from first reception to shelters to the mainland or further correspondence with the respondent Member State in order to respond to relevant queries,[253] thus, **in the overriding majority of cases, reaching approximately five months duration.**

Regarding the competent institution to conduct the exam, as it stems from practice, medical age assessments have been performed in various institutions such as university medical faculties (School of Dentistry), several public hospitals and in quite limited cases the medical exam has taken place in private entity medical organisations. It should be pointed out that there is no consistent or uniform practice in the formulation of the medical conclusion regarding the age of the applicant and therefore in some occasions we have encountered conclusions by some public sector institutions such as 'the possibility of the person being a minor is low'. Considering that it is impossible to accurately conclude age through these types of exams this is not a conclusion on age with a mean deviation and is formulated in a manner that results in States not applying the benefit of the doubt in relation to minority,[254]in accordance with the relevant European and Greek legal provisions. In a few cases, a new age assessment took place due to inadequate formulation of age assessment reports, resulting in further delays.

The factual background in cases which led to age assessment is also of particular importance, both in terms of the availability of other evidence and the existence of reasoned doubts regarding the applicant's age. In this respect, it is noteworthy that in **five of the eight total cases, the respondent State raised doubts as to the age of the applicant based on differing evidence.** The basis was in most cases previous statements by the sibling or family member concerning the age of the applicant made during the registration, screening or interview procedure at the respondent State (sometimes dating back more than a decade) or, in an isolated case, documentation submitted in a previous family reunification embassy procedure initiated in a third country. In all the above cases, other types of evidence such as documentation from the country of origin in most cases, sometimes in original form, or at least circumstantial evidence (statements of the family relation etc.) of the claimed age of the applicant were available either at the TCR or the re-examination stage. **Still, in all cases, respondent States did not consider this evidence sufficient to accept the request, giving higher value to the previous statements of the family relations over the documentation presented.**

Practices encountered include directly requesting an age assessment as well as translation of the identification document presented, rejecting the documentation on the basis that it is not considered genuine due to previous differing statements by the family relation or rejecting it because the documents are copies and could not be authenticated. In none of the above cases was there an effort by the receiving Member State to contact the family relation and request clarifications regarding the previous statements. In one case, where previous documentation had been submitted in a prior family reunification (embassy) procedure with an erroneous date of birth according to the applicant's statement and despite further (original) documentation presented, the negative response was maintained even after a medical age assessment was submitted which concluded that the applicant was a minor.[255] It appears the final

[253] Exact method utilised, interval and exact date/ time the assessment took place etc.
[254] Namely that the person is to be treated as a child if the medical exam cannot safely indicate that the person is an adult
[255] Coherent information by the child's representative regarding his erroneous date of birth in the previous documentation submitted in the national family reunification procedure was also provided.

rejection in this case was also influenced by the fact that at an earlier stage, a previous medical age assessment had been made when the boy was at the RIC concluding that the applicant is an adult, despite the fact that **the Greek competent authorities reinstated the age of the applicant to that of a minor once an original identity card was submitted thus giving higher evidential value to the original documentation than to the medical age assessment**.

Regarding **the remaining three cases**, in two cases there was no doubt raised regarding the age of the applicant by the respondent State (or the Greek State) based on differing evidence/statement etc., and yet an age assessment was requested by the respondent State 'in order to confirm that the applicant is a minor' and was subsequently submitted by the Greek Dublin Unit. In both instances, birth certificates were available either at the TCR or submitted later along with the age assessment. Finally, one case stands out, in which an age assessment was provided on the Greek authorities' initiative complementarily to the TCR (without request or doubts raised by the respondent State) confirming that the applicant was a minor. In this case the applicant, albeit evidently a minor, had been registered previously as an adult according to his stated age during the registration procedure at the RIC. Therefore, according to procedural rules applying to the Greek asylum procedure, the date of birth could not be altered in absence of original documentation.

The above findings depict alarming practices of recourse to medical age assessment even when less invasive means of substantiating age based on other evidence are available and submitted, but not given due weight by the respondent States. In spite of some good practices encountered in isolated cases where the result is assessed in good faith and flexibility by the respondent States, **in most instances, the margin of error inherent in those medical tests, which are widely contested or criticised for their scientific reliability and their high risk of producing arbitrary results,[256] is not taken into account by the respondent States, even though the significant margin of error had been highlighted by the legal representatives in their submissions**. This conclusion stems from the finding that respondent States seem to uphold the result of a medical exam even in cases of inadequate formulation as described above (namely 'the possibility of the person being a minor is low') and interpret it against the benefit of the doubt (even in case of submission of original documentation).[257] Additionally, the conclusion emerges from the undue request by the respondent States and the recourse to medical age assessment even when documentation is made available,[258]or **when there are no doubts raised 'following general statements or other indications'** as per the prerequisite according to the applicable article 25 paragraph 5 of the Asylum Procedures Directive.

The aforementioned provision raises an important issue in this respect, as the competent Greek authorities have not raised doubts in the overriding majority of the above cases and nevertheless have had to proceed with an age assessment at the express or implicit request of the respondent State. This seems to raise a question in relation to mutual trust among Member States, the importance of which is underlined in the Dublin III Regulation.[259] It is worth noting that this point was highlighted by the Greek Dublin Unit in the frame of correspondence with the respondent State in an isolated case stating that the Greek authorities had not raised any doubts about the age as the statements and documents provided by the applicant were consistent (quoting also article 25 paragraph 5 of the Asylum Procedures Directive).[260] As a concluding remark, we would like to quote one of the FRA opinions presented in a recent relevant report: *EU Member States should use age assessment procedures **only where there are grounds for doubting an individual's age**, they should only use medical tests if they cannot base their age assessment on other less invasive methods, such **as documents** or an interview by specialised social workers*[261] **[Our emphasis]**

[256] FRA, Age assessment and fingerprinting of children in asylum procedures – Minimum age requirements concerning children's rights in the EU available at http://fra.europa.eu/en/publication/2018/minimum-age-asylum/ EASO, Practical Guide on age assessment available at https://www.easo.europa.eu/news-events/easo-publishes-practical-guide-age-assessment etc.

[257] In a case where apart from the above described medical exam result, the psychologist's view was included in a BIA form, highlighting that the traumatic experiences of the applicant have influenced his growth and *in some ways make him mature while in others he is still a child,* was not taken into account by the respondent State.

[258] It should also be noted that in some instances, the Greek authorities have sent both documents as well as age assessment in a re-examination request, even though documentation should be deemed and invoked as sufficient.

[259] Recital 22, Dublin III Regulation

[260] This case is not included in the above eight cases in this section, as no age assessment had ever been requested or had taken place (by the time of the final rejection the applicant was already an adult).

[261] FRA Age assessment and fingerprinting of children in asylum procedures – Minimum age requirements concerning children's rights in the EU available at http://fra.europa.eu/en/publication/2018/minimum-age-asylum/ EASO, Practical Guide on age assessment available at https://www.easo.europa.eu/news-events/easo-publishes-practical-guide-age-assessment **, p. 7.**

Case Study

A 15-year old boy from Syria, with multiple vulnerabilities such as past experiences amounting to torture, abduction, physical and emotional abuse and orphanhood, arrived unaccompanied on the island of Leros. He managed to submit an international protection application approximately six months after arrival, seeking reunification with his brother who had acquired citizen status in an EU Member State. The TCR was sent a few days before the expiry of the three month time limit, mentioning that the child's parents had passed away and attaching a copy of the child's birth certificate. Also, documentation establishing the brother's legal status in the respondent State and his contact details, the written consents of the persons concerned and some further documentation regarding the brother's living conditions (employment in the respondent State etc.) were dispatched. Two days later, a negative response on the TCR was sent, challenging the boy's age and requesting further evidence as well as detailed information regarding the child's birthplace and family. Approximately one month later, the boy was transferred to the mainland and placed in a PRAKSIS shelter, around ten months after his arrival. In the meantime, a 'hold' was requested by the Greek Dublin Unit for an age assessment and after a lengthy and complex age assessment process, a re-examination request was submitted to the respondent authorities almost six months after the negative response.

The re-examination request, based on article 8 and alternatively article 17(2), included the birth certificate translated into English, the results of a medical age assessment in English, a BIA form and a legal note by the PRAKSIS lawyer as well as a written statement by the brother. The medical age assessment submitted, concluded that the possibility of the person being a minor was low, however the lawyer/legal representative underlined both the lack of accuracy of the medical age assessments in combination with the fact that the boy had been in Greece for quite a while and thus had grown in the meantime. Additionally, the BIA form submitted, prepared by a PRAKSIS psychologist, provided extensive information concerning the highly traumatic past experiences of the child and how they had influenced his natural growing process. Information was also provided concerning the close relationship with his brother, acting as a parental figure as the only family member the boy was in contact with and the importance of the reunification for the child's well-being. Likewise, the brother stated in writing his willingness and ability to take care of his brother and his deep concern for him due to his past highly traumatic experiences.

Three weeks later, a new negative response was received, on the grounds that article 8(1) was not applicable as there was no reasonable doubt that the applicant was a minor and that article 17(2), examined as an alternative basis, was not deemed applicable either, as the applicant was considered a healthy young adult by the respondent authorities despite acknowledging a somewhat troubled childhood. The boy absconded one month after the receipt of the second negative response in order to reach his brother through irregular pathways.

**Some data, such as the country of origin, have been altered in order to maintain anonymity.*

DNA

A very limited number of cases (**three**) sent under article 8[262] involved the taking place of a DNA test or at least the commencement of the procedure.[263] All cases were 8(1) cases (mother/sibling) and the respondent Member States varied.[264] With regard to the stage a DNA test was initiated, in two cases it commenced after the second rejection while in the third it took place after the first rejection but had started being organised before, as the potential need was anticipated due to lack of proof for family links from the country of origin.[265]

In all cases, the procedure entailed several actions and ensuing delays, some longer than others,[266] while the assistance of the legal representative was considered indispensable. The necessary involvement of the Prosecutor for Minors to provide consent and other factors such as the organising of the process and coordination between the laboratories involved, the gathering and submission of information necessary through forms, the coverage of the cost,[267] and the official translation of the results in English, made the overall process considerably time consuming. Further to this, the PRAKSIS lawyers interviewed, referred to other factors which complicated the process in some cases, such as the initial reluctance of the Prosecutor for Minors on the island to sign the consent for DNA, technical complications, the transfer of children from the islands to the mainland for their placement, or placement in different shelters and the subsequent change of lawyers.

The procedure is lengthy and entails complications. As prescribed in the legal provisions for means of proof stating that a DNA or blood test should be used as means of proof only *if evidence that the persons are related is not available and only* ***if necessary,*** [268]**[Our emphasis]** **this procedure to prove family links should be a last resort.** Otherwise, the delays this process entails are against the child's best interest and the request for DNA is excessive in cases where there is documentation proving the ties, **therefore rendering these procedures incompatible with the Dublin III rule of not requesting proof that exceeds what is necessary for the proper application of the Regulation**.

In the particular circumstances of the cases in question, it appears there were varying backgrounds in terms of evidence. In one case there was no documentation available from the country of origin to prove family links and the applicant's mother was a resident in the respondent State, having acquired refugee status and subsequently citizenship in another, different, Member State in Europe. Therefore, there were no records available in the respondent Member State and the DNA test results were sent after the first rejection without any recourse to other evidence such as written statements, at that stage. In another case, the evidence sent in the first re-examination was not available. Apparently, the request for a DNA test by the respondent State was based on the fact that the applicant's sibling had left the country of origin before the applicant's birth. In a third case, despite evidence submitted that fully proved the family links in the re-examination stage, the receiving State considered the family links unproven based on the inability to authenticate the submitted documents.

Therefore, it appears that in some instances at least, the DNA test is far from considered as 'necessary' according to the aforementioned legal requirement.

It is also worth stressing, that only in one case the respondent State explicitly requested a DNA test result, while in the other two the rejection was based on lack of establishment of family ties without requesting this type of evidence.

It also seems of relevance to mention that, in several instances even though a DNA test was not conducted or initiated, the Greek Dublin Unit expressed the applicant's declaration of availability to undergo a DNA test either based on the applicant's statement or through the legal note of the legal representative communicated to the respondent Member State. In principle, the declaration of the availability for a DNA test is made following issues raised by the respondent State related to proof of

[262] There is also one case sent under article 17 paragraph 2 which will be mentioned in chapter II) 5 further below
[263] In one case there was a hold request by the Greek Dublin Unit sending a note which proved an appointment for DNA while also the main preparatory actions had taken place (i.e. written request to Prosecutor for Minors for consent/authorisation and receipt) but just before the actual exam, the boy absconded.
[264] UK, Belgium, Sweden.
[265] This case was also an example of good practice of cooperation between PRAKSIS and a legal actor in the respondent State who provided guidance regarding the need of a DNA in the particular circumstances, according to his experience from the Member State's prior practice.
[266] I.e. in one case this stage took up to five months
[267] In one case the hospital performed the exam and results without receiving fees, as a donation
[268] Annex II of the Implementing Regulation 118/2014

family links. **This was observed even in cases where documentation from the country of origin was submitted,** [269] but the respondent authorities were not satisfied with the establishment of the family links, often for reasons related to their own asylum records. The declaration of availability for DNA may also take place at later stages, even after the second or third rejection. Often, after underlining the establishment of family links based on the documentation available, the legal representative stressed the duties of the respondent Member State to act upon the establishment of family links if it is still not satisfied with the evidence, invoking relevant case law and the availability of the persons concerned to undergo a test, if needed. The declaration during the TCR was not often encountered.[270]

In relation to the impact of this declaration in the assessment of family links, it should be stressed that in principle this is not even acknowledged in the response by receiving States. In cases where a positive response to the family reunification request is subsequently received, in some cases after a very long time and repeated 'hold' requests by the respondent State, it doesn't usually seem to be associated with this declaration of availability for DNA test.[271] **It is worth noting that in two cases, both Switzerland -bound, the declaration of availability to undergo a DNA test seemed to have contributed to some extent in the subsequent positive result, without the test actually taking place**.[272] Finally, despite the declaration of availability to undergo a DNA test and the full proof of family ties or the circumstantial evidence available in lack of documentation from the country of origin, some cases were finally rejected without any acknowledgment of the availability of the persons concerned for a DNA test.

According to UK case law concerning the application of the Dublin III Regulation to unaccompanied children and the Member States' duties regarding enquiry, investigation and establishment of family links, it was considered that: *these investigate obligations are not extinguished upon the initial refusal decision and that the authority's* [respondent State's] *erroneous passiveness with regard to the collection or organisation of DNA evidence is incompatible with the increased procedural mechanisms in the Dublin Regulation, inter alia, gathering of evidence, as well as the Regulation's emphasis upon the safeguarding of children and family life* concluding that *the inactivity on the part of the authorities violated the procedural aspect of Article 8 ECHR.*[273] **Even though DNA testing should be a last resort as provided in the Regulation, the rejection of cases without requesting and/or organising the establishment of family links through this exceptional measure when absolutely necessary, appears to be incompatible with both the requirements of the Regulation and article 8 of the ECHR. This incompatibility with the Dublin III[274] also applies in cases of rejections when proof and circumstantial evidence was available, resulting in applicants declaring at that point the availability for the lengthy procedures of DNA testing therefore, once again, exceeding the threshold of requirement for proof according to article 22 of the Dublin III Regulation.**

General observation regarding the assessment of all types of evidence by respondent States

Regarding the assessment by the respondent States of all types of evidence mentioned above, we would like to note that the majority of cases that were rejected on the basis of proof (exclusively or additionally to other grounds) were ultimately accepted after one or many more re-examinations.[275] However, often the time it took to reach this result was unnecessarily long due to excessive requirements. In this context, as already referred in chapter II) 3 above (Timescales), we should also note

[269] As well as corroborative evidence sometimes, such as family relations' statements
[270] Only in one case, where there were no documents from the country of origin regarding family links and the identification of the applicant.
[271] For instance, in one case the sibling submitted documents from the country of origin directly to the authorities of the respondent State after this declaration, in some others, there was no response on this and a positive response came long after, when the respondent Member State requested and received official translation of documentation etc.
[272] For instance, in one case there was an order by the Prosecutor for Minors for a DNA and following this, a positive response followed by the respondent State without any further evidence submitted at that stage.
[273] UK Upper Tribunal, The Queen on the application of MK, IK (a child by his litigation friend MK) and HK (a child by her litigation friend MK) v Secretary of State for the Home Department, JR/2471/2016, 29 April 201647, Full summary and link available in ECRE case law note on the application of the Dublin Regulation to Family reunion cases http://www.asylumlawdatabase.eu/en/content/ecreelena-case-law-note-application-dublin-regulation-family-reunion-cases . See also recent judgment MS (a child by his litigation friend MAS) v SSHD Judgment 19.7.18-JER2018071912144659 (1).pdf http://www.asylumlawdatabase.eu/en/content/uk-upper-tribunal-ms-child-his-litigation-friend-mas-v-secretary-state-home-department-19 in which the Tribunal considered also that it was incumbent upon UK authorities to undertake reasonable investigations on receipt of a TCR including to ascertain the viability of DNA testing (this also included considering whether the individual could be admitted to the UK for the purposes of undergoing a DNA test) and proceeded with ascertaining the family links according to the evidence presented in the Tribunal.
[274] A potential lack of compliance with article 8 of the ECHR could also be identified, depending on the particular circumstances.
[275] Twenty-five out of 34 cases that were initially rejected on the basis of proof related issues (exclusively or among other grounds).

that in some cases a 'hold' practice[276] was observed by some Member States[277] sometimes repeatedly in the same case and even in cases where all necessary proof combined with additional circumstantial evidence was made available. Sometimes this resulted in excessive delays.[278] **It was also observed that the involvement/intervention of a legal actor in the respondent Member State and the relevant cooperation of PRAKSIS with the occasional legal actor were significantly conducive to those cases finally gaining a positive result**.

Moreover, in some cases we have observed the respondent States' practice of raising issues related to proof in a later stage (second or third refusal) even though the evidence was already previously available, as well as sometimes (initially at least) rejecting the TCR on the basis of lack of substantiation of family links even if there was no objective ground to do so, including in cases where full proof was available. **The abovementioned practices of respondent Member States do not comply with the requirement of checking exhaustively as well as objectively whether they are responsible according to all information directly or indirectly available to them, which subsequently leads to unnecessarily prolonging the procedure.**

The practice of (at least initial) rejections despite available proof of family ties as well as the practices described above of requiring authentication/translation of documentation do not comply with the provision according to which **'the requirement of proof should not exceed what is necessary for the proper application of this Regulation'.**[279]

Finally, we have seen mixed[280] practices in the assessment of receiving States in relation to the '**sufficiently detailed coherent and verifiable circumstantial evidence**' such as written statements and other evidence that could fall under this category (family photos, communications etc.) and the use of BIAs containing information on family links as an evidential tool, all of which were mainly submitted in the re-examination stage.

In all cases, one element of formal proof, namely the family relation's legal status documentation was available. Often more than one element was available such as, additionally, documentation from the country of origin partly proving the family links. Therefore, the relevant legal requirement of at least one item of formal proof was satisfied.[281]

Regarding the finally rejected cases or cases long pending reply, these included several cases where full proof of family links or identification data as well as circumstantial evidence had been submitted. With regard to particular means of proof such as age assessments or DNA tests, the recourse to these has been observed even when this had not been absolutely necessary as analysed in detail above.

[276] Putting the case temporarily on hold in order for the respondent State to assess its responsibility, although surpassing-often significantly- the timeline of two weeks provided in article 5 of the Implementing Regulation 1560/2003, as referred in chapter II) 3
[277] I.e. UK, Switzerland
[278] Such as seven months until the acceptance, counting from the last reconsideration request providing evidence in substance.
[279] Article 22(4) Dublin III Regulation.
[280] Accepting as well as rejecting.
[281] Annex II List B footnote 1. Implementing Regulation 118/2014. In case of sufficiently detailed, coherent and verifiable evidence, an acceptance is- exceptionally- possible even without formal proof: article 22(5) Dublin III Regulation.

4B) Legal presence

The precondition of the family relation being 'legally present' in the respondent Member State applies to all unaccompanied children's family reunification cases through Dublin III irrespective of whether the person with whom reunification is sought is a family member, a sibling or a relative of the child. Article 8 is applicable to unaccompanied child applicants and **has the widest scope in terms of the family relation's legal status in the Dublin III Regulation**, contrary to articles 9 and 10 it is not limited to beneficiaries of international protection or international protection applicants. It is also broader than the precondition of the family relation being legally resident (article 16) by including all legal statuses. The wide scope of article 8 obviously serves the objective of allowing reunification under Dublin III with respect to the particularly vulnerable category of unaccompanied child applicants, regardless of the particular legal status of the family relations, so long as it can be considered that the family relation's presence in the respondent Member State meets the requirement of legality. This appears to serve the purpose of protecting the best interest of the child combined with the right to family unity. **Even though the Dublin III Regulation does not include a definition of the term 'legally present', the standard form for the exchange of information in cases of unaccompanied children international protection applicants in a Dublin family reunification procedure is indicative, as the form includes specific categories of status of the family relations which fall under the term 'legally present' or which are considered as irregular status**.[282]

Two different issues seem to arise in the context of the article 8 prerequisite of 'legal presence'. The first concerns cases where the respondent State concludes that the precondition of legality regarding the family relation's status is not fulfilled and thus, article 8 is not applicable. The other issue arising in practice refers to cases where the respondent Member State determines that the particular status of the family relation, despite fulfilling the requirement of legality, does not fall under the Dublin III Regulation and more specifically article 8 (the legal basis for the TCR).

In regard to this issue, the sample indicates that there were 22 cases sent to various Member States under article 8 in which the family relation had a different legal status to that of an international protection applicant or beneficiary of international protection.[283] Specifically, the family relation either had temporary or long-term resident status or citizen status, which in the vast majority of the cases did not influence the applicability of article 8. As such, respondent Member States have accepted the requests or have not put forward any objection on the basis of the legal status of the family relation in the overriding majority of the above cases.[284] However, **in four cases** the respondent Member States rejected the TCRs on grounds related to the legal status (resident permit or citizen) of the family relation, in principle among other grounds. In those cases, the States declared that the Dublin III Regulation is not applicable and pointed out to the national family reunification legislation and procedure through the embassy (visa process) or even stated that the Dublin procedure should not be used to circumvent existing family reunification procedures. When encountered, this interpretation has generally been counter-argued by the Greek Dublin Unit caseworkers' re-examination requests and/or the legal representatives' submissions. **It should be noted that this restrictive interpretation is contrary to the Implementing Regulation 118/2014 Annex VIII standard form where the status categories falling under the term legally present include residence permits, long stay or short-term visas as well as any other legal status**. Furthermore, considering the status of the child as an international protection applicant, the Dublin III Regulation is applicable irrespective of whether or not any other national legal procedure could potentially also be applicable. In this respect, it should be noted that this basis for rejection was also applied even in cases where the national law for family reunification was not applicable according to the lawyers' statements, either due to the particular type of the family relationship (i.e. uncle/nephew), the child ageing out at the time of the rejection or the lack of required documentation for that procedure, as well as when this procedure had been attempted and rejected in the past before entering Greece.

The practice of rejecting TCRs on the basis of resident permit/citizen status has been encountered in cases concerning mostly article 8(1) (parents) followed by 8(2) (uncles/aunts). Cases involved France

[282] Implementing Regulation 118/2014 Annex VIII available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0118&from=EN

[283] Under article 8 exclusively. For cases where the TCRs were sent under article 8 and additionally article 17(2) or exclusively under 17(2), see chapter II) 5 B) section 'The family relation's legal status' for respective analysis. One case is included here which is also calculated in chapter 5 below, as two different TCRs were sent one under the exclusive legal basis of article 8 and one subsequently under the legal basis of article 17(2).

[284] In an isolated case, the respondent State mentioned in the initial rejection, which was due to other reasons, that the relative-who was a citizen- had not applied for asylum and requested the residence permit. However, in the subsequent response the request for reunification was accepted. [The legal representative included in her submissions that the relative had acquired citizen status and clarified the relative's former legal resident status, submitting the previous residence permit]

(predominantly) and Austria, as the respondent States, with four cases in total for both. Additionally, this reasoning has been in principle maintained in all repeated negative responses by these States.

It appears that in the vast majority of French-bound cases sent under article 8, whether the family relation of the child was a citizen of the respondent Member State or a holder of residence permit (other than international protection), the response was, as a rule, rejected on the basis that the national family reunification law/procedure was applicable instead, often among other grounds.[285] **In particular, three such cases were rejected and only one was accepted.** These numbers indicate that even though this worrying practice has not been consistently applied it nevertheless appears to be an existing concern regarding the interpretation and application of article 8.[286]

Another issue raised concerning the term 'legally present', namely the consideration that the family relation's presence in the respondent Member State does not fulfil the requirement of legality, is encountered in **three cases** among the sample relating to various Member States.[287] **All cases concern article 8(1), in particular a parent of the child**. In two cases the status of the parent was that of an 'appeal pending against a deportation order', whereas in one of those cases the negative response by the receiving Member State specifically mentioned that the international protection application of the family relation had been rejected and the appeal against deportation had 'no suspensive effect'. Both cases were finally rejected on this ground after several re-examination requests. During the re-examination process, the lawyers involved, in sending State and in one case also in a receiving State, stressed, among other factors, the high probability of the appeal being accepted, the lack of a final determination regarding the legal status given that the appeal was pending[288] combining it with the argument that there is an obligation to process the applications of family members together, according to recital 15 of the Dublin III Regulation. Despite the limited sample of such cases not allowing for any solid conclusion to be reached, it should be noted that there was no case accepted among the sample based on this particular status of the family member.

The return procedure is included in the standard form of the Implementing Regulation 118/2014 among circumstances where the person is considered to be in an irregular status. Despite not being in a position to have information regarding the particular circumstances of the family members' status, the substance of their asylum claim or the applicable national legislation in the above cases, we should note, according to well-established ECtHR case law, that in order for a national remedy against a return decision to be considered effective in cases of a claim of violation of article 3 ECHR (prohibition of torture, ill-treatment) the remedy ought to have **automatic suspensive effect.**[289] Indicatively, in a case of a judicial review against a deportation order, the lack of an automatic suspensive effect was found by the Court to amount to a violation of article 13 (effective remedy) combined with article 3 (prohibition of torture, inhuman, degrading treatment) of the ECHR.[290] Even though the purpose of the requirement of legality with respect to the family relation's presence presumably aims at protecting the child, the final rejection of the TCR in cases where an appeal against a deportation is pending could raise concerns in terms of family unity and ultimately the best interest of the child, according to the research sample, which concerns cases of parents and their minor children. More specifically, it appears that sometimes parents and children remain separated on this ground resulting in them remaining apart in different European Member States for a considerably lengthy, indefinite period of time and leading their lives separately, while on European ground.[291]

The third case rejected on the grounds that the status of the family member did not meet the requirement of legality, was based on the fact that the family member's asylum application had been rejected and thus was not legally present (without clarifying or mentioning his claimed status). However,

[285] Regarding France bound cases sent under article 8 and 17(2) or 17(2), see respective chapter II) 5 B) section 'The family relation's legal status'
[286] Regarding Austria, this has been observed in one case only, which however was the only Austria -bound case included in the sample where the family relation was not an international protection applicant or beneficiary of international protection and had a different legal status. Nevertheless, considering that the sample of Austria-bound cases is quite limited, comprising of three cases in total, it does not seem possible to reach any conclusion regarding potentially, a systematic State pattern.
[287] Germany, Spain, France
[288] It is worth noting, in this respect that the procedure for obtaining residence permit as well as a short- term visa are statuses falling under the category 'legally present' according to the abovementioned standard form (Annex VIII, Implementing Regulation 118/2014), even though they do not guarantee either the definite legal status or a long -term legal status
[289] Indicatively: ECtHR, 30696/09 M.S.S. v. Belgium and Greece, 21/1/2011 § 293 available at: http://hudoc.echr.coe.int/eng?i=001-103050 and 30471/08, Abdolkhani and Karimnia v.Turkey, 22/09/2009**,** §108, http://hudoc.echr.coe.int/eng?i=001-94127
[290] ECtHR, 30471/08, Abdolkhani and Karimnia v.Turkey, 22/09/2009**, § 116-117**
[291] Also, the lack of automatic suspensive effective as of the appeal against a deportation order appears to be legally problematic.

as both the legal representative in her submissions and the Greek Dublin Unit caseworker highlighted, the parent was considered legally present as he had a certificate of international protection application still in force indicating that his application for asylum was pending re-examination. It should also be pointed out that the rule of article 7 paragraph 2[292] of the Dublin III Regulation had not been taken into account in this negative response as, at the time of the submission of the child's international protection application, the family member's application had not yet been rejected in the first instance, since it was still pending examination. This indicates that the article 8 requirement of being legally present has been misinterpreted and misapplied in the present case leading to a prolonged separation of family members for an indefinite period of time.

There is one more case among the sample in which the rejection seems to be related, among other grounds, to the legal status of the relative, stating that the relative is not a beneficiary of international protection contrary to what the applicant had declared. This phrasing however is ambiguous and it does not provide any concrete information regarding the legal (or irregular) status of the relative, thus not allowing to ascertain whether the requirement of being legally present is fulfilled.

Both of the last two cases indicate that the respondent State's omissions are not in compliance with the necessary cooperation and information-sharing among Member States or with the legal requirement of providing not just 'full' but also 'detailed reasons' for the refusal.[293]

Overall, it could be concluded that according to these findings, the term 'legally present' has been misinterpreted or misapplied, on repeated occasions, resulting in unnecessarily maintained separation between the child and his family relations.

[292] According to which: The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF

[293] Article 5 (1), Implementing Regulation 1560/2003.

4C) Best interest of the child[294]

Best interest of the child: specific guarantees and practice

The preamble of the Convention on the Rights of the Child stipulates, *the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.*[295] Further, the Convention on the Rights of the Child acknowledges several rights to children, which should be secured by States. Taking the above into account, the Dublin III Regulation provides a number of safeguards for children in a 'Dublin' process. For unaccompanied children particularly, the appointment of a representative for the child is considered of pivotal importance, always taking into account the views of the child according to his/her age and maturity, as it helps to ensure that the best interest of the child is centred throughout the 'Dublin' process. Given the significant effects on children's lives of the decision concerning the 'Dublin' process, States are bound by the Dublin III provisions to consider primarily the children's best interests when applying the Regulation.

The role of the representative

The representative in the Dublin III Regulation

The Dublin III Regulation places the existence of a representative appointed to represent and/or assist the child throughout the 'Dublin' procedure at the core of the procedural safeguards. The role of the representative is crucial in the assessment of the child's best interest and therefore he/she ought to *have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation.*[296] No further specification is included regarding the qualifications and expertise or professional capacity (i.e. lawyer, social worker etc.) of the representative in the Regulation, however the obligation to ensure that a representative is appointed is expressly incumbent upon State authorities. In this context, it is provided that the representative shall be present in the personal interview conducted for the purpose of determination of the Member State responsible, the representative shall also have access to the content of the relevant documents in the applicant's file and the authorities carrying out the process of establishing the Member State responsible for examining the application of an unaccompanied child *shall involve the representative in this process to the greatest extent possible.*[297] This underlines the significance of the representative's role and that States should give due account to the information and or/views of the representative in the framework of the best interest of the child. Even in cases where the appointed representative is an organisation there should always be a designated [natural] person acting as the representative to carry out the duties provided in the Dublin III Regulation.[298]

Considering the role of the representative is to exercise legal capacity for the child when necessary and to secure the best interest of the child throughout the 'Dublin' procedure, it becomes evident why it is imperative to ensure that a specified, natural person is appointed as the representative of the child. It should also be noted that the above apply in addition to and within the general context of the appointment of a representative provided in the Asylum Procedures Directive, including the role of the representative to give consent in cases of medical age examinations for instance.[299]

[294] The total sample examined in this subchapter is 67 cases. The remaining 13 cases where TCRs were sent under article 8 and 17(2) or 17(2) exclusively are analysed in chapter II) 5 below. Also, one case is included in both, as two different TCRs were made, one under article 8 exclusively and one subsequently under article 17(2): each TCR and subsequent process is examined under the respective chapter (Chapter II) 4 C) for TCR under article 8 and chapter II) 5 B) for TCR under article 17(2)).
[295] Preamble, United Nations Convention on the Rights of the Child available at: https://www.ohchr.org/en/professionalinterest/pages/crc.aspx
[296] Article 6 (2) Dublin III Regulation
[297] Article 6 (2) Dublin III Regulation combined with article 1 (7)3 Implementing Regulation 118/2014.
[298] Article 2 (k) Dublin III Regulation
[299] Article 6 (2) Dublin III Regulation combined with article 25 Asylum Procedures Directive. In the Greek legal context, it is provided that a guardian should be appointed for an age assessment process and he/she (or the unaccompanied child) should consent for the medical age assessment to take place (article 45 L. 4375/2016 incorporating article 25 of the Asylum Procedures Directive)

The Greek legal context and practice

The relevant Greek legislative framework provides that in cases of unaccompanied children the Public Prosecutor for Minors or in the absence of said Prosecutor, the Prosecutor at the First Instance Court is considered by Law the temporary guardian and is responsible for proceeding with the necessary actions for the appointment of a guardian.[300] In the context of the asylum procedure,[301] a 'representative' is considered the temporary or permanent guardian of the child or the person appointed by the competent Public Prosecutor for Minors or in the absence of the latter, by the First Instance Court Public Prosecutor to ensure the child's best interests. The role of the representative of a child may also be assigned to the person responsible for the legal representation of a non-profit legal entity. In the latter case, the representative of that legal entity may authorise another person to represent the child. Regarding the lodging of an international protection application an unaccompanied child less than 15 years of age always lodges an application through a representative, whereas a child over 15 years can lodge an application independently. Both the representative of the child as well as the representative of the accommodation centre that hosts the child may submit an application for international protection on the child's behalf as long as they consider the child might have the need of international protection on the basis of an individual assessment of the child's personal circumstances. It is also worth noting that the Law explicitly refers to the possibility of the representative being a lawyer.[302]

In practice, the procedure of appointing a guardian is not, in principle, currently operational. Therefore, the Public Prosecutor for Minors is responsible for authorising a natural person to act as a representative of the child on the basis of a written authorisation specifying the particular framework of actions delegated to him/her. This could extend to social rights of the child (as in the practice of the NGO Metadrasi's 'network of 'guardians' for unaccompanied minors') or be limited to mainly legal representation/assistance related to actions required by the asylum procedure. NGO staff currently serves this role. At the time of writing, a new Law has been adopted but has not entered into force,[303]which introduces a new framework establishing a registry of guardians for foreign/stateless unaccompanied children. Also, a new Law incorporating the Reception Conditions Directive (recast) has been issued, which includes specific reference to the capacity and role of the representative at the stage of reception as well as the process followed to assign a representative, again through the competent Prosecutor.[304] It is worth noting that the representative should have the knowledge and expertise necessary to perform the duties in a way which ensures the best interest of the child as well as the child's well-being and that the responsible authority for the protection of minors will occasionally conduct evaluations of the representatives, according to the relevant provision.[305]

In the particular context of this research study, where all children are housed in PRAKSIS shelters, shelters undertake the temporary care of the children regarding the coverage of all their relevant needs (housing, nourishment, psychosocial needs, schooling, medical needs) on the basis of the Prosecutor's order. Additionally, all PRAKSIS lawyers act upon authorisation of the Prosecutor for Minors for the legal actions specified therein, therefore acting as 'legal representatives'.[306] This authorisation is always submitted to the Regional Asylum Offices and is made available to the Greek Dublin Unit, therefore ensuring that the legal representative acts upon and within the framework of the authorisation of the Prosecutor for Minors. It has been observed that occasionally the PRAKSIS lawyers make specific reference to their capacity as representatives by signing their legal submissions as 'the applicant through his representative'.

Likewise, even though it does not emerge from the information available in the sample that the Greek Dublin Unit sends the authorisations from the Prosecutor for Minors to the respondent Member States, caseworkers have repeatedly referred to the PRAKSIS legal representative/lawyer in correspondence with

[300] Article 19 paragraph 1, Presidential Decree 220/2007
[301] Articles 34 (l), 36 paragraphs 8,9,10 combined with 45, L. 4375/2016 http://asylo.gov.gr/en/wp-content/uploads/2016/05/GREECE_Law_4375_2016_EN_final.pdf
[302] Article 45 paragraph 3, L. 4375/2016
[303] Law 4554/2018, Government Gazette 130, 18/7/2018 available at: http://asylo.gov.gr/wp-content/uploads/2018/08/%CE%95%CE%A0%CE%99%CE%A4%CE%A1%CE%9F%CE%A0%CE%95%CE%99%CE%91-XLcompressed.pdf According to article 32, the entry into force is dependent upon the issuance of a ministerial decision by the Ministry of Labour Social Security and Social Solidarity
[304] Articles 2 ia) combined with articles 22 paragraphs 1,3, 5 and 30 paragraph 6, Law 4540/2018, Government Gazette 91, 22/5/2018 entered into force on 22/8/2018. According to article 30 paragraph 6 of this Law, the abovementioned article 19 paragraph1 of the Presidential Decree 220/2007, remains into force.
[305] Ibid, article 22 paragraphs 3a) and 5.
[306] This term is used throughout the study to describe this capacity: Lawyers acting on authorisation of the Prosecutor for Minors, in the frame of the specific legal support actions described 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.

the respondent States in various ways, such as the 'legal representative', 'representative of the minor', the 'legal aid of the minor' or even the 'legal guardian'. The latter cannot be considered fully accurate as specific guardianship acts can potentially be delegated to a representative[307] acting on authorisation by the Prosecutor for Minors but the person is not considered a guardian per se as this capacity remains with the Prosecutor for Minors. [308]

In practice, the legal representative often serves the role of the representative[309] in the Dublin process through the described process of authorisation by the Prosecutor for Minors and in absence of another appointed representative. It appears that the Greek Dublin Unit, as the competent authority for the determination of the Member State responsible, generally seems to keep the legal representative involved in the procedure for determining the Member State responsible, in compliance with the abovementioned relevant legal requirement in the Implementing Regulation, by providing information regarding the receiving Member States' responses or requesting the necessary documentation or information. Occasionally, it has been observed that this communication did not take place with the necessary promptness, as further described in chapter II) 8.

In regard to the respondent Member States' approach there has been no observed standardised, uniform or consistent practices taking the relevant information, views and submissions of the legal representative into account. On occasion, the information provided through submissions may have influenced the subsequent positive response, however, **no general consideration of a significant weight placed on the legal representative's submissions can be inferred from the cases reviewed**. In several cases the family reunification request was rejected despite the views and information presented by the legal representative, while no general practice of request for information regarding the views of the legal representative (or information provided by him/her) by the respondent Member States has been noted. However, there have been a few distinct instances where specific reference to the legal representative has been made by the respondent Member State. In one case, the respondent Member State requested that the legal representative (called 'legal guardian' in its correspondence) provide a statement to 'prove' that the reunification is in the best interest of the child.[310] In other cases, some Member States requested further clarifications and detailed information and were satisfied to receive them from the legal representative.

Best Interest Assessment (BIA) Process: requirements and practice

Requirement of cooperation between Member States

As analysed in detail above in chapter II) 4 A) section 'Overview of the legal requirements', cooperation between Member States is specifically provided for in the framework of article 8 of the Dublin III. Regarding the best interest of the child in particular, a close cooperation between Member States is required in the context of assessing the best interests of the child according to the relevant provision.[311] Factors to be taken into account in assessing the best interests include, *family reunification possibilities, the minor's well-being and social development, safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking, the views of the minor, in accordance with his or her age and maturity.*[312] In the framework of article 8, the State where the application for international protection of the child is lodged is obliged to proceed with appropriate action for the identification of the child's family relations including access to family tracing services of relevant organisations.[313]

A procedure for consultation and for the exchange of information between the Member States is provided through a standard form[314] and is meant to serve the purpose of identification/location of the family relation, establishment of family links and as an assessment of the relative's capacity to care.[315] In cases where the family relation in another Member State is a relative (article 8(2)) or where there are more

[307] See relevant reference in article 45 paragraphs 1,3 L.4375/2016
[308] Reference is made to the current -applicable at the time of the drafting of this study- legal framework described above.
[309] In the sense of the term as described above in the relevant provisions of the Dublin III
[310] Which was not a consistent practice though as it emerged from the other cases involving that Member State.
[311] Article 6, Dublin III Regulation.
[312] Ibid.
[313] Article 6(4) Dublin III Regulation. Also, another guarantee provided in article 6(4) is the requirement for appropriate and continuous training of the staff of the competent authorities regarding the specific needs of the children.
[314] Included in Annex VIII, Implementing Regulation 118/2014, as mentioned above
[315] Article 6(5) Dublin III Regulation in conjunction with article 1 (7)(4) and 1 (7)(6) Implementing Regulation 118/2014.

family members, siblings or relatives in different Member States (article 8(3)), an enhanced cooperation process is required (this shall be further analysed in the respective subsections below). According to the findings on the basis of the research sample the process of exchange of information through the standard form does not seem to be generally observed in practice. Co-operation, when observed, takes the form of a request, provision or exchange of relevant information between the Member States from the initiation of the TCR and thereafter (concrete examples will be demonstrated below).

The aforementioned identification process, via facilitation of access to tracing services and/or through the exchange of information through the standard form, does not seem to be applied in practice either. In the vast majority of cases, the identification details (address, contact details and legal status documentation) of the children's family relations in other Member States are already available at the time of the lodging of the international protection application. However, from a very limited number of cases where the above was unavailable to the child at the time of the submission of the international protection application, the Greek competent authorities did not adopt a proactive approach for identification, as per the legal requirement. In particular, the process of the TCR took place after the subsequent submission of the relevant information and/or documentation by the child at a later stage, resulting in delays for the case.

Best Interest Assessment (BIA) process in practice[316]

Neither the Dublin III Regulation nor the Implementing Regulation provide for a standardised process and/or form for the assessment of the best interests of the child for unaccompanied children in the 'Dublin' procedure. The only relevant provisions, as mentioned above, include specific factors that should be taken into account in the assessment namely: family reunification possibilities, the child's well-being and social development, safety and security considerations as well as the views of the child according to age and maturity. These provisions also underline the representative's role in ensuring that the best interest of the child is taken into account. A personal interview with the applicant in the presence of the representative is also provided for in order to facilitate the process of determining the Member State responsible. The interview may be omitted if the relevant information allowing for the determination has already been provided.[317] Finally, the standard form for the exchange of information between Member States,[318] initially serves the purpose of identifying the family relation, establishing the family links or giving information regarding the presumed capacity of the relative to take care of a child according to an assessment performed by the competent service of the respondent State. However, this exchange of information and consultation is considered as the basis for further establishing the 'best interests of the minor' as referred to in the Implementing Regulation concerning cases where different family relations reside in more than one Member State.[319] It should also be underlined that even though the requirement of the reunification being 'in the best interests of the minor' is included in all categories of reunification under article 8, irrespective of whether the family relation is a family member, a sibling or a relative, **an individual assessment is explicitly provided in article 8(2) of the Dublin III Regulation only regarding the relative's ability to care** (this will be analysed below in the respective subsection). This seems reasonable in the cases of reunification with more distant family relations such as relatives. However, any reunification, regardless of the type of relationship, should always serve the child's best interests (as it transpires from the provision of article 8).[320]

According to the **Greek practice**, as demonstrated in the research sample, the only personal interview in State 'Dublin' family reunification procedures occurs during the registration of the international protection application, where basic information regarding the presence of family relations in other Member States (or third countries) and the willingness/views of the child with regard to a potential reunification within European ground[321] is requested. Sometimes, children may have provided more detailed information regarding the actual ties, relationship in the past etc., during the registration process. **The review of TCR forms, even though no consistent and systematic practice can be inferred, indicated that sometimes TCR forms included vital elements to be considered in relation to the**

[316] As already mentioned, observations and numbers included refer to cases where the TCR was sent under article 8. For cases sent under article 17(2) exclusively or additionally, see chapter II) 5 further below.
[317] Article 5, Dublin III Regulation in conjunction with article 1 (7) (3) Implementing Regulation 118/2014.
[318] Annex VIII, Implementing Regulation 118/2014
[319] Article 1 (7) (4) and (5), Implementing Regulation 118/2014.
[320] See also Opinion of Advocate General Cruz Villallon, 21/2/2013, Case C-648/11, points 60,61,62,78 available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62011CC0648&qid=1537201642034&from=EN emphasising that the Member State responsible will be that were the family relation is present unless, exceptionally, this would be against the child's best interest.
[321] Covering the application of the Dublin III: EU Member States and the associated Member States Iceland, Norway, Switzerland and Liechtenstein.

child's best interest. These included the fact that the child was unaccompanied without a supportive environment in Greece, the need to be reunified with the family relation in order to feel safe and be in an emotionally supportive environment and even, in fewer cases, a conclusion that the reunification appears to be in the child's best interest. This practice was encountered regardless of the legal basis for TCRs sent under articles 8(1) and 8(2)[322] and irrespective of whether or not a BIA form had been co-submitted with the TCR. It should be noted that in a UK judgment regarding Dublin III, the Court considered that a TCR form containing information and an assessment comparable to the above, concerning a single parent family in that case, contained significant information and a finding as to how the Greek authorities assessed the family.[323] **According to the sample, the practice of the BIA process i.e. a comprehensive interview and the submission of a report, was performed, in principle, by PRAKSIS shelter staff** (usually a social worker and/or psychologist) and reviewed by the shelter coordinator.[324] Other times, a type of informal BIA and recommendations has also been observed in the PRAKSIS lawyer/legal representative's submissions, based on the information available to the representative. In one particular case the BIA was performed by RAO staff, however, this was possibly linked to both the particular RAO's practice that conducted some BIAs on a pilot basis as well as, potentially, to the particular circumstances of the case.[325]

During the period covered by the research sample, there is no uniform practice of a specific form being used for the assessment [326]and different types of forms used by PRAKSIS staff have been noted in the sample, such as an elaborate BIA form for 'Temporary Care Arrangements and Durable Solutions', the Comprehensive BIA form, or occasionally more informal types of narrative reports.[327] Additionally, legal notes often include relevant information and sometimes specific recommendations or conclusions regarding the best interest of the child, as stated above. Sometimes, psychosocial reports have also been submitted instead of BIA forms. In the majority of the cases in the sample, an extensive, elaborate BIA form for 'Temporary Care Arrangements and Durable Solutions' has been used by PRAKSIS staff, providing information concerning the child's family relations, their whereabouts and closeness of actual ties as well as the child's past experiences and current status (emotional status included). Also included are the child's views concerning a potential family reunification with the particular family relation with whom reunification is sought, as well as more extensive information regarding closeness of ties and communication with the particular family relation. Additionally, in cases where reunification with siblings/relatives is pursued, the parents' views concerning reunification are also generally included when the child is in contact with them.[328] Finally, recommendations are always the concluding part of the assessment. Most of the above information is included, in principle, in all types of reports encountered. **It is worth underlining that all BIAs, psychosocial reports and legal notes are edited in English[329] while in an isolated case a BIA was edited in the language of the receiving State.**

It should be noted that, in most cases, a BIA form is submitted at the reconsideration stage of the Dublin process, whereas submission before the TCR is more limited. In particular, a BIA form was submitted in the TCR stage in ten cases, [330] whereas in the re-examination stage it was submitted in 23 cases[331] in total and in one more case, which was pending re-examination, the BIA is prepared and is under review.[332] **In several cases, psychosocial reports or assessments were submitted either instead of or in addition to a BIA form, often including vital information regarding the best interest of the child**. More specifically, in nine more cases where a formal BIA was not submitted, a psychosocial report

[322] For cases which are 8(3) cases in substance, see in detail analysis under chapter II) 4 C) subsection 'Best Interest Assessment (BIA) in case of family relations present in different Member States (Article 8(3))'

[323] See UK - HA, AA and NA v Secretary of State for the Home Department, JR/10195/2017, 19 April 2018, paragraphs. 40-41, available at: http://www.asylumlawdatabase.eu/en/case-law/uk-ha-aa-and-na-v-secretary-state-home-department-jr101952017-19-april-2018

[324] In a very limited number of cases BIAs had been submitted in the Dublin process, prior to placement to PRAKSIS shelters, from NGOs hosting the child before.

[325] Unaccompanied child applicant wishing to be reunited with spouse.

[326] Or any relevant requirement provided by the Regulation as already mentioned.

[327] In August 2018 a new BIA form has been uploaded at the Greek Asylum Service' s website, developed by the Greek Dublin Unit, with the contribution of several actors, which shall be the form to be used onwards by NGO staff. Available at:http://asylo.gov.gr/wpcontent/uploads/2018/08/%CE%95%CE%A0%CE%99%CE%A4%CE%A1%CE%9F%CE%A0%CE%95%CE%99%CE%91-XLcompressed.pdf

[328] Sometimes, the phrasing indicates that the information is coming from the interview with the child, who however gives detailed information about the parents' views whereas other times, the information as cited indicates that direct contact with the parents has also taken place.

[329] In one case a psychosocial report was sent in Greek and subsequently translated in English and sent again.

[330] In four cases -out of ten- the BIAs were submitted with the TCR in cases accepted directly, without entering into a re-examination stage. BIAs in such cases (accepted directly) were quite limited, four out of 22 cases (including here two acceptance by default in the latter number) sent on the basis of article 8 exclusively. In two of those cases, the submission of BIAs seems to have been associated with the particular circumstances, (more family relations in different Member States, unaccompanied child siblings, one of them facing health problems)

[331] In one of them an updated BIA was submitted at the second re-examination

[332] Developments included according to the cut- off date: 20 April 2018.

assessment had been included instead along with legal notes, often including information regarding the best interest of the child. **Therefore, in a total of 67 cases of TCRs submitted exclusively on the basis of article 8, 42 cases included (at the TCR or re-examination stage) a BIA or a psychosocial report or assessment and in one more, the BIA was under way, as mentioned above.**

In this respect, it seems important to highlight that the vast majority of the remaining cases, **18 out of 24** cases, concerned cases that were accepted directly (or by default) without entering into a re-examination stage. Regarding the remaining six cases, one of them included an information note by the appointed representative as well as a legal note by the subsequently appointed PRAKSIS lawyer. Both notes provided some vital information for the best interest of the child but did not seem to have been taken into account by the respondent Member State. Of the remaining five cases, four were 8(1) cases [333] and the issues raised in all five cases pertained to clarifications/establishment of the family links. All five cases were subsequently accepted following the submission of relevant evidence such as DNA, clarifications by the Greek Dublin Unit, a questionnaire filled out on a basis of an interview with the legal representative etc.

Finally, it should be stressed that in certain cases, the BIA or psychosocial report or assessment was prepared or initiated previously but concluded and reviewed at a later stage and then submitted at the re-examination stage. Also, in few cases a BIA had been prepared but was not submitted because an acceptance followed in the meantime. Further, the observed practice of submitting BIAs more frequently in the re-examination stage seems to be linked also, to some extent, to the stage at which some children were placed in a PRAKSIS shelter, namely after the TCR.

With regard to the respondent Member States' approach to BIA practice, a few important observations can be inferred from the research sample. First, it should be underlined that **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. In some of these cases further information is requested regarding the family connection between the child and the family relation etc., or information as well as an assessment regarding the best interest of the child. A request for a BIA addressed to the sending State has been observed in six cases in total, including cases where a BIA is explicitly requested or a 'report', a 'statement' or 'information' is requested by the receiving State directly relating this in its request to the best interest of the child.[334]

With respect to the question of the responsible authority to proceed with the assessment, even though a request for an assessment by 'the authorities' has been sometimes observed, the subsequently submitted BIA conducted by PRAKSIS shelter staff has been accepted, except for one isolated case. In this case, the Member State requested, separate to the BIA already prepared by PRAKSIS and submitted to the respondent Member State through the Greek Dublin Unit, an assessment by the Greek authorities**, stating that the authorities are responsible for conducting an assessment, not an NGO**. However, during subsequent interviews with PRAKSIS lawyers for updates on the cases reviewed for the purposes of this study, it has been communicated to us that this approach has occurred in a few more cases, which were not included in the sample. However, it did not appear that this constitutes a consistent approach of any Member State.

It should be noted that, considering the role of the representative both in the context of the Dublin III and the Greek legal framework as well as the particular role of the shelter staff hosting unaccompanied children as provided in the Greek Law, it appears unfounded to disregard a BIA prepared by an NGO which is responsible for the temporary care of a child and which acts on the Prosecutor for Minors' order. This applies also to the relevant recommendations of the legal representatives acting on authorisation of the Prosecutor for Minors. It should further be underlined that the standard form for the exchange of information[335] explicitly provides for the identification, location, assessment of the degree of the relationship and the relative's capacity to care to be conducted by *a '*public authority, representative's services, NGO or IGO' and for the possibility of a similar service in the sending State to contact that service. It thus follows that NGO involvement in this process is permissible according to the Implementing

[333] In one of the four cases a Best Interest Determination had been prepared but not submitted, as it was not deemed necessary in the end.
[334] In one more case a reference to a potential need for a Best Interest Determination in case the family links are proved, is included, without however specifying if the sending or the respondent State will be performing it.
[335] Annex VIII, Implementing Regulation 118/2014.

Regulation. In conformity with the above, one Member State (Italy) has requested a report by 'social services or an **NGO**' [**Our emphasis]** in all Italy bound cases.[336]

Another important point observed is the fact that some Member States request information or a BIA but at the same time declare that their social services will also proceed with a BIA on the appropriateness of the family relation to undertake the care, even if this refers to 8(1) cases.[337] This has been observed in two Sweden bound cases concerning siblings, even though it cannot be inferred according to the information available that this process was consistently applied in all 8(1) Sweden bound cases.[338] **However, an individual assessment of the ability to care is provided only for cases regarding relatives (article 8(2)) according to the Dublin III Regulation**.[339] Similarly, in another case, the receiving Member State's response included a requirement beyond the Regulation's threshold, in particular, associating the best interest of the child with the request for financial/accommodation information, even though the reunification request was sent under article 8(1) (siblings).[340] Implicit reference to financial requirements has also been observed in one other 8(1) case (parent) concerning another Member State.[341] Finally, the Netherlands seems to have adopted a proactive approach of proceeding with an assessment in the sense of both conducting a social assessment of the relative as well as sometimes contacting the applicant directly (even though a BIA is conducted and submitted by the Greek side).[342] In one case, this process took place despite the fact that it concerned reunification of siblings (8(1) case), however the authorities' response seems to imply that an assessment of a sibling would be exceptional and does not in principle apply in 8(1) cases. In particular, it was mentioned that information was provided according to which there were indications that an individual assessment might be necessary in order to determine whether it is in the best interest of the child to be reunified with the sibling.

The sample also includes cases where the respondent Member State underlines the fact that a long separation between family members, siblings etc. is a reason to reject the family reunification request, on some occasions on the explicit ground that the best interest of the child is not being served by the reunification. The practice of rejecting on the basis that there is no close emotional tie as the family members, siblings or the child and his/her relative have been living separately, has been observed in three cases involving various Member States,[343] and no conclusion of a consistent or systematic practice by them can be inferred.[344] Regarding the timeframe of separation, it ranged from separation for one and half years, five years and, in one case, up to a separation not very long after the child's birth. **Only one of those cases was ultimately accepted. This practice has been applied even in a case concerning a parent and a child, despite evidence underlining the actual personal tie.**[345] **It should however be highlighted that this type of reasoning is not within the scope of article 8 preconditions**.[346] Further, it is contrary to the applicable well-established ECtHR case law on family life (article 8 ECHR) according to which (…) *it follows from the concept of family on which Article 8 is based that a child born of a marital union is ipso jure part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to 'family life'(…) which subsequent events cannot break save in exceptional circumstances.*[347]

[336] Two cases examined under this chapter. For article 17(2) cases see chapter II) 5 further below, where Italy has a consistent approach in this respect.
[337] For 8(2) cases see below chapter II) 4 C) relevant subsection on relatives 'The particular requirement in case of reunification with relatives: individual assessment of the ability to care (article 8(2))'
[338] In two other cases, it does not stem from the questionnaire that this was included in the response of the Swedish authorities, (relevant documentation was not available). In another case this was not included, however the Swedish authorities had clearly stated that article 8 was not applicable according to their view, therefore this case cannot be indicative of whether this practice is applied or not. 8(1) Sweden bound cases were five in total.
[339] Still, article 12(1) Implementing Regulation (1560/2003, in force, provides for cooperation between the competent State authorities 'authorities or courts for the protection of minors' regarding the decision to entrust the care of a child, in cases other than the 'father mother or legal guardian'. This article seems to imply that siblings can be included in this process, being relatives 'other than mother father or legal guardian'. However, this article is prior to Regulation 604/2013 which includes siblings in article 8(1) (in addition to family members) and which provides for an individual assessment for the ability to care **only for relatives falling under article 8(2)** (grandparents, aunts and uncles). Assuming that siblings would still be included in this process, it does not seem that the process could extend, in any case, to an individual assessment in the sense of article 8(2).
[340] That Member State however ceased to request this information and accepted the TCR once the PRAKSIS legal representative pointed out that this aspect is not of relevance in article 8(1) cases.
[341] At this point, it should be noted, that sometimes such information (financial status, accommodation etc.) is included in the evidence submitted with the TCR or at the re-examination stage even though this element is, in any case, not of relevance in article 8(1) cases.
[342] See below chapter II) 4 C) relevant subsection on relatives 'The particular requirement in case of reunification with relatives: individual assessment of the ability to care (article 8(2))' in detail
[343] France, Denmark Austria
[344] For instance, in another French bound case involving long separation, this reasoning was not included.
[345] Tickets showing that the parent had visited the child repeatedly and a BIA providing information regarding their close actual tie.
[346] The element concerning length of separation is not included in article 8 of the Dublin III, nor is it included as a factor to be assessed in the standard form for the exchange of information pursuant to article 6(5) of the Dublin III: Annex VIII, Implementing Regulation 118/2014 in cases of relatives' ability to care. All the more so, it does not seem to be of relevance, in cases of core family members.
[347] Indicatively, ECtHR, 23218/94, Gul v. Switzerland, paragraph 32 available at: http://hudoc.echr.coe.int/eng?i=001-57975 In this case the Court concluded in circumstances where the father and the child had been living apart since the child was three months old, that their relationship consisted of family life protected under article 8 ECHR, taking also into account, among other factors, the visits the father made to his child (**paragraph 33).**

Case study

A 16-year old boy from Iran, with multiple vulnerabilities including serious medical issues, arrived on the island of Samos unaccompanied. He submitted an international protection application approximately two months after arrival, seeking reunification with his brother, an international protection applicant in an EU Member State. The TCR was sent a little over one month after the lodging, attaching the child's written consent, a copy of the child's identity card from the country of origin and a copy of the family certificate, fully substantiating the family ties. Also, documentation establishing the brother's legal status in the respondent State and his contact details were sent. The Greek Dublin Unit caseworker also made reference to the child's medical problems in the TCR. In the meantime, a few days before, the child was placed at a PRAKSIS shelter, around three months after his arrival. At the expiry of the time limit for the TCR, two months after its dispatch, a negative response was sent, which challenged the emotional and family bond because the two brothers had been apart for one and a half years. Furthermore, a request was made for additional information in relation to the child's health problems. The re-examination request submitted the next day by the Greek Dublin Unit included a BIA form prepared by the PRAKSIS shelter staff and medical documentation in relation to the child's health problem.

However, a new negative response was received approximately one month later on the same ground, maintaining the position that the required emotional bond was not present due to the separation. Three weeks later, a new re-examination request was submitted attaching an updated BIA, additional medical documents including a psychiatric report, all of which again substantiated the high vulnerability of the child, and a written statement by the brother. A little over a month later, the boy was accepted by the respondent State and was transferred three months after the acceptance. The PRAKSIS lawyer noted that the boy was extremely disappointed after the first rejection on his reunification request, and his psychological state shifted dramatically after the acceptance.

**Some data, such as the country of origin have been altered in order to maintain anonymity*

Further, there is a practice observed in some France bound cases, relating to invoking the best interest of the child as the basis for the reasoning of the negative response.[348] This was the case, even though the findings were not based on any relevant process for a proper BIA by the respondent authorities and despite the BIA or Psychosocial Assessment findings/recommendations submitted by the legal representative to the Greek Asylum Service and subsequently to the respondent State through the Greek Dublin Unit. As such, the best interest of the child has been invoked repeatedly in the reasons for rejection, either because the father had left when the child was young and had created a new family and therefore it was considered that the reunification would not be in the best interest of the child, or because the father's situation was not considered stable enough to provide good living conditions or even because the respondent authorities could not authenticate the documentation and considered that the best interest of the child dictated that they did not participate in what they feared could be 'trafficking networks'. The above reasonings do not seem to be in compliance with preserving the best interest of the child, as they disregard the findings of the BIAs made in the sending State and do not even seem to stem from the findings of an established assessment procedure in the respondent State. **Furthermore, given that the refusal of reunification in these cases on the basis of the aforementioned reasonings, concerns core family members' reunification (minor children with their parents), this appears to be particularly damaging to the child's best interest**.

Finally, it is worth noting that in certain cases under article 8(1) some respondent Member States[349] have stated that they will contact the family relation (parent, sibling) in order to confirm the willingness to be reunified with the child or have proceeded with this without notifying previously the sending State.

In conclusion, it should be noted that in several cases the BIA findings and recommendations or the relevant information provided, whether these were submitted in the form of a BIA form or through other reports,[350] did not seem to be adequately taken into account by the respondent Member States. In particular, respondent States have repeatedly rejected the TCRs contrary to the recommendations and findings of the BIAs and often have not made any reference to the BIA recommendations.

[348] Three cases in particular.
[349] I.e. France, Germany
[350] Psychosocial reports/assessments, or the legal representative's legal notes including observations or relevant information

Particular Requirements

The particular requirement in case of reunification with relatives: individual assessment of the ability to care (article 8(2))

Article 8, paragraph 2 includes an additional precondition in cases of reunification with aunts, uncles and grandparents. This precondition is the ability of the relative to care which emanates from an individual assessment. It is considered, however, that the best interests of the child shall be of primary consideration in the application of the Dublin III Regulation. **In this context, the findings regarding the relative's ability to care should be viewed and interpreted in the light of the child's general best interest**. According to the legal provisions applicable, in cases of potential reunification with relatives, the respondent Member State, through its competent State or other non-State services,[351] appears to clearly have a role in assessing the capacity of the relative to care and providing relevant information to the sending State. The Implementing Regulation provides for a relevant tool to be used, namely the standard form for the exchange of information[352] where relevant information regarding all or any aspects of the capacity to care can be included. In particular, types of information included in the form and considered useful refer to the emotional capacity of the relative to care (factors to be taken into account, include psychological and social aptitude, willingness, previous care of the child etc.) as well as to material evidence of capacity to care such as financial information, employment or social security information etc. Evidence regarding accommodation, is not included among the indicatively listed elements in the standard form. However, as analysed below, the sample indicates that relevant evidence of accommodation is often either submitted by the sending State or accommodation availability and arrangements are assessed by the respondent Member State. For the purpose of classification, it will be considered as part of material capacity in the analysis below. Contact details of the competent service (public authority, representative services, NGO, or IGO), which proceeded with the assessment of the relative are required, in order for the respective service in the sending State to be able to get in contact with. In this respect, it is also provided that in cases of potential reunification with relatives other than the 'father, mother or legal guardian',[353] *cooperation between the competent authorities in the Member States, in particular the authorities or courts responsible for the protection of minors, shall be facilitated and the necessary steps taken to ensure that those authorities can decide, with full knowledge of the facts, on the ability of the adult or adults concerned to take charge of the minor in a way which serves his best interests. Options now available in the field of cooperation on judicial and civil matters shall be taken account of in this connection."*[354] This highlights both the particular cooperation required between the competent authorities for the protection of minors in such cases, as well as their particular role in deciding on the ability of the relative (with full knowledge of the facts as stated) to undertake the care of the child in accordance with his/her best interest.

The research sample regarding cases where the TCRs were sent exclusively on the legal basis of article 8(2) (relatives) corresponds to 26 cases, 21 directly[355] or finally accepted, four finally rejected and one pending reply.[356] Those cases involve nine Member States, namely Germany (eight cases) and the UK (seven cases) as well as Austria, Denmark, Italy, the Netherlands, Sweden, Switzerland and France with corresponding cases of one to two per Member State. Aspects that will be analysed in this subsection include the different approaches and processes of individual assessment between respondent Member States, the relevant material submitted by the sending State and its assessment by respondent States and, finally, the balancing of emotional and material capacity, in the context of the best interest of the child.

In the majority of cases, the respondent Member States make no reference to an individual assessment of the relative regarding the ability to care. However, it should be pointed out that the above sample includes seven cases which were accepted without entering into a re-examination stage and

[351] As mentioned above and further below, the standard from for the exchange of information Annex VIII, Implementing Regulation 118/2014 refers to public authority, representative services, NGO, or IGO'
[352] Annex VIII, Implementing Regulation 118/2014
[353] Article 12(1) Implementing Regulation 1560/2003.
[354] Ibid.
[355] Without a re-examination request
[356] Cases sent under article 8(2) and additionally 17(2) or only on the basis of article 17(2) are examined in chapter II) 5 Also 2 cases sent under article 8(2) are included, which pertain to more than one relative family member in different Member States that will be further analysed regarding the procedure provided in 8(3) in particular, below in the relevant subsection for article 8(3).

thus, the acceptance response only includes the reference to the acceptance and its legal basis.[357] This highlights once again the importance of cooperation and exchange of information between Member States in cases of unaccompanied children. More particularly, the practice of not sharing information regarding an individual assessment from a prior stage and proceeding with an acceptance without confirming that the positive response is actually based on a prior assessment appears to be a gap in the family reunification process concerning unaccompanied children.

A reference by receiving States to an individual assessment concerning the ability to care, has been observed in nine cases in total,[358] including both reference to an assessment conducted by the respondent Member State or a request made to the sending State to provide relevant information. In two more cases, the respondent Member State either rejected temporarily on the basis of needing more time to investigate the case or did not accept 'by default' on the basis of not being able to reach the relative, but no assessment has been confirmed in those cases.[359] The practice of proceeding with an individual assessment of relatives has been encountered in a consistent manner in cases where the Netherlands[360] is the respondent Member State and it has also been encountered sometimes in UK bound, Germany- bound or Switzerland- bound[361] cases, but not consistently.[362]

With respect to the particular type of assessment, it appears that both the UK and the Netherlands have proceeded in those cases with a house visit for assessment by the competent social/child protection services.[363] In Germany bound cases, the particular type of assessment conducted is not clear from the response, as there is either reference to the youth service's notification regarding the relative's overwhelmed status due to the number of children in their care, or to a check on the relative's financial status by the immigration authorities, without mentioning, in either case, if this emanated from a social service check/house visit or not. A unique practice observed only in Netherlands- bound cases consists of having direct telephone contact with the child, and in one case, with the father, also in the framework of the relative's assessment. It should also be stressed that the Netherlands consistently considered a house visit for social check to be a sine qua non prerequisite for accepting the reunification with the relative, irrespective of whether relevant evidence regarding the ability to care had already been submitted by the sending State.

A different practice was observed, although in very few cases, concerning cases where Italy or Denmark[364] (as the respondent Member States) **exclusively** requested the relevant information or evidence regarding the relative's ability to care from the sending State during the re-examination stage, without proceeding themselves with an assessment of the relative.

It is worth highlighting that this type of evidence or information is often included, in some cases in the framework of the TCR or more often in the re-examination request, even without a specific request being made (or any reference to the relative's ability to care in general) by the respondent Member State.

As such, evidence relating to accommodation arrangements and/or financial (including employment) status of the relative has been submitted a few times with the TCR and more frequently after the refusal of the request by the respondent Member State, even if the refusal was not associated to the relative's ability to care. Types of evidence often include the relative's witness statement regarding accommodation or sometimes even financial support of the child, or legal notes or other reports, which included such

[357] See article 6, Implementing Regulation 1560/2003.
[358] The limited number of cases per Member State-apart from the UK or Germany- should be born in mind regarding all observations in this section.
[359] In the first case there was an acceptance a few days later, following further submissions by the sending State in the framework of a reexamination request, which included the written consent of the relative and a psychosocial report. In the second, the process of reaching out to the relative may have been associated exclusively to the purpose of receiving the written consent, a practice sometimes observed in that Member State. The particular circumstances of the case regarding this aspect cannot be verified from the information available.
[360] Two 8(2). cases in total
[361] In the case concerning Switzerland the response makes reference to the relative's written statement to the Swiss authorities declaring the inability to accommodate the child. It is not confirmed if this occurred in the particular context of an assessment and which type. This is an 8(3) case and will be further analysed below in the respective subsection
[362] Reference to an assessment made by respondent States has been noted in two 8(2). cases regarding the UK (out of seven 8(2) UK cases), two cases concerning Germany (out of eight 8(2) Germany cases) [and in two more German cases a need for more time for investigation/finding the relative was noted without explicitly referring to an assessment] and one case concerning Switzerland (out of two 8(2) cases). The types of assessment are described in the main text above.
[363] In one case the UK also requested initially from the sending State some information regarding physical/ emotional needs of the child and the child's contact with the relative.
[364] One case for Italy and one case for Denmark. These were the only 8(2) cases involving those States. As mentioned, for cases sent on the additional or exclusive legal basis of article 17(2) see chapter II) 5 below

information. Sometimes actual documentation is included such as tax statements, proof of employment, pension statements, residential documentation etc.

Substantiation of the very important aspect of emotional capacity – the willingness to care being a central part of it – is again more often encountered at the re-examination stage. Although there are a considerable number of cases providing some relevant evidence at the TCR stage, more elaborate evidence is being provided in the next (re-examination) stage. The emotional capacity is established via written statements by the relatives, providing information about the relationship and their willingness to undertake the care. Also, BIA reports, social reports or legal notes containing crucial information regarding the closeness of the relationship and the actual personal ties, provide important indications regarding the relative's emotional capacity to care. The relative's expressed willingness for reunification has also been included in such reports several times. Sometimes, additional evidence such as family photos depicting the persons concerned or screenshots of communication between them has also been submitted. Furthermore, in cases where a written statement is not included, as a rule, a written consent is submitted[365] evidencing the willingness for reunification. It should also be underlined that in two[366] cases sent under article 8(2), the mother's consent for the child's reunification with the relative was submitted. As mentioned, the above cases have been either finally accepted, rejected or pending reply by the respondent Member States, as will be analysed below in more detail. It is important to note that in the cases finally accepted, from the documentation available regarding the Member States responses, no particular reference seems to have been made by the respondent Member State to the satisfaction of the criterion of the ability to care.

Another emerging issue from the relevant sample concerns the balancing of the emotional and the material capacity to care within the general context of the best interest of the child. The Dublin III Regulation does not provide particular factors to be taken into account. The Implementing Regulation, as stated, includes relevant factors (information concerning the emotional capacity, the material capacity or both) that may be shared between Member States following the relevant assessment of the relative by the competent services.

A conclusion regarding a standardised assessment for balancing the emotional and material capacity of relatives applying to all Member States cannot be inferred. However, in certain cases, evidence related to the emotional capacity of the relative has been considered sufficient to comply with the requirement of the ability to care. The relevant sample includes three categories of cases: the cases that are accepted directly without entering into a re-examination stage, those which enter a re-examination stage due to refusals invoking reasons irrelevant to the relative's capacity to care and finally, the cases undergoing a re-examination stage, where at some initial or later point, the element of the relative's capacity to care is invoked by the respondent State. The first two categories, in cases of initial or final acceptance, can give indications as to what is considered tacitly acceptable by Member States.

As such, in the sample of **seven cases which were directly accepted,** only two had evidence submitted with the TCR, regarding both material and emotional capacity of the relative to care: willingness as well as close ties through BIAs, written statements/consents and proof of accommodation or of financial capacity, whereas three cases only included a written consent as evidence of willingness (factor for emotional capacity). In the remaining two cases, from the information available, there seems to be an acceptance without any relevant evidence, in one, or after contact with the relative in the other.[367]

Regarding the **ten cases where there was an initial refusal for other reasons**, seven were ultimately accepted without including any reference by the respondent Member State to an individual assessment of the relative's ability to care, a process provided in Dublin III. In six out of those seven cases there was evidence submitted by the sending State regarding the relative's emotional capacity to care through a combination of written statements and/or written consents by the relatives, BIAs, psychosocial reports. Regarding material capacity, in at least[368] five cases there was information or evidence through written statements, psychosocial reports, legal notes, proof for employment which could cover either or both the

[365] There are only three 8(2) cases from the total sample of 26 cases analysed in this section where no written statement or consent is included at any stage. In one of those, the respondent Member State stated that contact with the relative was sought therefore it is presumed that the consent was received via this way.
[366] One of those is in substance an 8(3) case, even if the TCR was sent under article 8(2) and will be further analysed in the following subsection
[367] Presumably, at least for a written consent.
[368] In two cases the related documentation is not available, thus, it is not clear if for instance the written statements include also information about material capacity apart from willingness. Therefore, they are not included in the above number (five) regarding the material capacity.

aspects of accommodation and financial support.[369] It is worth noting that regarding the three remaining cases rejected or pending reply, abundant evidence covering at least the emotional capacity of the relative to care and in one case the material capacity, had been included in evidence submitted by the sending State.

The remaining sample of **nine cases in which reference to the relative's ability to care has been made** by the respondent Member States can be more indicative of the weight placed on the two potential aspects of capacity (emotional/material) in their assessment. Concerning the three cases[370] where the respondent Member States actively sought information by the sending Member State, all Member States requested information related to the emotional capacity, i.e. closeness of actual ties and/or whether the reunification could be considered in the child's best interest. In two of those cases, where no social assessment by the respondent Member State followed, information regarding both the willingness and ability to care was requested (even when partly available already).[371] Moreover, in one of them, a specific request to demonstrate the material capacity (accommodation, financial status) with the provision of evidence was observed. In these two cases, which were finally accepted, evidence regarding the emotional capacity was considered sufficient in one case whereas in the other the request was accepted only after material capacity was evidenced.

In cases where a social check and assessment has been conducted (seven cases in total), elements such as the willingness, the ability and/or the appropriateness to accommodate the child have been assessed, as it emerges from the Member States responses. However, given the lack of information regarding the content of the social assessment, it is not possible to conclude which elements were taken into account each time.[372] It is worth noting that in all the cases where an assessment of the relative was conducted, evidence and information regarding the emotional capacity of the relative to care had been already or subsequently made available to the respondent State through the evidence submitted by the sending Member State. This was also the case regarding material capacity whereas sometimes related evidence was submitted after the social check had been conducted and a negative response to the TCR, based on the check, had been communicated to the Greek authorities. Information or evidence submitted by the sending State regarding the material capacity mostly pertained to the ability to accommodate, while in a couple of cases evidence and information submitted related both to the financial status and the ability to accommodate as well.

Issues relating to the ability or the appropriateness of accommodating the child have been a primary consideration in the respondent authorities' social checks of the relative. The request has been refused when it was considered that the relative could not accommodate the child, for instance due to the number of dependent family members or due to other reasons. **In this respect, it is important to note that, the submissions of the child's legal representative, the BIAs as well as the Greek Dublin Unit's correspondence have repeatedly stressed the importance of assessing the option of family reunification in the general context of the best interest of the child and the overall conditions prevailing in his/her life. Thus, factors such as the child's unaccompanied status in Greece without any family supportive environment, the relative being the child's sole relative in the EU, the child's need for safety, security and emotional support that could be provided by the relative, have been invoked as factors in favour of the reunification being in the best interest of the child.** The above factors had been highlighted in circumstances where either the child could be accommodated or when exceptionally he/she could not be accommodated but could be hosted close by or finally, when the relative was faced with limited financial resources.

Concerning the financial aspect, it should be noted that in one case where the limited resources of the relative had been checked and put forward as a basis for rejection by the respondent State (it being considered that the relative could not undertake the care of the child without recourse to social benefits) the above factors had been invoked in the re-examination stage and finally the child had been accepted, as the best interest of the child dictated. Indeed, circumstances in which the limited financial resources of the relative would override all other considerations such as emotional capacity of the relative and willingness to care, needs and particular circumstances of the child could not seem to be compliant with the best interest of the child. In another case, those factors were not taken into account in the final outcome of the case in circumstances where the relative had declared an inability to accommodate but wished to provide (and had provided in the past) emotional support to the child. In this case, shelter facilities close by were available to

[369] Reference to accommodation is usually included, at minimum.
[370] As already mentioned, in one case (UK) there was a combination of request for information and a social assessment, subsequently.
[371] Analysis of the third case where a social assessment was conducted as well, is included in the following paragraphs.
[372] I.e. whether the financial status of the relative is also assessed, or not.

host the child and a child protection NGO operational in the respondent State had considered that the reunification with the relative was in the best interest of the child. Surprisingly, the respondent Member State considered in its final rejection that the circumstances in the case did not even warrant the alternative applicability of article 17 paragraph 2 (the humanitarian grounds clause).

Finally, it is important to stress that sometimes further evidence and information was submitted after the Member State's negative response (issued on the basis of the social check findings) had been communicated to the sending State, resulting in overturning the reasons invoked in the rejection. In one case, such evidence had been taken into account and the case was subsequently accepted by the respondent State whereas in two other cases, according to the respondent States' response the evidence had been considered but the previous decision concerning the social assessment and therefore the negative response, had been maintained. Following a request by the Greek Dublin Unit to proceed with a new social check and the involvement of a legal actor in the respondent Member State, the cases were finally accepted.

Concerning the seven cases where any type of assessment seems to have taken place in the respondent States, five were finally accepted, although often after long and repeated reconsideration processes and two finally rejected.[373]

The above findings should be considered in the context of the required cooperation and information sharing between Member States and in particular between the competent authorities for the protection of minors or child protection services, as provided in the Dublin III and the Implementing Regulation, in order to guarantee that the final outcome actually serves the child's best interest. In this respect, it should be emphasised that in certain situations, the information available to the respondent Member State after the social checks of the relative had been conducted, seemed to be of vital importance for the assessment of the child's best interest in the context of a potential reunification. If there are issues relating to the relative's ability to accommodate the child or the ability to provide a safe environment, sharing this information with the competent authorities/services of the sending State would be indispensable in accordance with the above described legal framework. In those cases, the information sharing process, even if this took place in the context of the reasoning for a formal negative response and not in a prior stage, allowed for further evaluation and fresh evidence/information to be submitted by the sending State thus contributing to a more holistic approach regarding the assessment of the child's best interest.[374] However, as already mentioned this did not always result in the respondent State taking the additional information or evidence into account and accepting the family reunification request.

Best Interest Assessment (BIA) in case of family relations present in different Member States (article 8(3))

As stated previously, the Dublin family reunification process provides for enhanced cooperation between Member States in cases where the unaccompanied child has more than one family member, sibling or relative present in different Member States. The criterion for determining responsibility is the best interest of the child according to article 8 paragraph 3 of the Dublin III Regulation. Therefore, an exchange of information between Member States via the standard form included in Annex VIII of the Implementing Regulation 118/2014, in order to assess the capacity of the relative to take care, is provided, *including where family members, siblings or relatives reside in more than one Member State.*[375] It is important to note that according to the wording of article 1(7)(5) of the Implementing Regulation 118/2014, the scope of enhanced cooperation between Member States applies not only in cases falling under article 8(3) of the Dublin III, where the different family relations reside in different Member States as per the wording and scope of article 8(3) of the Dublin III, but also where they all reside in one Member State (other than the sending State). In both circumstances the Member State where the unaccompanied child is present *shall cooperate with the relevant Member State - or States - to determine the most appropriate person to whom*

[373] The aforementioned Switzerland bound case, where a written statement of the relative was submitted directly to the Swiss authorities regarding the ability to care is included here, even though the exact framework of the assessment does not emanate clearly from the facts of the case. This being an 8(3) case, analysis is included in the following subsection.
[374] For instance, in one case the family reunification request was switched to another relative legally present in that Member State, once information regarding the initial relative's lack of capacity to undertake the care of the child was brought to the sending State's attention, following a social assessment in the respondent State. In the context of the new reunification request, abundant evidence was submitted regarding the (new) relative's capacity to undertake the care of the child.
[375] Article 1 (7)(4) Implementing Regulation 118/2014.

the minor is to be entrusted.[376] Therefore, once the exchange of information through the standard form[377] indicates the existence of more than one family member, sibling or relative in one or different Member States, an enhanced cooperation is subsequently provided between the sending State and any relevant States in order to determine the most appropriate person to entrust the care of the child.

Factors taken into account which need to be established through this cooperation are *a) the strength of the family links between the minor and the different persons identified on the territories of the Member States; b) the capacity and availability of the persons concerned to take care of the minor and c) the best interests of the minor in each case.*[378]

The research sample includes a fairly limited, although indicative, number of cases, which fall under the category of article 8(3) of the Dublin III, namely involving family relations in more than one Member State. In particular, **eight such cases** have been identified which have been sent to the respondent Member State on the basis of article 8(1) or 8(2).[379] The majority of cases were sent on the legal basis of article 8(1) (parents or siblings in the respondent State), whereas two cases were sent on the basis of article 8(2) (reunification with aunt). The respondent Member States in these cases varied – UK, the Netherlands, France, Switzerland, Germany and Norway were involved as the respondent States with 1-2 cases per State, whereas States where other family relations were present (in the above cases) included Member States such as Sweden, Belgium, France, Switzerland, Austria, Germany or even Greece.[380] As it appears from the above cases, no consultation occurred with any Member State other than the one to which the TCR was addressed i.e. the respondent State. Thus, the Member States where other family relations where present were not involved in the process.[381] However, information was provided regarding these relations through the BIAs or sometimes written statements as will be described further below.

The prescribed procedure of exchange of information through the standard form (Annex VIII Implementing Regulation 118/2014) does not appear to be observed in these cases either. The practice commonly followed consists of proceeding with BIAs in the sending State[382] and presenting the findings and recommendations to the Member State to which the TCR was addressed, thus falling under the common practice described above in article 8 cases in general. What is considered as specific to 8(3) cases, is the reference to all family relations present in different Member States and the relevant assessment regarding the person considered as the most appropriate to entrust the child, as analysed below in detail.

In seven out of eight cases, information about other relatives, siblings or family members being present in Member States other than the one to which the TCR was addressed, was available with the TCR, whereas in one case, this information became available to the respondent State at the re-examination stage, through the BIA submitted by the sending State.

However, even though the above information was included in the TCR, in principle, a BIA form regarding the appropriate person to undertake the care of the child was not submitted. In particular, only one case, where a sibling was present in Greece in addition to the relative of the child in the respondent Member State included a BIA form in the TCR stage. The BIA form stated particular reasons for the conclusion that reunification with the relative would be more appropriate for the child and a written statement of the relative was submitted as well. This case was subsequently accepted by the respondent State.

With regard to the other six cases where information about other family relations was available through the TCR, in one case, the TCR included crucial information about the other family relations present in other Member States, which could be taken into account regarding the best interest of the child, without however including a BIA form at this stage. In three more cases information about the family relation with whom reunification was sought, the relationship and the particular expressed views of the child regarding the pursued reunification or, in exceptional cases, a conclusion that the reunification seemed to be in the child's best interest was included in the TCR form, without however including elaborate information regarding all the family relations present in different States, through a formal and extensive assessment procedure. Finally, in the remaining two cases, only the child's expressed desire to be reunited with the family relation is stated as well as the whereabouts of other family relations but without any further information.

[376] Article 1(7)(5) Implementing Regulation 118/2014.
[377] According to the procedure prescribed in article 1 (7) (4) of the Implementing Regulation 118/2014
[378] Article 1 (7)(5) Implementing Regulation 118/2014.
[379] The TCR is always sent under article 8(1) or 8(2) (depending on the family relation present in the respondent Member State), as it is confirmed by the sample, even if it is an 8(3) case, where more than one family member, or siblings, relatives are present in different Member States. Also, for one more 8(3) case sent under article 17 paragraph 2 see below chapter II) 5.
[380] The Implementing Regulation 118/2014 refers to cooperation of the State where the child is present with another or other Member States. However, article 8(3) of the Dublin III Regulation refers to family members, siblings, relatives who stay in more than one Member State thus, including potentially a family relation in the State where the child is present. See also chapter II) 5 subsection 'Best Interest Assessment (BIA) in case of several family relations in different Member States', in which an erroneous interpretation had been made in relation to the applicability of article 8(3) in this respect.
[381] However, see below the relevant request of the respondent State in one case to send a TCR to the State where a family member was present.
[382] Conducted by the shelter housing the children, according to the practice described previously.

It should be stressed that the prima facie views of the child are always available through the written consent for reunification with the particular family relation, which is included in the TCR, as well as any more detailed views expressed or information given by the child during the lodging of the international protection application. Indeed, the views of the child is in general an essential factor in determining the best interest of the child, considering the child's age and maturity every time. Also, information provided by the child during the registration of the international protection application has been the basis for some succinct conclusions regarding the best interest of the child, included few times as already mentioned in TCRs. However, a formal and extensive BIA process is considered (especially in 8(3) cases) crucial in determining the appropriate person to entrust the care of the child, as it allows for both an elaboration and affirmation of the views of the child as well as an evaluation of any other determining factors present in the particular circumstances in relation to the different persons concerned.

Concerning the BIA process conducted by PRAKSIS shelter staff in all remaining seven cases where a BIA form was not included in the TCR, the best interest of the child to be reunified with the particular person was supported during the re-examination stage either through a BIA form or through a BIA form combined with written statements from the different family relations in Member States or finally, through a written statement of the family relation present in the State where the TCR was addressed which contained crucial information regarding the other family relation. In the latter case, a Best Interest Determination report had been prepared at a prior stage and concluded with the same result regarding the appropriate person to care for the child but was not deemed necessary to be co-submitted. It appears that the submission of the BIA form at the re-examination stage is, in some cases, associated with the material time PRAKSIS undertook the case and housed the child (after the TCR was sent or a few days before or after the first rejection) or with the necessary time in order to conclude the assessment.[383]

The particular aspects evaluated and presented in the BIAs, according to the sample available, comprise: providing information regarding the closeness of the family relationship with all family relations involved, often with more detailed information regarding the child's relationship with the family relation with whom reunification is sought, information about those family relationships in the past,[384] the views of the child, and sometimes the child's level of maturity assessed by the social worker during this process as well as views of the parents in case of the child's potential reunification with siblings or relatives.[385] Sometimes observations by the legal representative as to the particular choice of the child have been included etc. [386]

Furthermore, in some cases the Greek Dublin Unit caseworker stressed, during the re-examination stage and on the basis of the BIA findings, the express view of the Greek Dublin Unit authorities that the best interest of the child would be served by the reunification with the particular family relation instead of the others. In one case, there was also reference to the particular factors enumerated in the relevant legal provision regarding 8(3) cases: strength of family links, capacity and availability of the persons concerned to undertake the care of the child and best interest in each case which were taken into account for the conclusion regarding the child's best interest.

At this point, it should be noted that even though, as already mentioned, information was available regarding other family relations present in other Member States during the TCR in the vast majority of cases, in several of those cases there was no request for relevant information or assessment by the respondent States. In only three cases a reference by receiving States to the need for an assessment of the best interest of the child or a request for information and an assessment to be conducted was encountered. However, this reference seemed to be related to the 8(3) element only in two[387] cases, which referred explicitly to the information provided in the TCR regarding the existence of other family relations in other Member States and put forward a request to receive information about them, as well as a request to receive an assessment of the best interest of the child. Norway and Switzerland were the respondent Member States involved. In both cases, the respondent State requested further information regarding the other family relations present in other Member States and information as to why it is in the best interest to be reunited with the particular family relation.

[383] An observation also included in chapter II) 4 C) subsection 'Best Interest Assessment (BIA) process in practice' above, concerning the BIA practice in general.
[384] I.e. the child had been living with this relative in the country of origin or the other parent had been remarried and left the child behind in the country of origin.
[385] Out of the eight cases where a BIA or BID had been conducted, in three cases the actual documentation of the BIA form was not available (in one of them it was under review) but in two of those three cases, information was available about the elements included in the BIA form.
[386] I.e. older sibling serving as parental figure.
[387] In the third case, there was no available information about other family relations in the TCR, therefore the reference to the need of an assessment does not seem to be associated with this being an '8(3)' case.

However, in one of those, the respondent State seemed to have also proceeded with contact with the relative present in its territory and further requested from the Greek Dublin Unit that a TCR would be sent also to the State where the family member was present, as well as a BIA by the Greek authorities (instead of an NGO). Putting aside the latter requirement for an assessment by the Greek authorities,[388] the requirement to proceed with a TCR also to the Member State where the other family relation is present appears to go beyond the requirement of the Dublin III and Implementing Regulation in 8(3) cases. The latter provides for cooperation with the Member State(s) concerned in order to ascertain the strength of the family links, the capacity and availability of the persons concerned to care and the best interest of the child in each case. Indeed, this case, even at the later stage of re-examination, includes information emerging directly from both the persons with whom reunification could potentially be achieved, family member and relative (through their written statements) on all of the above elements as well as the Greek authorities' view. Considering the above, as well as the family member's lack of regularised presence in the territory of the State she was present in,[389] as confirmed by her own written statement, it appears that only a request extending to consultation and confirmation with that Member State could potentially fall under the above legal requirement for cooperation with all Member States where different family relations are present.

From the above sample of eight cases, four were finally accepted, one pending reply, one pending re-examination and two finally rejected (in one of the rejected cases the grounds of rejection were related to 8(3) in particular). **In the overriding majority of cases, the respondent States did not request any particular information concerning the other family relations nor an assessment regarding the best interest of the child despite available information included in the TCR about other family relations in other Member States. Relevant information was however submitted, as well as findings concerning the best interest of the child through BIA forms and other evidence in all cases by the sending State, in the overwhelming majority during the re-examination stage. In some cases, relevant crucial information was included in the TCR forms**.

Finally, a brief general remark is considered appropriate concerning cases included in the sample where more than one family member, siblings or relatives of the child were present in the **same** Member State, even though, as stated, these are not included in 8(3) cases. In principle in such cases, a reference was made to the other family relations also present in the same Member State in the TCR as well as in the BIAs or other reports submitted whereas more detailed information was available concerning the family relation with whom the child sought reunification. However, sometimes these family relations have been invoked as being able to assist (in addition to the 'principal' family relation with whom reunification had been requested) in the support of the child and relevant information and/or documentation (residence permits, written statements, financial evidence etc.) had been co-submitted. In only one exceptional case (included in the subsection on 8(2) cases above), the request for reunification was subsequently changed in the process and addressed to another relative also present in the same Member State. Regarding the respondent Member States' approach, no reference or request for information was observed in principle concerning the other family relations. Nonetheless, in a couple of cases, the State appeared to be also focusing on the other family relation present, either by proceeding with a 'record searching' of that family relation's asylum interview in relation to the establishment of family links with the child or by referring to that relative concerning potential safeguarding concerns for the child. With regard to cases where the presence of other family relations in the same Member State has been invoked as being able to support the child in addition to the 'principal' family relation, a subsequent positive response had sometimes been observed in such cases. However, given that this evidence and information is as a rule co-submitted with other evidence it is not possible to draw a conclusion about the exact influence of this evidence to the subsequent positive response when acceptance of the request follows.

[388] Which has been analysed above, chapter II) 4 C) subsection 'Best Interest Assessment (BIA) process in practice', concerning this case.
[389] Not the respondent State.

5. The exceptional application of the discretionary humanitarian clause (article 17(2)) in cases of unaccompanied children's reunification requests[390]

5A) Legal framework and general overview of article 17(2) cases

This chapter focuses on cases where the discretionary humanitarian clause (article 17(2)) of the Dublin III Regulation has been applied as the exclusive or additional legal basis for the reunification request of unaccompanied children.[391] The primary purpose is to identify whether the different legal basis of the request (article 17(2)) influences the evidential standards and practices, how the best interest of the child is taken into account in this context and what is the Member States' approach in relation to the assessment of their potential responsibility. Considering that all cases concern unaccompanied children, it appears appropriate to also examine how particular aspects originally included in the assessment under article 8 (for instance, individual assessment of the relative's ability to care) are applied.

Before beginning the analysis of the cases, an introductory reference to the relevant legal provisions of article 17(2) and some preliminary observations are deemed appropriate in order to capture the framework of the cases analysed below. Further references and observations will be included, when pertinent, in the process.

Article 17(2) of the Dublin III Regulation provides that: *The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, 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 laid down in Articles 8 to 11 and 16.*** *The persons concerned must express their consent in writing (…)* [**Our emphasis**]

Furthermore, recital 17 of the Dublin III serving as a tool of further interpretation of the above provision stipulates that *Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring* ***together family members, relatives or any other family relations*** *and examine an application for international protection lodged with it or with another Member State,* ***even if such examination is not its responsibility under the binding criteria laid down in this Regulation****.* [**Our emphasis**]

It emerges from the above that article 17(2) is applicable in case of '**any family relations**' including family members,[392] relatives, siblings or other family relations and the request may be sent at any time until a first decision regarding the substance of the asylum application is taken, therefore a request surpassing the three month time limit prescribed in article 21 of the Dublin III, is permissible under this basis. Finally, the phrasing '***Even where*** *that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16*' **[Our emphasis]** appears to also include cases where the Member State **is responsible according to the substantive provisions of the binding criteria (i.e. preconditions of article 8 of the Dublin III)** but for other reasons, such as the surpassing of the prescribed time limit under article 21, is not deemed responsible (any longer) according to the Dublin III Regulation. **It is worth noting that some respondent States have not adopted this interpretation, underlining in their negative responses that article 17(2) is not supposed to be used for requests which would normally fall under the binding articles whose time limits have been surpassed.**

This provision has a broad scope and aims to protect family unity and to take into account all particular circumstances where 'family considerations', among other reasons, would warrant the reunification even in cases not falling under the binding Dublin III provisions, for whatever reason. Therefore, in cases of unaccompanied children in particular, it could include cases where any substantive precondition of article 8 is lacking, for instance the relation in the respondent Member State is a more extended family relation, such as cousin etc. and therefore the respondent State would not be responsible under article 8, as well as cases where the substantive preconditions of article 8 are fulfilled but for other reasons, related to the

[390] In this chapter the term family relation encompasses any type of family relation, including family member sibling, relative or more extended. When specific reference to the type of relationship is of significance, it is expressly stated (i.e. relative, more extended family relationship such as cousin etc.
[391] This chapter includes only cases where the TCR is based exclusively or additionally to article 17(2). Cases where article 17(2) has been invoked additionally to article 8 in the re-examination request are included in the analysis under article 8 (chapter II) 4).
[392] This refers to family members including but not limited to family members as defined in article 2(g) of the Dublin III due to the broad scope of article 17(2) according to its wording 'any family relations'.

Dublin III procedural rules, such as surpassing of the three month time limit, the respondent State is not considered 'responsible' under the binding provision of article 8. **In this respect, it should be underlined that the primary consideration of the best interests of the child and family unity[393] as well as the relevant international legal instruments (ECHR, CFR and CRC) and case law apply throughout the application of the Dublin III Regulation[394] irrespective of the provision that forms the formal legal basis for the TCR. Furthermore, the provisions of the Dublin III, which concern unaccompanied children in a 'Dublin process' and the relevant guarantees, such as the BIA and other guarantees included in article 6,[395] are applicable, regardless of the article invoked as the legal basis for the TCR.**

According to article 17(2) of the Dublin III, the sending State is obliged to send all the material in its possession to allow the requested Member State to assess the situation and the requested Member State has to carry out any necessary checks to examine the humanitarian grounds. The latter is further obliged to reply to the requesting Member State in the normal time limit ('within two months of receipt of the request'). In cases of negative responses, a reply refusing the request has to state the reasons on which the refusal is based. Furthermore, given the flexibility inherent in this provision, no particular types of legal status regarding the family relation are specified in article 17(2).

The sample includes 13 cases in which article 17(2) has been applied as the sole or alternative legal basis for the TCR. In particular, in seven cases this has been the exclusive legal basis whereas in six cases this has been the alternative legal basis to article 8. Furthermore, one more case is analysed in this chapter that involves a new TCR at the re-examination stage on the basis of article 17(2) due to the particular circumstances subsequently discovered.[396]

Out of the **14 cases in total, the vast majority (ten cases) were sent under the exclusive or alternative legal basis of article 17(2) due to the expiration of the prescribed three month time limit for sending the TCR**. Three more cases were sent within the three month time limit under the exclusive legal basis of article 17(2) as it was considered that article 8 did not apply in the particular circumstances of those cases.[397] Finally, one other case was sent under the legal basis of article 8 and additionally under article 17(2) in circumstances where article 8 was applicable and the request was sent in time, thus serving as an alternative legal basis. **Three cases in total were accepted without entering into a re-examination stage (two of those as 'acceptance by default') whereas the remaining eleven cases underwent (often several) re-examination requests and processes. In relation to the final outcome of cases in this chapter, six were directly[398] or finally accepted, six were finally rejected[399] and two were pending reply on re-examination requests at the time of the cut-off date.**[400] Cases in this chapter involved several Member States, with the majority of requests being addressed to Germany (seven cases) as well as Italy, France, Spain, Sweden and UK with one to two cases corresponding to each Member State.

This chapter will include observations regarding evidence,[401] the best interest of the child and the relevant assessment, the family relation's legal status as well as more particular observations regarding the application of article 17(2). For the purpose of consistency, some observations, when applicable to the whole sample, will include all 14 cases whereas a breakdown of cases will also follow according to the particular aforementioned categories of cases[402] where a request was sent under article 17(2), exclusively or alternatively, with corresponding specific observations for each category in subchapter II) 5 C) 'Particular observations on article 17(2) cases'.

As a general observation regarding the observance of the two-month time limit of article 17(2) for the response to the TCR mentioned above, it emerges from the sample that the respondent Member States generally observed the two-month time limit. However, in three cases, which were all accepted without a

[393] Recitals 13,14, 16, Dublin III Regulation
[394] As analysed also in chapter I) 5
[395] Article 6, Dublin III Regulation, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN
[396] This case has been included in terms of means of proof etc. regarding the previous stage (request sent under article 8) in chapter II) 4.
[397] In two of the cases because there was a more extended family relation than the one applicable to article 8 (family member, sibling relative). In the third case, the circumstances for using article 17(2) as the legal basis for the TCR are unclear as the substantive article 8 preconditions were fulfilled, however subsequently the request was switched to article 8 during the re-examination stage: see in detail subchapter II) 5 C) section 'Observations regarding cases sent within the three- month time limit from the take charge request (TCR) under the exclusive basis of article 17(2).'
[398] Without a re-examination request. This number (six) includes the two cases accepted 'by default' and the cases finally accepted.
[399] Including one case where the child absconded after the re-examination request was submitted, without having received a (second) response
[400] 20 April 2018.
[401] Including particular types, when included in the sample
[402] I.e. cases where the request was sent under 17(2) due to surpassing the binding time limit for the TCR etc.

re-examination stage, the time limit was not observed and two of them resulted in an acceptance by default. This seems to fall under the practice observed and analysed in chapter II) 3[403] and applies in some cases **regardless of the legal basis of the TCR (8 or 17(2)).**

5B) Findings on evidential requirements – Best Interest Assessment (BIA) practice – legal status: a comparative approach

Evidence

From the sample of **13 cases**[404] analysed here according to the information/documentation available, no conclusion can be inferred of a higher evidential standard consistently applied in relation to the evidence included in the TCRs. However, in one case, according to the statement of the legal representative of the child, the Greek Dublin Unit requested a BIA to be conducted and submitted so that it could be included in the TCR under article 17(2) (sent under this basis due to expiration of the prescribed time limit).[405]

Regarding evidence submitted for the **identification of the applicant**, the TCR included such evidence from the country of origin (birth certificates, identity card or passport, sometimes copies from the original) in seven out of 13 cases**.** Concerning **the legal status of the family relation** in the respondent State, evidence such as residence permits, international protection applicant cards, passports etc. was available in all 13 cases and contact details in 12. Finally, the substantiation **of family links** had been fully proved through documentation from the country of origin in five cases.[406] In three other cases the family links were partly proved[407] via documentation from the country of origin (in those cases BIAs/social or psychological reports were also included) as well as from a written statement of the family relation including a family tree in one of them. In five cases there was no documentation from the country of origin available to substantiate the family links, nevertheless in two of them a BIA and a written consent of the family relation were included.

However, in the vast majority of the cases where documentation from the country of origin regarding family links was not available in the TCR, such documentation was made available in the re-examination stage, often at the explicit or implicit request of the respondent States included in the negative response. More particularly, regarding the five cases where no such documentation was included in the TCR, the lack of proof was raised by the respondent Member States in three cases and subsequently evidence was submitted providing full proof either through documentation from the country of origin through a DNA test or through a combination of documentation from the country of origin and a BIA. In the other two cases where this was not raised in the response of the requested State (refusal for other reasons), relevant evidence was provided anyway in the re-examination request (information through BIA, family photos, written consent etc.) which appears to have been considered as acceptable evidence in one case, whereas in the other, there was a final refusal on other grounds. Finally, in one case where there was evidence partly available through the TCR in relation to family links, an issue of proof was raised by the respondent State (among other reasons) and full proof through documentation from the country of origin was made available at the re-examination stage. It is worth noting that in one of the above cases, with lack of any proof submitted concerning family ties, the respondent State (Italy) requested a report by an NGO or social service proving the family link and subsequently accepted the request when this was submitted as well as documentation from the country of origin partly proving the family ties. Comparing the analysis made under article 8, the practice of requesting substantiation of family links through a report 'by social services, or NGO' seems to be consistently applied, however considering the limited sample of Italy bound cases (three in total in the whole research sample), no general conclusion about a systematic State practice can be inferred.

It seems important to also stress that the respondent States' practice of challenging the family links when documentation was available, on the basis of their own asylum records, was not an issue raised among the cases included in this chapter. In one case only, in circumstances where the family ties had

[403] These cases are included also in the analysis in chapter II) 3 (Timescales) but are flagged here also due to the particular legal basis for the TCR (8 and 17(2), or 17(2) exclusively).
[404] In one case, not included, the evidence in the TCR is not available. Therefore, the sample is 13 cases in total here: 12 cases and additionally one more which was analysed in chapter 4 in terms of proof only until the stage there was a new TCR based on article 17(2), included in this chapter from that stage thereafter. Reference to proof submitted before, to the extent that it is taken into account in the next TCR also, will be included here also.
[405] This case happened to be an 8(3) case involving a sibling and a relative in two different States, however, this was not invoked as the reason for which the BIA was requested by the Greek Dublin Unit, according to the legal representative's statement.
[406] In one case, the above documentation from the country of origin was provided also translated.
[407] Namely, substantiating identification for some of the persons involved, either applicant and his/her parents or relative and parents of the applicant.

been fully proved through documentation from the country of origin, the receiving Member State put forward that the sibling in the respondent State had not mentioned the applicant in her interview.[408] Still, this was overcome at a later stage when a documented interview was supplied and the receiving Member State seemed to have acknowledged there was proof of family ties**. Finally, the emerging practice of respondent Member States requesting translation of submitted documents was noted in this sample as well, again to a limited extent.**[409]

Concerning particular types of evidence, **no age assessment** was observed among this sample, whereas **a DNA** test took place in **one case**. The findings regarding the process of conducting a DNA are comparable to the ones in the analysis under article 8. In the particular case examined in this chapter, the respondent State did not request a DNA test but requested documentation proving the family ties instead. It should be noted that circumstantial evidence (such as the mother's written statement etc.) or evidence such as a BIA with information about family ties was included in a previous stage but was not considered sufficient by the respondent State. According to the particulars of the case, there were discrepancies in the names declared in the TCR,[410] which appears to be the reason for the express request of documentation to prove the family links, despite the aforementioned evidence previously submitted. However, given the lack of relevant documentation from the country of origin, a DNA test was conducted instead and a 'hold request' was made by the Greek Dublin Unit in order to send the relevant results. Nonetheless, the process went faster than the average time in the cases examined under article 8, amounting to a little over a month in total. A factor contributing to this seems to be the fact that the mother was in Greece at the time and the test was conducted for both at the same time.

With regard to **BIAs** or other reports submitted with the TCR in cases of no documentation concerning family ties, which provided information about family links and thus served as an evidential tool, this was observed **in one case where there was no evidence from the country of origin and in three cases where there was evidence partly available**. Considering that in some cases of lack of evidence there was no submission of a BIA in the TCR as stated, no conclusion can be inferred about a general submission of BIAs as a means of evidencing family links in TCRs in all cases where formal proof is lacking or insufficient. **However, it should be stressed that in all cases where a BIA was submitted in the TCR, there was some level of lack of proof regarding family ties**. As mentioned above, BIAs were also submitted in the re-examination stage concerning cases where there was lack of proof.[411] Regarding the respondent Member States' approach on the evidential value placed on BIAs, it appears that it varies, as in some cases where BIAs were submitted (often with other evidence co-submitted such as family photos, written consent of the family relation) the case was finally accepted, whereas in others the respondent State requested further evidence.

Of particular importance in this chapter is the submission of written consents, as article 17(2) provides explicitly that both parties should express their consent in writing. However, approximately half of the cases were primarily sent under article 8, which does not provide explicitly for a written consent. Also, the cases which were not in 'substance' article 8 cases due to the particular family relationship not falling under the ones included in article 8 are considerably limited to two, as will be analysed below. Still, considering the number of the above cases which are in substance article 17(2) cases in conjunction with the cases sent under the exclusive legal basis of article 17(2) (even if in substance are article 8 cases)[412] this element merits further analysis. The applicant's written consent has always been included in the TCR. The family relation's written consent was included in the TCR[413] in six cases, whereas in one more the consent was sought directly by the family relation in the respondent State before the acceptance.[414] In the re-examination stage (first re-examination) the written consent was included in the vast majority (six) of the rest of the cases with one case remaining where there is no submission of the family relation's consent according to the information available**. Therefore, as it transpires from the above, the written consent of**

[408] However, it is unclear whether the response was challenging family ties or the sibling's willingness for reunification.
[409] Two cases, this time involving Germany as the respondent State. Reference to this practice concerning cases sent under article 8 exclusively where other States are mentioned indicatively in subchapter II) 4 A) subsection 'Assessment of evidence by the respondent Member States' footnote 227.
[410] There was 'alias' in the mother's name/surname field of the TCR: two different names and surnames
[411] In particular, BIAs were submitted in the re-examination stage for the first time in three cases where there was an issue of proof (in the rest of the cases where there was lack of proof a BIA/psychosocial report had been submitted during the TCR stage) In one more case the BIA was re-submitted during the re-examination stage.
[412] In the sense that all article 8 substantive preconditions are fulfilled.
[413] The total sample regarding written consents is 14 cases, including one case where no information about documentation is available as information about the request of the written consent by the respondent State is available
[414] However, the case was already accepted as an 'acceptance by default', before the expiration of the time limit set to the relative to respond.

the family relation was available in approximately half the cases with the TCR and the other half in the first re-examination request. However, no relevant request or issue was raised (or relevant request) by the respondent States regarding the lack of consent in cases where it was not available with the TCR.[415]

Best Interest Assessment (BIA) practice

As mentioned above, the safeguards provided in article 6 of the Dublin III concerning unaccompanied children, BIA included, apply irrespective of the formal basis of the TCR. Additionally, the primary consideration of the best interests of the child applies throughout the Dublin III Regulation. **Therefore, even if article 17(2) does not include any specific provision, the child-specific safeguards and relevant principles apply in the context of this legal provision as well**. Thus, the analysis included in this section is made in the light of the above.

Regarding BIA practice (in the sense of an elaborate interview and report), this was again conducted by **PRAKSIS shelter staff**, social workers or psychologists and reviewed by the shelter coordinators.[416] The types of BIA forms varied, sometimes the structured forms of either the elaborate BIA form for 'Temporary Care Arrangements and Durable Solutions' or the Comprehensive BIA form served as the tool for the assessment, whereas others, a more informal type of narrative report was submitted instead. However, even in the cases where this narrative report was submitted, vital information regarding the best interest of the child such as closeness of actual relationship with the family relation including past relationship and communication, demonstrated willingness of the relative to undertake the care of the child (when applicable), past and current circumstances of the child, views of the child etc. were included, as well as observations/recommendations of the assessor regarding the best interest of the child. Furthermore, in the two cases where psychosocial and/or psychological reports were submitted instead, the reports included vital information regarding the best interest of the child including the views, emotions of the child and the family connection between the child and the family relation, the child's current emotional status, background etc., as well as recommendations relating to the best interest of the child. With regard to the stage BIAs are submitted to the authorities and included in the family reunification process, **it appears that in cases examined under this chapter, approximately half of the BIAs were submitted during the re-examination stage.** This seems to be associated in most of the cases to the reasons stated in the analysis under article 8.[417] **However, it should be noted that more BIAs were submitted in the TCR, in the cases examined in this chapter compared to the cases examined in chapter II) 4, by analogy.**

In the context of the TCR stage, four BIAs[418] were conducted and submitted to the authorities (and subsequently included in the TCR) while in two more cases a psychosocial or psychological report referring to the best interest of the child was included. None of the cases where there was a direct acceptance (without entering into a re-examination stage) or a 'default acceptance' included a BIA or a psychosocial report in the TCR.[419] In the re-examination stage, BIAs were submitted in five more cases, while in one case,[420] where a psychosocial report was submitted in the TCR, several updated psychosocial and psychological reports in the re-examination stage were included. **Therefore, all cases that underwent a re-examination stage included a BIA (or another report as mentioned above) either at the TCR stage or the first re-examination request**. On the contrary, cases accepted directly without entering into a re-examination stage or accepted 'by default', did not include BIAs or psychosocial reports in the TCR. Legal notes[421] including observations about the best interest of the child were predominantly submitted at the re-examination stage, sometimes repeatedly submitted in subsequent re-examination requests (updated or new legal notes), whereas in one case the legal note was included in the TCR. It is also worth noting that **in some cases of children with psychological overburdening or other mental health issues, psychological reports/assessments were also often included, corroborating this element. It should also be highlighted that, in the cases reviewed in the context of this chapter, reports and**

[415] Including in one case where article 8 was not applicable in substance. In the only case where, according to the information available there was no written consent submitted at any stage, there was an 'acceptance by default'.
[416] Except for one case where it was prepared by another NGO's staff, before placement to PRAKSIS, during the time the child was staying at the RIC.
[417] Necessary time to conclude the BIA, placement of the child in the shelter right before or after the TCR etc.
[418] In one case the BIA was prepared at the time the boy was at the RIC by a representative of the child from an NGO, mentioned in the TCR as 'legal guardian'. The BIA was not made available by the previous representative to the PRAKSIS lawyer/legal representative after the placement in the shelter
[419] Three cases accepted directly or by 'default'. In one of those three cases there is no information about documentation submitted with the TCR.
[420] The other case mentioned above (where a psychological report was submitted) is examined regarding reports from the stage of the fresh TCR concerning related evidence submitted thereafter.
[421] In seven cases in total (including TCR and re-examination stages), whereas in three more cases the lawyer/legal representative submitted an explanatory note or an email to the Greek Dublin Unit

submissions prepared by PRAKSIS staff (BIAs, psychosocial or psychological reports and legal notes) and subsequently submitted to the respondent authorities through the Greek Dublin Unit were edited in English.[422]

The practice of providing vital information to the respondent States regarding the best interest of the child through the TCR form was observed among the cases examined in this chapter also.[423] Indeed, even though it cannot be considered a consistent practice applying to all cases, the Greek Dublin Unit caseworkers have, in several instances, put forward the child's particular circumstances, vulnerabilities and past experiences, views, strength of emotional bonds with the family relation with whom reunification is sought etc. Sometimes this was done by making direct references to the enclosed BIA forms, or by providing any relevant information available through the child's registration form. In some cases, a conclusion that the reunification is considered to be in the best interest of the child or even a reference to the international legal instruments' provisions (such as the CRC), applicable in the particular circumstances, has been included. Even though this good practice does not equate with the practice followed in BIA forms, namely a detailed interview with the children (or often, many interviews) in order to assess the best interest of the child and the subsequent submission of a comprehensive report, the information and findings provided are, in any case, a first basis for the assessment of the children's best interests, especially in cases where a relevant BIA process and report has not been submitted. Thus, it is important that this practice be taken into account by the respondent Member State in the context of the assessment of their responsibility. It has also been observed that reference to particular circumstances concerning the unaccompanied child that may well fall under humanitarian grounds,[424] has been made in the TCR form in several instances when article 17(2) has been invoked exclusively or alternatively. However, the above references have been invoked explicitly as an analysis of the humanitarian grounds under article 17(2) in very few cases. Concerning the cases which were 'clear' 17(2) cases, in the sense that any preconditions of article 8 were not fulfilled, in one of them reference to the unaccompanied child's particular circumstances which could fall under humanitarian grounds was included, whereas in the second case no analysis and establishment of the reasons that could warrant such an application was made in the TCR form. In a third case, which was sent by the Greek Dublin Unit within the time limit of three months, initially on the basis of article 17(2), reference to the unaccompanied child's particular circumstances, which could fall under humanitarian grounds, was included also.[425]

Respondent Member States approach

The question of whether the respondent States had any proactive approach in assessing the circumstances of the family relation present in their State and in providing such information to the sending State in the context of the assessment of the best interest of the child was raised among the cases examined in this chapter as well, particularly regarding cases where the family relation was a relative[426] or a more extended family relation or when there were more than one family member or relative in different Member States.[427]

A direct reference to the best interest of the child in the Member States' response has been observed in three cases involving various Member States.[428] The reference was associated either with the State's intention to proceed with an assessment of the relative in order to check that family reunification was in the best interest of the child (but had failed in its effort to reach the relative),[429] or with requesting information and documentation from the sending State, again in the context of the best interest of the child or finally, with a conclusion reached by the respondent State regarding the best interest of the child. As it derives from some of these responses, the respondent States appear to perceive themselves as the responsible State to assess or determine the best interest of the child despite the relevant assessment undertaken by the sending State as also noted in some cases sent on the exclusive basis of article 8

[422] In conformity with the practice observed in cases of BIAs sent on the basis of article 8, under chapter II) 4
[423] The TCR form was available in 12 of the 14 cases.
[424] Such as missing parents, psychological issues, domestic violence etc. often combined with the family relation being the only relative in Europe
[425] All three cases are analysed below in this chapter section 'Observations regarding cases sent within the three- month time limit from the take charge request (TCR) under the exclusive basis of article 17(2)'.
[426] Such as an uncle, or an aunt
[427] Further analysis is included regarding these circumstances in this chapter under the following subsections 'Individual assessment of the ability to care' and 'Best Interest Assessment (BIA) in case of several family relations in different Member States'
[428] Italy, France, Sweden.
[429] This case is further analysed below

(chapter II) 4). Moreover, in two more cases a reference to the respondent authorities' effected effort to contact with the relative has been included, which will be further analysed below.

The practice of requesting information and specific documentation from the sending State (instead of proceeding with an assessment) in order to assess the family relation's ability to care seems to be consistently applied by Italy, as this was observed in the context of article 17(2) also,[430] this time referring to a more extended family relation (cousin). On the contrary, the practice of announcing a social assessment regarding the appropriateness to care in case of siblings, adopted by Sweden in some cases analysed in chapter II) 4, was not confirmed by the analysis in this chapter. In particular, in the only Sweden bound case analysed here, the respondent authorities requested the Greek Dublin Unit to submit a report, in case of a potential re-examination.

With regard to the practice of contacting the relative, this was observed in three cases concerning various States and no conclusion of a consistently applied Member State practice can be inferred. More particularly, this has been observed in one France- bound case where the response stated that the relative had been convened by local authorities, explicitly in order to check if it was in the child's best interest to be reunified with the relative.[431] Contact by the police was observed in a Spain- bound case and in a Germany- bound case contact with a relative was initiated to confirm his/her consent in undertaking the care of the child. In the latter case, being an 'acceptance by default' the appointment of a guardian was mentioned, potentially, in case there was non-acceptance of the responsibility by the relative. It appears that the contact mentioned in the France- bound case aims at proceeding with an assessment of the relative whereas in the Germany- bound case the purpose seems to be to secure the consent. The exact purpose of contact by the police is not explicitly stated in the Spain- bound case.

Finally, it should be emphasised that, in most cases respondent States did not appear to be taking the BIAs, the social reports (or the lawyer/ legal representative's observations) duly into account. Even though at times there has been an acceptance following the submission of the BIA form, there were several cases that were rejected or still pending reply despite the BIA or social report findings and recommendations or the co-submitted psychological reports underlining the great vulnerability of the children.[432] Further, more case-oriented observations regarding the best interest of the child will be included in the analysis below, as well as in subchapter II) 5 C).

Individual assessment of the ability to care

The sample in this chapter includes **seven cases in which the family relation was a relative** according to the definition of article 2(h) of the Dublin III Regulation (adult aunt or uncle, in these cases) and **two more cases** where the family relation belonged **to more extended family relations** (cousin, or the parent's first cousin). Respondent States in the above cases were Germany (three cases) and France, Italy, Spain and the UK with one to two corresponding cases.

The **three cases that were accepted without entering into a re-examination** stage, including two cases by 'default' (all three cases involving relatives in accordance with the above definition in the respondent State) did not include any information or documentation regarding the material capacity to care. With respect to the emotional capacity, the element of willingness was covered through a written consent in the TCR in one case and in another case, relevant contact of the respondent authorities with the relative was observed. As already mentioned, no BIA or social report was included in these three cases nor had any individual assessment of the ability to care by respondent authorities taken place according to the information available.[433] It should also be highlighted that these three cases that were accepted directly without including a BIA, social report or much evidence regarding the ability to care are the 'oldest' cases [434] among the ones examined in this chapter and two of them have been accepted as 'default'. These factors appear to be of consequence in the result of direct acceptance, considering the above-described circumstances regarding evidence.

[430] In addition to article 8 cases included in chapter II) 4
[431] This is the only case in the sample where an intention for an assessment by the respondent authorities in case of a potential reunification with a relative is observed in a France- bound case, see further analysis below.
[432] From the 11 cases where BIAs, psychosocial/psychological reports were submitted, six were rejected (in one case, as mentioned above, the child absconded after the re-examination request had been submitted, no second reply had been sent in the meantime) and two pending reply following re-examination requests, as of 20 April 2018.
[433] In one case mentioned above only contact for the consent seems to have been made by the respondent authorities
[434] TCRs in 2016 or beginning 2017

Concerning the **four other cases involving a relative** in the respondent State (two of them based exclusively on article 17(2) and two on 8(2) and additionally 17(2))[435] all included relevant information and/or documentation at the TCR stage and/or at the re-examination stage.

In particular, in three cases this information and/or documentation were available with the TCR. In two of these, this was available through BIAs giving extensive information with regard to the closeness of the family relationship and communication, the relative's emotional ability and willingness to care and finally the importance/role of the relative in the child's life, also including a written consent in one case. Concrete information about the relatives' material capacity, both financial and accommodation, was also included. In the third case, documentation was available in the TCR for the emotional capacity (a written consent in particular) and the material capacity in terms of accommodation and financial status.

In the re-examination stage, all cases presented further evidence when necessary either because it was not already included in the TCR or because additional information was considered necessary due to the negative response of the respondent State. Therefore, at the re-examination stage, BIAs and written consents of the relatives were by then available in all cases, as well as written statements in two cases, all confirming the relatives' willingness, emotional and material ability to care whereas in one case additional various evidence regarding the financial ability was repeatedly provided, as this element was challenged by the respondent State.

With regard to the **two cases where the family relation did not fall under the definition of article 2(h**) of Dublin III and therefore article 8 was not considered applicable,[436] in one of those cases evidence was available with the TCR regarding the emotional ability to care. In particular, the family relation's written statement and the psychological report concerning the child, also underlining the importance of the family relation in the child's life, were included. In this case there was no material capacity of the relation in terms of financial support and accommodation. In the other case, no relevant evidence was available in the TCR, however, upon the express request of the respondent State for specific evidence regarding both the material and emotional capacity and willingness of the relative, this evidence was made available in the re-examination stage through a BIA, a written consent and documentation regarding accommodation and financial status. **Thus, it appears that the same process regarding the submission of evidence concerning the emotional and material capacity of the family relation is followed irrespective of whether the case falls, in substance, under article 8 or under article 17(2)**. However, in the context of the best interest of the child the lack of material capacity alone could not reasonably justify a rejection based solely on this ground under any of the two legal bases. Still, this is not always the approach adopted by respondent States, as will be analysed further below.

As introduced above, in two of the cases a contact with the relative was mentioned in the respondent State's negative response, in one case as explicitly mentioned in the response: in order to check if it is in the child's best interest to reunite with the uncle. It is worth noting that in both those cases a BIA had already been submitted in the TCR with detailed information regarding the relative's emotional and material capacity whereas the relative's willingness through a consent/statement had been secured at the TCR or first re-examination, respectively. It thus appears that the declared by the respondent States intention of an assessment (in one case) and in any case of direct contact in both cases were considered to be of critical importance by the respondent States, as the cases were not accepted[437] despite the fact that the relatives, being abroad at the time of contact and therefore not being able to be reached, subsequently requested a new appointment (in one case through the legal representative) and had also declared in writing the willingness to undertake the care.

It is difficult to draw a conclusion regarding any prioritisation between the balancing of the material and emotional aspect of the ability to care as- apart from the three cases accepted directly, two of them by 'default'- in all the rest cases involving relatives in the sense of article 2(h) of the Dublin III, relevant evidence or information was available for both aspects as already mentioned. However, in one case, the financial inability of the relative, as it was perceived by the respondent State, despite certain evidence denoting the opposite,

[435] Three having surpassed the prescribed time limit for the TCR and one sent also on the alternative humanitarian ground basis

[436] Both sent under 17(2) exclusively and analysed further below in this chapter, section 'Observations regarding cases sent within the three- month time limit from the take charge request (TCR) under the exclusive basis of article 17(2)'

[437] One of them received two negative replies and is pending reply on the last re-examination request. In the other case, the child absconded a few weeks after the re-examination request. No reply had been sent in the meantime (considered as rejected, and in chapter II) 1 Table 8 the final status is described as 'rejected-absconded')

was evaluated as a factor superseding all other parameters, including substantiated close actual family ties and vulnerabilities of the child.

Also, in a case involving a more extended family relation, (not a relative), information regarding both the emotional as well as the material capacity (accommodation and financial status) was sought by the respondent State, as already mentioned, in order to be taken into account in its assessment of applicability of article 17(2). The other case, involving a more extended relation, in which there was no material capacity of the relation, was rejected on other grounds, thus not allowing a conclusion to be drawn on this aspect.

Finally, it should be noted that in some cases, the existence of other family members or relatives or other relations living in the same Member State (or even the same house) as the family relation with whom reunification was sought was invoked by the sending State, through relevant information in BIA or documentation (including of financial nature), as a factor contributing to the financial and/or emotional support available for the child. The respondent States took this into account in some cases whereas in others, it did not seem to make any difference.

Case Study

A 16-year old boy from Morocco, with the additional vulnerability of being a victim of domestic violence and neglect in his country of origin, arrived on the island of Samos unaccompanied and was placed in a PRAKSIS shelter around two and a half months after arrival. A few days later, he submitted an international protection application, almost three months after arrival, seeking reunification with his aunt who had resident status in an EU Member State. His grandmother was also in the same State and they resided together. Also, other aunts and siblings of the child were in that State. The TCR was sent two and a half months later within the three-month time limit, on the legal basis of article 8 and the alternative legal basis of 17(2) of the Dublin III. The TCR attached written consents of the child and of the aunt and copies of the child's and the whole family's birth certificates from the country of origin. Also, documentation establishing the aunt's resident status in the respondent State and her contact details were included, as well documentation in relation to her material capacity to undertake the child's care. The Greek Dublin Unit caseworker further made reference to the child's unaccompanied status and need for support. Three days later, a negative response on the TCR was sent, on the grounds that a) the aunt did not have sufficient economic resources to provide for his accommodation, as well as that b) the Dublin process should not be used to circumvent the national family reunification process. The re-examination request submitted three weeks later by the Greek Dublin Unit caseworker attached financial documentation concerning the grandmother (living with the aunt), the aunt's written statement noting that she was able and willing to take care of the child and stressing that he had no other family, a legal note by the PRAKSIS lawyer/representative and a BIA form prepared by PRAKSIS staff. The latter described in detail the child's past traumatic experiences of domestic violence in his country of origin and thus this information became available to the authorities (of the sending and the respondent State as well). Furthermore, the close relationship with his aunt and grandmother in the past as well as at that time was described and the confirmed willingness of the aunt to take care of the child was included in the BIA. Finally, the importance of the reunification for the child's well-being and sense of safety was underlined.

Around two and a half months later, a new negative response was received, on the exact same grounds without any reference to the new evidence and information provided in the re-examination request. The response emphasised that the re-examination request was finally rejected. The child was subsequently transferred to a PRAKSIS shelter in the mainland and a 'hold' request was requested. The new PRAKSIS lawyer submitted a series of documents in contact with the Greek Dublin Unit caseworker, who however did not send them in the end, due to doubts expressed because the last response by the receiving State had been underlined as being 'final'. A few months later (almost seven months from the last rejection) the documentation was sent to the respondent authorities including a) a new legal note, b) 'whatsapp' screenshots showing the close relationship and communication, c) a new written statement by the aunt d) plane tickets which proved her financial capacity as she was able to travel abroad on holidays. Approximately one month later, a new negative response was received on the same grounds commenting on the long delay for the dispatch of the new re-examination request and pointing to the national family reunification process. The Dublin case was subsequently closed and the boy continued the asylum process in Greece. The PRAKSIS lawyer underlined that the boy experiences psychological 'ups and downs' and had lost trust in the Dublin process.

**Some data, such as the country of origin, have been altered in order to maintain anonymity*

Best Interest Assessment (BIA) in case of several family relations in different Member States

The sample in this chapter includes only one case where there were more than one family member, siblings or relatives in different Member States according to article 8(3) of the Dublin III. The case has already been mentioned previously and a more in-depth analysis will be included in this subsection.

In this case, sent on the sole basis of article 17(2) due to the expiration of the binding time limit for the TCR, an explicit request for a BIA was made from the Greek Dublin Unit to the legal representative. However, no reference to the case being an 8(3) case was made as the basis for this request. In this case the child had a sibling and a relative in different States. The BIA form submitted included very detailed information regarding the child's past experiences, strength of emotional bond and communication with the relative, and the relative's role as a father figure in his life. It also provided extensive information regarding the relative's emotional capacity and willingness to care as demonstrated, among other things, through his active involvement in facilitating the reunification process and concrete information about his material capacity (both accommodation and financial status). Finally, an assessment was included regarding the anticipated beneficial effect on the child's personality in case of achievement of the reunification. The inappropriateness of seeking reunification with the child's sibling was fully established also, on grounds such as lack of the sibling's will for reunification, lack of close personal ties between the siblings as well as a lack of the sibling's integration in the State where he resides. Some of this information was also included in the TCR form concluding that the authorities were of the opinion that the reunification with the relative is for the child's best interest according to the BIA findings.

Despite the very detailed assessment provided, covering all persons potentially involved in the reunification and the relative's signed consent to undertake the care of the child, the respondent authorities rejected the request on the basis that the relative had failed to appear at an appointment with the local authorities checking that reunification was in the child's best interest. In this case it was communicated by the legal representative to the Greek Dublin Unit and subsequently to the respondent authorities that the relative had requested another appointment from the authorities as he was abroad at the time of the date given for the appointment but had not received a response.[438] In this respect, even though an assessment of the relative's ability to care by the competent services of the respondent authorities is included under the provisions of the Implementing Regulation as mentioned, **it is important to note that this is provided in the context of cooperation between Member States and information sharing, in a way which best serves the child's best interest. The above example does not seem to serve, by way of implementation, the above purposes and framework of cooperation.**

Furthermore, in the context of the sample in this chapter, a Member State's interpretation of article 8(3) is considered noteworthy. In particular, in a case of request for reunification between three siblings, (two in Greece and one in the respondent State) the respondent State invoked that the child's (one of the siblings in Greece) best interest according to article 8(3) would be to not be separated from his brother in Greece. This seems to be a misinterpretation and misapplication of article 8(3), as both siblings in Greece had made reunification requests with the particular adult sibling at the respondent State and, moreover, the second sibling in Greece was a person who had just come of age, was disabled and was suffering from mental health issues. Therefore, given that the reunification requests were pending examination with the same sibling in another State, it does not appear that article 8(3) would apply, in the above circumstances. Furthermore, a declaration made by the receiving State on the basis of article 8(3), of what is in the best interest of the child, which seems to be a conclusion that it would be in his best interest to remain separated from the adult sibling in the respondent State who could provide support upon reunification to both of the siblings who were in Greece together, disregards all recommendations and findings of the reports (psychosocial and psychological) submitted in the request.

[438] As mentioned, the boy absconded a while after the re-examination request had been submitted and no reply on the re-examination had been received, as of the cut -off date, 20 April 2018

The family relation's legal status

A recurring issue in the analysis of cases sent under the exclusive basis of article 8 (subchapter II) 4 B)) was related to some Member State's approach regarding the particular legal status of the family relation. In seven cases of the 14 cases examined in this chapter, the family relations had a permit of residence status (often long term), and in one case the family relation had citizenship status,[439] involving different respondent Member States. In one case only, a France-bound case sent primarily on the basis of article 8 and alternatively 17(2), the particular (resident) status was questioned in relation to the applicability of the Dublin III. This appears to confirm France's described practice in subchapter 4B) of invoking the applicability of national family reunification processes, instead of the Dublin III process in the majority of cases where the family relation had a resident or citizen status. However, it should be noted that from the two France-bound cases included in this chapter, the more recent one was sent under the exclusive legal basis of article 17(2) and the French authorities' argument about the applicability of a national family reunification process instead of Dublin III due to the resident status was not raised this time. This different approach could be interpreted – prima facie – as being attributed to the different legal basis of the TCR (based exclusively on article 17(2)).

However, it should be emphasised that varying approaches in France-bound cases have been noted in this practice in the latest cases, judging from the cases examined under chapter II) 4 and under this chapter. In particular, in the two most recent France-bound cases in the whole research sample[440] where the response was sent approximately in the same time period, France did not raise the applicability of another process due to the resident status. On the contrary, in a third France-bound case with a response around that time, where the family relation was a citizen, the argument about the applicability of national law instead of the Dublin III was maintained.[441] Therefore, it remains to be seen in the future whether France is gradually beginning to adopt a different approach and interpretation from the one encountered in several previous such cases, and if so, if it will be uniformly applied in cases of both residents and citizens.

Finally, it should be noted that in a couple of cases the TCR request was rejected because the relatives were abroad at the time the respondent authorities tried to contact them as mentioned above. In both cases the relatives had long-term residence permits and all data available regarding willingness, emotional as well as material capacity, had been submitted. Therefore, they were both considered legally present, even though actual presence was temporarily not available. In the first case, the rejection seems to be based on the inability of the respondent authorities to proceed with an assessment themselves due to the absence of the relative; however, the second case clearly states that there could be no acceptance as the relative was not present in the territory at the time. It should be underlined that even though the confirmation of the relative's return and presence in the Member State would be understandable in order to uphold an acceptance in case of unaccompanied children, no final rejection on such grounds could be tolerated in terms of the best interest of the child, especially considering the actively demonstrated willingness of the relatives to participate in a meeting with the respondent authorities as well as to undertake the care of the children.[442]

[439] This case has been included also in subchapter II) 4 B) as two TCRs were sent one under article 8 exclusively and one later under 17(2) exclusively (second TCR examined in this chapter)
[440] One examined in subchapter II) 4 B), (sent under the legal basis of article 8) and this one sent under 17(2)
[441] The case was sent under article 8 (included in subchapter II) 4B).
[442] Having made contact for another appointment.

5C) Particular observations on article 17(2) cases

Observations regarding cases exceeding the prescribed time limit for the take charge request [443] (TCR)

As already mentioned, the sample includes ten cases[444] sent exclusively or alternatively on the basis of article 17(2) of the Dublin III because the TCR was sent after the expiration of the three month time limit provided in article 21 of the Dublin III.[445] Therefore, these cases are in substance article 8 cases, in the sense that all relevant article 8 preconditions are fulfilled, even if they are sent under article 17(2). The timescales concerning the delays in sending the TCRs and the reasons invoked in the TCR regarding those delays have been analysed in detail in chapter II) 3. In brief, the reasons invoked in the TCRs included the late submission of the written consent, excessive workload as well as shortcomings in the first reception registration process or procedural shortcomings in general, whereas, in few cases, there was no explicit explanation regarding the delay.

It is worth noting that the Greek Dublin Unit has based the request primarily on article 8 in five such cases, sometimes stressing the unaccompanied status of the child in Greece as the basis to send the request under article 8 and, in other cases, by underlining the applicability of article 8 due to the fulfilment of all its preconditions. Also, an explicit request addressed to the respondent State to examine the substance of the request regardless of the time limits has been noted in a more limited way.

The Greek Dublin Unit has repeatedly underlined the primary consideration of the best interest of the child in TCRs and at the re-examination stage.

Concerning the choice of the legal basis, either article 8 and, alternatively, article 17(2) or exclusively the latter, it appears, when examining the cases in chronological order, that the first option (8 and alternatively 17(2)) has been the choice for the legal basis in the first as well as the last four cases in this sample, whereas, in the meantime, from December 2016 to August 2017, article 17(2) has been the exclusive legal basis in five other cases. However, no apparent criterion applicable to all cases was identifiable as the vast majority of children (nine out of ten cases) had additional vulnerabilities to their unaccompanied status. Still, it is worth pointing out that, from the three cases where the TCR form directly stated that the delay in sending the TCR was attributed to procedural shortcomings, in the two most recent ones, the request was made primarily on the basis of article 8 and alternatively 17(2).

In relation to the relevant article analysis included in the TCR, cases sent under article 8 and alternatively 17(2) included in principle a reasoning and analysis of article 8 making reference to any information available regarding the applicability of article 8 and sometimes including information regarding particular vulnerabilities of the child.[446] Article 17(2), as an alternative basis, was invoked in most of the cases with no different reasoning than the one included for article 8. In one case, a separate analysis for the establishment of humanitarian grounds under the alternative basis of 17(2) was also included. With regard to the cases sent exclusively under article 17(2), information available about family considerations, thus information potentially falling either under the applicability article 8 or 17(2), was provided, as well as sometimes other grounds constituting humanitarian reasons, such as health related problems.[447] In one case, the analysis was based on an examination of the applicability of the requirements under article 8, even though no explicit reference to the article was made, underlining the best interest of the child, which would be served by the reunification. The practice described above seems appropriate given that the cases are, in substance, article 8 cases and the safeguards regarding unaccompanied children in general, such as assessing the best interest of the child, are applicable throughout the Regulation irrespective of the legal basis for the TCR.

Regarding the respondent States' approach in assessing their responsibility in these cases, in the first three cases, in chronological order, there was a direct acceptance without a re-examination, regardless of whether the TCR was sent under both 8 and 17(2) or 17(2) exclusively.[448] Concerning

[443] Article 21 of the Dublin III.
[444] There are two more cases, not included in this chapter, where there was a delay of a few days, but the request was nevertheless based exclusively on article 8.
[445] In particular, as per the general provision under article 21 applying to all Dublin binding criteria for responsibility, the surpassing of the time limit for the TCR, generally entails responsibility for the sending State. However, a request is always possible on humanitarian grounds (related to family considerations, among others) on the basis of article 17(2) until the issuance of a first decision on the substance.
[446] The first one did not include an analysis whereas the subsequent four were considerably more detailed.
[447] TCR documents were available for three out of five 17(2) cases.
[448] Two of them were an acceptance by default.

the remaining seven cases, three of those cases[449] were initially rejected due to reasons related to the substance of the request such as proof, assessment of the relative, which have been analysed in detail above, (two of them currently[450] pending new reply from the respondent States) and the third case with a final status 'rejected - child absconded'.[451] Finally, four more cases have either been finally rejected (three) or finally accepted (one), which have particular interest in terms of the respondent States' assessment of article 17(2) applicability and will be analysed in more depth in the following paragraphs.

In three cases, the expiration of the prescribed time limit has been invoked by the respondent Member States repeatedly in the first and/or subsequent negative responses as a reason to reject the TCR. This involved two Member States, but this practice has not been applied consistently, as in another such case the same Member State did not invoke the expiration under article 21.1 of the Dublin III. However, it is worth noting that there has been quite a restrictive interpretation in these cases, as the respondent States have underlined in the negative responses that the request cannot be accepted due to the surpassing of the binding time limit, as well as that article 17(2) is not destined to be applied in cases where there would be responsibility on the sending State due to the expiration of time limits.[452] Only one of those three cases was ultimately accepted, after several rejections on this basis, when the family member had gained international protection status and commenced a reunification process through the embassy. Following this, the respondent State commenced examining the substance of the Dublin family reunification request (evidence of family links) and an acceptance was ultimately received through the Dublin process.

The above restrictive interpretation does not seem to be in compliance with the wording and the spirit of article 17(2) as analysed above[453] and negative responses on this basis do not appear to take into account the best interest of the child as the primary consideration applicable throughout the Dublin III Regulation. Furthermore, this interpretation seems to be disregarding the predominant purpose of the humanitarian clause included in article 17(2) of the Dublin III as it has been described in the Commission Proposal for the 'Dublin II', namely that it should be used: *first and foremost to prevent or remedy the dispersal of family members which could sometimes result from the strict application of the responsibility criteria. Although the Regulation now contains several binding provisions aimed at bringing together, or maintaining the unity of, asylum seekers belonging to the same family group, the situations that can arise are so diverse that they cannot all be covered by special provisions, with the result that a discretionary humanitarian clause remains necessary in the interests of the Member States and of asylum seekers.*[454] This general purpose has been reiterated in the Commission Proposal for the Dublin III.[455] The purpose of article 17(2) is described in this Proposal as follows: (…)***it is proposed to keep a general clause allowing Member States to use it whenever the strict application of the binding criteria will lead to a separation of family members or of other relatives***, adding explicitly the term 'other relatives'.[456] Moreover, legal doctrine has pointed out the need for flexibility in the interpretation of article 16 and 17 of the Dublin III **especially in cases where failure to do so would result in a violation of article 8 ECHR and respectively 7 CFR. In those cases, this is no longer a discretion of the State and it becomes an obligation.**[457] The latter point also seems to be a conclusion emerging from UK case law.[458]

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[449] Where TCRs were sent either under 8 and 17(2) or exclusively on the basis of the latter
[450] As of cut- off date, 20 April 2018
[451] This is the status included in chapter II) 1 table 8 for this case, already mentioned above, the boy absconded a few weeks after the submission of the re-examination request, no reply on the re-examination had been received in the meantime.
[452] In one of those cases, the response underlined the lack of responsibility under article 8 as well as under article 16 which formed the legal basis in the re-examination stage along with article 17(2) alternatively, due to the surpassing of the three month time limit. The respondent State additionally stressed, that the sending State had failed to comply with its obligation under the provisions for unaccompanied children **and that in any case, the discretionary clause is a question of the respondent State exercising discretionary powers.**
[453] Under this chapter subchapter II) 5 A) **(**Legal framework and general overview of article 17(2) cases)
[454] Commission of the European Communities, Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Brussels, 26 July 2001, COM (2001) 447 final, p. 15 http://ec.europa.eu/transparency/regdoc/rep/1/2001/EN/1-2001-447-EN-F1-1.Pdf
[455] Commission of the European Communities, Proposal for a Council Regulation 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, (recast) Brussels, 3 December 2008, COM (2008) 820 final, p. 9 https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF
[456] Ibid. The term relative here is not limited to the term as defined in article 2 (h) of the Dublin III, given the scope in article 17(2) of the Dublin III being: 'any family relations'
[457] Silvia Morgades-Gil, "The Discretion of States in the Dublin III System for Determining Responsibility for Examining Applications for Asylum: What Remains of the Sovereignty and Humanitarian Clauses After the Interpretations of the ECtHR and the CJEU?" http://ijrl.oxfordjournals.org/ p.24 *International Journal of Refugee Law*, 2015, Vol. 27, No. 3, 433–456 doi:10.1093/ijrl/eev034
Advance Access publication July 31, 2015
[458] UK - HA, AA and NA v Secretary of State for the Home Department, JR/10195/2017, 19 April 2018 http://www.asylumlawdatabase.eu/en/case-law/uk-ha-aa-and-na-v-secretary-state-home-department-jr101952017-19-april-2018

Another issue meriting attention is the respondent States' assessment of responsibility under article 17(2) in particular. Putting aside the three cases either 'pending reply' or 'rejected – absconded,'[459] previously analysed and which were examined by the respondent State in relation to issues of substance for the reunification request (such as proof of family ties, assessment of the relative etc.), **in the remaining four cases, respondent States have generally applied a very high threshold for the application of article 17(2). In particular, despite the very elaborate evidence submitted regarding the children's multiple vulnerabilities (including psychological/mental health issues, victims of war, violence including domestic etc.) and the close actual family ties with the person with whom reunification was sought, it was considered in three of four cases that no humanitarian grounds, or strong enough grounds existed for the reunification resulting in the cases being finally rejected and closed**. In the only case where acceptance of the TCR was finally conceded, after the embassy reunification process had begun, it is worth noting that in previous stages no relevant assessment of responsibility had been made under the substantive grounds of 17(2). In this case, only the procedural element of surpassing the timeline had been put forward, despite available evidence that the boy was extremely troubled psychologically and had resorted to self-harming practices. Indicatively, as to the threshold applied by receiving States in the above cases, in one case the receiving State considered that **humanitarian ground would be a reference about a shipwreck or an analogous dramatic situation**. This threshold is non-compliant with the wording of article 17(2) which, as analysed above, makes explicit reference to 'family considerations' among other grounds.

Additionally and very surprisingly, in two out of those four cases, concerning two different receiving Member States, **the age of the applicant who had at the time of the negative response reached adulthood, was evaluated erroneously regarding its significance and influence on the reunification process**. In one of them, the respondent State noted that from the time the applicant had reached majority article 8 (as the primary basis for the TCR), was no longer applicable and the assessment would be made only under article 17(2). In the other case, **the fact of adulthood was included explicitly among the reasoning for the lack of humanitarian grounds under article 17(2). In particular, in both those cases the children were still minors at the time of the registration of the asylum request and of the TCR.**[460] It should be noted that article 7(2) of the Dublin III defining the material time to be taken into account for the particular circumstances of each case as the time of the lodging of the international protection application, is not applicable to articles 16 and 17(2).[461] However, considering the scope of articles 16 and 17(2), namely dependency (article 16) on various grounds such as medical problems, pregnancy etc. and humanitarian grounds (article 17(2)) which should be taken into account in order to bring family relations together (under 17(2)), it appears that the non-applicability of article 7(2) in these two provisions, aims at taking into account in a more flexible way any circumstances that may occur, even subsequently, which should be considered when assessing the appropriateness of accepting a family reunification request on those grounds.

Nonetheless, the fact that a child was a minor at the time of the lodging of the application, and also at the time of the TCR, could not be viewed as immaterial when assessing responsibility under article 17(2), as it was interpreted in those two cases, especially considering that the applicability of article 17(2) is also assessed in the light of the best interest of the child. **This stance results in placing children in a less beneficial position due to the late TCR and the subsequent formal primary or alternative legal basis of article 17(2), even though their cases are factually in the same position as others whose cases are sent under article 8**.Moreover, the child reaching adulthood at the time of the response does not seem to justify a negative response regarding the existence of humanitarian grounds, considering that article 17(2) applies irrespective of the age of the applicant.

Contrary to the above, both cases were rejected stating, among other things, that the applicant was no longer a minor. In one of the cases, the respondent State concluded in the second rejection that since the boy had just reached majority, both article 8 as well as the best interest of the child were no longer applicable, nor was article 16,[462] despite evidence of extreme vulnerabilities. No applicability of article 17(2) was considered appropriate either, invoking a lack of 'strong' humanitarian grounds.

[459] The request was rejected, a re-examination request was submitted and the child absconded a few weeks after without having received any response in the meantime.
[460] In one of them, the child was a minor even at the time of the first rejection but not the second.
[461] It is however applicable to article 8, thus the rejection on the basis that article 8 was no longer applicable from the second rejection thereafter due to the subsequent adulthood of the child is contrary to article 7(2) of the Dublin III.
[462] Which was invoked during the re-examination stage as a primary basis, along with article 17(2) as an alternative basis

Case Study

A 16-year old boy from Somalia, with additional vulnerabilities such as being a victim of war and domestic abuse/neglect, arrived on the island of Samos along with his 17-year old brother, a disabled person with mental health issues, both unaccompanied children at the time. Three weeks later, he and his brother submitted an international protection application. Almost five months later he was placed in a PRAKSIS shelter for unaccompanied children, whereas his brother was placed in different accommodation, due to having reached adulthood. As soon as he was informed that their adult married sister had legally reached an EU Member State through a resettlement scheme, the boy submitted documentation and a request for reunification. The TCR was sent ten months after the lodging of the applications on the basis of article 8 and alternatively article 17(2). The TCR was making reference to the burdened past of the child, the close connection with the sister and his unaccompanied status as well as his need for support due to his brother's severe health issues (for whom a separate TCR is also sent), among other reasons. The TCR was fully substantiated in terms of family links (copy of the child's birth certificate, a copy of his sister's identity card and family register, the latter two translated in English). Additionally, documentation establishing the sister's legal status in the respondent State and her contact details as well as the child's written consent were dispatched. Furthermore, a detailed psychosocial report was included, with information on the child's past traumatic experiences, his current burdened psychological status due to his feelings of responsibility toward his brother and anxiety because of their separation in different shelters, the close connection and communication with the sister etc. Finally, a psychosocial and psychiatric report and other medical documents for the brother were also attached.

Approximately one and a half months later, a negative response on the TCR was sent, on the grounds that the sister had not mentioned any of the two siblings during her resettlement interview, which took place at a time after the lodging of an international protection application in Greece. The response stressed that they have lived separately for years due to their parents' divorce and remarriage with others, even though a warm relationship between them was described, thus concluding that no dependency among them could be inferred. Also, the respondent State emphasised the obligations of the sending State under article 6 of the Dublin III ***(prompt*** *identification of family members etc.) and concluded that it is in the child' s best interest not to be separated from his adult brother in Greece under article 8(3). A request for a documented interview analysing dependency and the sister's potential support was included. Around three weeks later, a re-examination request was submitted based again on article 8 and alternatively article 17(2), including a documented interview proving the dependency and support that can be provided by the sister to both siblings as well as providing clarifications on the lack of reference to the siblings during the resettlement interview and attaching her written consent. Also, a legal note by the PRAKSIS lawyer was attached, including recommendations regarding the best interest of the child. The psychological impact of the prolonged separation with his sister was described in a new psychosocial report and finally the close relationship with her was evidenced by attached screenshots of communications. Also, an updated psychological report on his brother was included.*

Approximately one and a half months later, a new negative response was received, on the grounds that a) article 8(1) was not applicable as the sending State failed to send the TCR within the stipulated timeframe b) article 17(2), examined as an alternative basis, was not deemed applicable either, as it was considered by the responded authorities that there are no strong humanitarian grounds for the case despite the proof of family ties. Reference to some of the information provided with the re-examination request was made, however the respondent authorities concluded that 'the boy is no longer a minor' (as of this second negative response) and thus no question of the best interest of the child was raised and that despite his attachment to his sister, he was by then an adult and was together with his older brother. The respondent authorities stated that this was their final response.

However, a new re-examination request was submitted around two weeks later, on the basis of article 16 (dependency) and alternatively 17(2). The request included an extensive psychological report demonstrating that the boy remained a multi-traumatised adolescent and the chronological passing to adulthood did not entail capability of undertaking responsibilities much beyond his actual age. Also, a new legal note and psychosocial report were included, as well as a note by the State-run service for accommodation stating that there was no specialised accommodation available for the type of disability the sibling has. Finally, a communication between PRAKSIS and the respondent services for disabled persons was also attached.

A new negative response was sent around two weeks later stating that there were no formal grounds to apply article 16 due to the surpassing of the three month time limit, and maintaining that there were not strong

enough grounds to apply article 17(2), stressing at the same time that the application of article 17(2) was under their discretionary power. Finally, the response determined that the sending State had the responsibility to provide any help and support that might be needed for the applicant as well as his sibling and that it was the very final response. The family reunification process was closed, and the asylum application continued for examination in Greece, while both siblings are in dire psychological condition.

**Some data, such as the country of origin, have been altered in order to maintain anonymity*

Observations regarding cases sent within the three-month time limit from the take charge request (TCR) under the exclusive basis of article 17(2)

The current section includes some specific observations on the three cases where the Greek Dublin Unit sent the TCR under the exclusive legal basis of article 17(2) within the three months from the lodging of the child's asylum application.

In relation to the two cases in which a request was sent under article 17(2) (due to the family relation being more extended than the ones included in article 8), it is worth making a comparison of the different approaches by the two respondent Member States involved.

The first case raises a matter of interpretation as to what an uncle actually is in terms of the application of the Regulation. In this case a request was initially sent under article 8, as the person in the respondent State was considered an uncle of the child and therefore, a 'relative' in the sense of article 2(h) and 8(2) of the Dublin III Regulation. Subsequently, following the involvement of a legal actor in the respondent State, it was clarified that the person concerned was the first cousin of the child's parent. In the information leaflet[463] for unaccompanied children in a Dublin process, included in the Implementing Regulation, an uncle is defined as 'the mother's or father's brother'. In this case, once the exact relationship was discovered, a fresh TCR was sent on the basis of article 17(2) this time, as article 8 was not considered applicable. However, it is important to underline the significance of actually distributing the leaflet to children and their representatives as well as making particular enquiries to ascertain the exact relationship in the context of the registration of the international protection application, as this case highlights. This is imperative, as confusion may occur with regard to the terminology, especially considering that in some languages (including Greek) the term uncle is broader, thus encompassing both the parent's sibling and cousin.

The interpretation of the respondent authorities in this case is also noteworthy, as it was considered that the particular family relation did not fall under 'family', or 'relative' under article 8(1), 8(2), or 17(2) and thus the applicant (child) could not be eligible for transfer. This restrictive interpretation is contrary to the wording and spirit of article 17(2), as analysed above, **since it provides that 'any family relations' can be brought together on humanitarian grounds, thus not limited to family members, siblings or relatives according to the definition of the Dublin III**. It is worth noting that the particular family considerations and humanitarian grounds in this case were well substantiated. Among the circumstances underlined in the TCR on the basis of the legal representatives' submissions and a psychological report, was the fact that this family relation was the only one in EU territory, on whom the child had invested emotionally, especially given the fact that his parents had gone missing. Despite the fact that an alternative way was put in place for the child to reach that Member State through another legal scheme in the end, this does not alter the reality that an erroneous interpretation and application of article 17(2) in the case has been made, nor change the fact of the subsequent delay the child had to face until the conclusion of that alternative process.

Another approach, placing the best interest of the child at the core of its considerations in the context of article 17(2) was adopted in the other case where the family relation was a cousin of the child. In that case, the respondent State invoked the best interest of the child and took into account the BIA findings underlining the actual close family bond between the two cousins as well as other crucial parameters, resulting in an acceptance of the TCR.[464]

[463] Implementing Regulation 118/2014, Annex XI, footnote 4, https://www.easo.europa.eu/sites/default/files/public/DublinEN.pdf
[464] Analysis of further issues regarding the case has been included in this chapter, under subchapter 5B) above.

Finally, the third case sent under article 17(2) without having surpassed the three month time limit concerns a case of twin children, one present in Greece and the other in the respondent State. The reason for sending the request under article 17(2) exclusively is not clarified in the TCR as would have been expected, given that this family relationship normally falls under article 8(1). However, this could be due to a potential concern relating to article 7(2) considerations, namely, the circumstance prevailing at the time of the applicant's lodging of the international protection application. In particular, according to documentation of the sibling submitted with the TCR, the international protection applicant card of the twin sibling in the respondent State dates a few days later than the applicant's (in Greece) lodging of the asylum claim. However, a prior initial registration of the sibling's asylum claim could have taken place before that date, as the exact circumstances concerning the submission of the international protection application in the respondent State are unknown. In this case it was interesting to note that after the legal basis was switched to article 8 by the Greek Dublin Unit, on the basis of the legal representative's submissions, the request was finally accepted by the respondent State, whereas it had already been rejected twice on the previous legal basis of article 17(2).

It is striking to note that the detailed evidence of the interdependency between the twins, their troubled and traumatising past experiences and the finding included in the BIA regarding the necessity of the completion of the reunification for their emotional well-being and stability, were not considered by the respondent State as sufficient humanitarian grounds based on 'family considerations'. The initial negative response was based on the lack of evidence that the twin sibling can take care of the applicant and therefore no humanitarian grounds were available.[465] The conclusion of lack of humanitarian grounds was subsequently maintained despite the submission of the above BIA. It is important to note that in this case the respondent State, apart from a misinterpretation of article 17(2), also seems to have failed to comply with article 3 of the Implementing Regulation 1560/2003, according to which the respondent State is obliged to check exhaustively, **irrespective of the provisions or criteria relied on** [by the sending State in the TCR] whether its responsibility is established under **at least one of the criteria. [Our emphasis**]. In this case, the respondent State relied exclusively on the provision of article 17(2), (the legal basis the sending State relied on in the TCR) and did not proceed with a proactive check of its potential responsibility under article 8, as per the above legal requirement.

In conclusion some observations regarding the respondent States' prescribed general obligations under article 17(2), are necessary. More particularly, in the only case where preconditions of article 8 were fulfilled and the TCR was sent on the basis of article 8 and alternatively article 17(2) within the three month time limit, the respondent State failed to make any assessment regarding the existence of humanitarian grounds and also failed to respond to the alternative legal basis for the TCR, article 17(2). **Regarding the rest of the cases, no checks to ascertain the humanitarian grounds were generally observed.** However, in one case the State requested relevant information from the sending State instead, and in two others the respondent States proceeded with contacts with the relatives during the re-examination stage, as mentioned above. In one more, the respondent State crosschecked the sibling's interview but requested that the sending State provide a documented interview demonstrating any potential grounds for dependency.

In relation to the obligation to state the reasons for a negative response under article 17(2), from the ten relevant cases in the sample,[466] two cases received a rejection of the TCR which was sent without any reasoning but with a request for specific documentation instead (implicitly giving reasons for the rejection), while in two more cases the reasoning is related to the lack of ability for an assessment or contact with the relative, not to a lack of humanitarian grounds. Regarding the six remaining cases, generally there was no adequate reasoning provided in relation to the assessment of humanitarian grounds. In particular, in three cases a reasoning was provided concerning the lack of humanitarian grounds according to the respondent authorities' interpretation and no reasoning was provided in the subsequent negative response, and in another three cases a reasoning was provided that mainly related to the expiration of the three month time limit and a lack of or insufficient reasoning in the first and

[465] It is reminded that the ability of the family relation to take care of the applicant is not included among the factors that have to be substantiated in the framework of article 17(2). This factor is of relevance in cases of dependency (article 16 of the Dublin III) according to article 11(2) and 11(4) Implementing Regulation 1560/2003 and article 1(6)(6) Implementing Regulation 118/2014.

[466] Three cases were accepted without a re-examination and one was only examined under 8 by the respondent State as mentioned above

subsequent negative responses regarding the existence of humanitarian grounds. It is also noteworthy that in the cases where relevant reasoning regarding 17(2) is available, the States fail to take into account the particular circumstances put forward and sometimes only provide a response of a general nature regarding the interpretation of article 17(2) and the meaning of humanitarian grounds.

Case Study

A 16-year old boy from Iraq with multiple vulnerabilities such as past experiences amounting to inhuman treatment, torture and mental health issues, arrived unaccompanied on the island of Lesvos and was placed in a PRAKSIS shelter a few days later. He submitted an international protection application approximately two months after arrival, seeking reunification with his uncle who had refugee status in an EU Member State. The TCR, however, was sent one and a half months after the expiry of the three month time limit, on the legal basis of article 17(2) of the Dublin III, stating that due to excessive caseload the time limit had been surpassed. The TCR attached the child's written consent, a copy of the child's identity card from the country of origin and a copy of the uncle's family book, fully establishing the family ties. Also, documentation establishing the legal status and the contact details of the uncle in the respondent State were included. The Greek Dublin Unit caseworker further made reference to the child's stated psychological problems. Approximately one week later, a negative response on the TCR was sent, on the grounds that the responsibility lay within the sending State due to the surpassing of the three month time limit and that the reasons put forward in the TCR in the context of article 17(2) could not be accepted. The re-examination request submitted three weeks after by the Greek Dublin Unit caseworker underlined the primary consideration of the best interest of the child in the Dublin process and clarified that the Greek Dublin Unit was informed of this Dublin case only a few days before the dispatch of the TCR, in particular after the transfer of the child to the mainland and after his subsequent placement in a PRAKSIS shelter in Athens. The uncle's written consent, a legal note by the PRAKSIS lawyer/representative, a BIA form were also included, describing in detail the exceedingly traumatic experiences of the child in his country of origin and the ensuing psychological effects. Furthermore, the close relationship with his uncle and the importance of the reunification for the child's well-being and sense of safety was described, also underlining the uncle's particular role as a father figure in the child's life.

Only two days later, a new negative response was received, on the grounds that a) article 17(2) was not supposed to be used for cases which normally fall under other articles of the Dublin III for which the time limit has expired and b) the wish of the applicant to have his application examined in that State did not constitute a humanitarian reason, adding that the sending State could check under its own responsibility the option of transfer through relocation. No reference was included regarding any of the particular issues related to the child's vulnerability previously put forward by the sending State. The Greek Dublin Unit subsequently requested a 'hold' request and a psychiatric assessment and psychological reports substantiating the high vulnerability of the child were submitted to the Asylum Service by the PRAKSIS lawyer. However, they were not ultimately sent to the respondent authorities as the child decided to withdraw the family reunification request after his sister's arrival in Greece as an asylum seeker.

**Some data, such as the country of origin, have been altered in order to maintain anonymity*

6. Children absconding: Key observations

From the cases reviewed in the research sample, **10% (eight cases)** concerned children who absconded while the process of family reunification had commenced and was on-going. Considering that all children absconded at a time when they were housed in PRAKSIS shelters where all their basic needs were catered for and they had access to services such as psychosocial support, recreational activities, schooling etc., one might assume that absconding could be correlated to the on-going family reunification process. The aim of this chapter is to understand as much as possible about the reasons for the absconding in so far as it relates to the family reunification process and to pinpoint the factors that appear to be conducive to this result, as they emerge from the particular circumstances of the cases.

First and importantly, there was no case where the child absconded when the family reunification request was accepted directly.[467] The majority of cases (six) where children absconded concerned cases which, at the material time of absconding, had been rejected one or two times by the respondent States and were thus at the reconsideration stage.[468] From the remaining two cases, in one case the child absconded a few days before receiving a first but negative response and in the other case the child absconded after having finally received a positive response and was at the stage of pending transfer.[469] These cases involved various respondent Member States, with one to two corresponding cases per State. With respect to the family relations present in the respondent States, these varied again, being a parent (two cases) a sibling (two cases), an aunt/uncle (three cases) and a spouse, in one case. **It is also important to note, due to the increased vulnerability of being subjected to gender-based violence when travelling through irregular routes, that three absconding cases involved girls, the majority of whom had experienced gender-based violence in the past**.

The cases in the sample indicate that the main factors contributing to children absconding are the delays in the family reunification process as well as the negative responses received in their request by the respondent States, resulting in a lack of trust in the Dublin III reunification process, as introduced in chapter II) 1. With regard to **delays in the process, the decision to abscond seems to be more associated with delays during the re-examination stage**. More specifically, out of the three cases where children absconded shortly before the second negative response was received, in two[470] cases the interim period between the submission of the reconsideration request and the subsequent response was exceedingly long, 201 and 302 days, respectively.[471]

In two other cases, the long delay in the reconsideration stage was related to the particular evidentiary process (age assessment, DNA) that had to be followed during that stage, due to a high evidentiary threshold required by the respondent States. This process reached 173 days in one case, and in the other the child absconded after 115 days had elapsed since the beginning of the second reconsideration stage. In the first case the child absconded only after having concluded this process and after having received a new final rejection, whereas in the second case, the child absconded after having concluded part of this evidentiary process.[472] Similarly, in the case finally accepted, there was a lengthy period of four months between the first and the second response.[473] In the remaining cases (two) there were no excessive delays in the re-examination process. Therefore, exceedingly long waiting periods during the re-examination stage seem to have been an important factor in the children's subsequent decisions to abscond in many cases. Further, lengthy processes during prior stages, when observed, have additionally overburdened children with waiting. In some cases, delays were noted during the period between arrival and lodging of the international protection application. In three cases this application was lodged between 1.5 and 3.5 months approximately from arrival and in two more cases this period reached approximately six months.[474] With regard to the subsequent stage, the TCR was sent within the prescribed time limit but

[467] It is reminded that 25 cases in total were directly accepted, including in this number the ones processed as acceptance by default.
[468] It is reminded that the reconsideration stage commences upon the receipt of the first negative response and includes the period of preparation of the reconsideration request, the subsequent period of the examination of the reconsideration request by the respondent State and this process may be repeated several times, therefore the reconsideration stage comprises all, unless specified.
[469] The particular circumstances of the case are analysed further below in this chapter.
[470] In the third case, analysed in the next paragraph, the second negative response was sent within ten days from the reconsideration request. Also, in one more case, analysed in the next paragraph, no response followed regarding the reconsideration request, however, the child had already absconded a few weeks after the reconsideration request was sent.
[471] It is reminded that the prescribed timeframe in article 5 (2) of the Implementing Regulation 1560/2003 is two weeks.
[472] Both cases are further analysed in the next paragraph.
[473] In this case, no reconsideration request was made as the respondent State declared that more time would be needed for investigation in that Member State.
[474] In the three other cases, the lodging of the asylum application took place in less than a month from the arrival.

close to the expiry date (within two to three months from the lodging) in seven out of eight cases, whereas in one case there was a delay of approximately 2.5 months following the expiry of the prescribed three month time limit for sending the TCR.[475] **However, children have absconded in much later stages, as mentioned above.**

The other crucial factor in absconding appears to relate to the children's disappointment concerning the course of their family reunification case and the lack of trust and hope that the reunification will be concluded, when they have received one or two negative responses. Even though this factor is present in all cases where children had absconded after receiving negative responses it seems to be particularly determining in cases where children abscond even if no exceedingly long delay has occurred. In two cases children absconded after having received a negative response, shortly after the subsequent reconsideration request had been submitted and was pending examination by the respondent State, having considerably invested in the procedure in prior stages with the submission of evidence. In one more case, the child absconded after having already received two negative responses and while the process of preparing the reconsideration request (DNA test and age assessment) was on-going.

In the latter case, (already mentioned above regarding lengthy processes), according to the PRAKSIS legal representative, the decision to abscond seemed to be more related to a lack of trust in the process. The child had already undergone a medical age assessment with the result in his favour and there was no fear of a DNA test since full proof of family ties had already been submitted and the children had great resemblance. In another case, the loss of hope concerning the conclusion of the family reunification process seemed to be the reason triggering the decision to abscond as well. The child underwent a lengthy reconsideration process due to medical age assessment having been requested and absconded only about a month after having received a new negative response. **It should be emphasised that all the above cases were well-substantiated with considerable evidence being provided, including documentation from the country of origin, written statements, BIAS, psychosocial reports etc.**

In addition, less clearly defined factors may also be present in one case outlined above and another case where the child left a few days before receiving the first negative response. Finally, in the case where the child left while pending transfer, an additional pressing factor relating to the family member's serious health problems appeared to be also a determining factor in the child's decision to abscond. However, the child left five days after the notification of the positive response[476](through the Greek authorities' inadmissibility decision) and the submission of a prioritisation request. It appears that the lengthy period of four months that had elapsed between the first and second response, approximately six months in total from the TCR dispatch, contributed considerably to the decision to abscond especially considering that the health problems of the family member, pre-existed and had been communicated to the respondent State with documentation.

Thus, the two main factors contributing to the children's decision to abscond are lengthy reconsideration processes and loss of trust concerning the completion of the family reunification process and they are often interrelated. It should be acknowledged that in all of the above cases abundant evidence had been submitted and both the children as well as their family relations had invested considerably in the process, including submitting evidence regarding family links, undergoing medical age assessments, participating in the BIA process (which entails remembering and putting forward traumatic experiences), submitting written statements, contacting the respondent authorities etc. **It is also important to recognise that in the overriding majority of cases (seven out of eight) children had additional vulnerabilities** due to circumstances such as gender-based violence, orphanhood, victims of torture, young age, sexual harassment or abuse etc. In the remaining case there was a great psychological impact caused by the delays in the reunification process. All the above were evidenced through BIAs and psychosocial reports, which were submitted in the process and available to the respondent authorities.[477]

Concerning the impact of delays, as already stated, six cases of children absconding occurred during the reconsideration stage, either while pending examination of the reconsideration request by the receiving State in the overriding majority of cases, or after having received a second negative response, or finally, while waiting for the submission of a new reconsideration request. Even in cases where children had

[475] No delays were noted in the first response stage, all responses were sent within the time limit, however in the case pending transfer, the first negative response requested further time for investigation, see relevant analysis of this practice and observations under chapter II) 3 subsection 'Acceptance by default: legal provisions and observed practice'.
[476] Approximately 1.5 month after the dispatch of the positive response by the receiving State
[477] In two cases-out of eight- the related documentation was not available.

experienced some delays in prior stages, the circumstances predominant at the material time of absconding seem to be of relevance in their decision to abscond. More particularly, it should be highlighted that in **the six cases where children absconded after having received at least one negative response, the interim period between the first negative response and the absconding of the child ranged in four cases from 137 to 246 days, with the vast majority (three) being over 200 days**. In the remaining two cases, the respective time was less than two months.[478] Moreover, in the case where the child absconded while pending transfer having initially received a 'temporary' negative response, the time since first rejection to absconding had been 176 days.[479]

The above timescales and circumstances prevailing at the time when the children abscond, demonstrate that in the overwhelming majority, children absconded at a time where they had lost hope and trust in the Dublin III family reunification process, either due to excessively long waiting time during the reconsideration stage or due to a refusal of their request despite substantial evidence being provided, or often due to both. It is important to note that no issue relating to their living circumstances in Greece was present at the time of absconding (and thus of relevance to the decision to abscond), in any of the above cases, according to the information available. Therefore, in principle the findings indicate that children abscond after having attempted to be legally reunified with their family relations and after losing trust in the process in which they have significantly invested. **The exceedingly high evidentiary requirements and the excessively lengthy re-examination processes appear to be the predominant factors for absconding and are considered a failure of the Dublin III process leading vulnerable children, who had initially placed their trust in the legal system, to abscond and endanger themselves through irregular pathways.**

[478] 33, 51 days respectively.
[479] Analysed regarding each stage in detail above.

Case Study

A 15-year old girl from the Democratic Republic of Congo, a survivor of gender-based violence, arrived unaccompanied on the island of Lesvos and was transferred and placed in a PRAKSIS shelter on the mainland a few days later. She submitted an international protection application approximately one month after arrival, seeking reunification with her father (who had resident status in an EU Member State) and her mother and siblings (who had citizen status) all living together in the same Member State. The TCR was sent at the expiry of the three month time limit, comprising a copy of the child's original birth certificate which fully established the family ties, as well as documentation establishing the legal status of the father and the rest of the family in the respondent State, plus their contact details and finally the child's written consent. Three weeks later, the girl received a negative response on the grounds that none of the family members had an asylum related residence permit and thus the applicant should apply through the respondent State's consular services and that the family links were not proven.

The re-examination request submitted three weeks after by the Greek Dublin Unit pointed out the proof of family links through the birth certificate. Highlighted was the applicability of article 8 of the Dublin III with regard to the family's legal status, as well as the best interest of the child given that the family were legally present in the Member State. A legal note by the PRAKSIS lawyer/representative was also included describing the close relationship between the family members and the importance of reunification for the child's well-being and sense of safety, attaching copies of tickets from the latest visit of the family to the girl in Greece, some family photos and a copy of the negative response of the embassy family reunification process, attempted a few years before. Alternatively, the availability of the persons concerned for DNA was included, in case of continued doubts by the respondent authorities.

After more than five months without any response, a reminder was sent by the Greek Dublin Unit and a second, one and a half months later, submitting at the same time a psychosocial report and a new legal note. Both of these provided important information and recommendations concerning the child's best interest, including information about the child's past experience involving gender-based violence, details about the close actual family ties and the family members' constant communication, the child's emotional state and the family's positive views about reunification. Some days later, the child absconded and resorted to irregular pathways in order to reach her family, after having waited more than seven months for a response to the initial re-examination request. The response arrived after the child has absconded and approximately three months after the last reminder, again refusing the request and stating that there was no way of authenticating the documentation. A reference was made again to the national (embassy) family reunification procedure, which should not be circumvented through the Dublin process. No reference was made to any of the information previously provided by the sending State concerning the additional vulnerabilities of the child and the importance of the reunification for the child's well-being and best interest.

**Some data, such as the country of origin, have been altered in order to maintain anonymity*

7. Main reasons for refusals and key observations

Main Reasons for Refusals

The research sample of 80 cases includes 55 cases in which at least one, often more, negative responses to the family reunification request had been received, even when ultimately the request was accepted. In many cases, the refusals may relate to different reasons, all included in the same or in subsequent refusal letters. The purpose of the list below is to underline the different categories of reasons for refusals put forward by the respondent States.[480]

- In the overriding majority, negative responses were related to the question of proof of family ties, or of the identification of the applicant's age. In those cases, responses were either requesting evidence, contesting the evidence submitted or noting that family ties and/or age were not considered substantiated. (These cases include requests for translation of documentation, or for submission of original documentation and temporary rejections on this ground etc.)
- In a considerable number of cases, the question of the best interest of the child was put forward, either explicitly or implicitly. This includes cases where information about the best interest of the child or a BIA was requested from the sending State or planned by the respondent State (social checks included) and cases where the emotional bond and (lack of) closeness of ties due to the separation was invoked, or the best interest of the child in cases of more than one family relation living in different Member States. The family relation's material capacity in reference to the best interest of the child is also a factor considered in some cases, even in cases of family members or siblings present in the respondent States.
- The questioning of the ability to care by relatives and extended family (under 17(2)) was a reason for refusal in a number of cases. This includes requests for information or documentation about the ability to care, as well as refusals invoking a lack of the relative's financial capacity, or a lack of ability to care according to information deriving from an assessment by the respondent States. Sometimes, refusals were due to the inability to proceed with a social (or other) check.
- In a comparable number of cases, the refusal was associated with the family relations' legal status in the respondent State, including cases where a different (national) family reunification process was suggested. These refusals were either based on a lack of legal presence or on the particular type of legal status of the family relation.
- Other reasons for refusals in a limited number of cases (one to four cases each) included: a) absence of humanitarian or strong humanitarian grounds under article 17(2), b) expiration of the three month time limit as a ground for non-applicability of articles 8, 16 or 17(2),[481] c) ageing-out of the child at the time of the response despite being a child at the time of the lodging concerning cases both under article 8, or 17(2), d) invoking a need for more time for investigation or examination of the case for unspecified reasons resulting in 'temporary' rejection e) invoking the 'discretion' of article 17(2) f) lack of recognition by the respondent State of marriages involving a child and subsequent lack of the State's ability to undertake responsibility under Dublin III, g) an interpretation that the family relation is not a relative or a family relation under 8(1), 8(2) or 17(2) and h) lack of ability to detect a sibling in the declared address.

[480] The grounds listed below are in descending order, according to the number of cases including each ground.
[481] In all such cases article 17(2) was invoked as a legal basis for the TCR, additionally or exclusively.

Key Observations on refusal letters

Considering that detailed and specific observations have been made concerning the issues deriving from the respondent States' formal responses with regard to the evidentiary standards, the best interest of the child and the relevant assessment etc., this chapter aims to make some general observations on the refusal letters, pertaining mostly to the procedural aspect of negative responses as regulated in the Implementing Regulation 1560/2003. A primary obligation for the respondent States in cases of negative responses is to include '**full and detailed reasons'** for the refusal of the family reunification request.[482] The obligation "to state the reasons on which refusal is based" in the response applies to cases falling under article 17(2) of the Dublin III, according to the requirement of that legal provision. As is illustrated from the analysis below, there is no general, uniform or consistent practice in providing reasoning for the refusal. Some reasons have been put forward in the overriding majority of cases sent under article 8 relating to the question of proof regarding family links or age, the best interest of the child, the legal status of the family relation etc. even though sometimes, a negative response denying responsibility was only limited to requesting specific evidence, thus implicitly giving reasons for refusal.[483]

In some cases, the reasoning appears to be quite vague as will be analysed below. In some instances, both in the first negative as well as in subsequent negative response, a "temporary" rejection requesting more time for investigation is provided without specifying the grounds for this request, even when the evidence provided is fully substantiated. Sometimes, in the re-examination stage there has been no further explanation but merely a repetition of the reasons stated in the first negative response. Or, there is a statement simply acknowledging the new information or evidence and the refusal is maintained. It should be underlined that the requirement of full and detailed reasons applies to negative responses issued in all stages as per article 5 of the Implementing Regulation 1560/2003, which does not make any distinction regarding the application of the requirement for full and detailed reasoning. This interpretation also derives from article 41 of the CFR: the applicable right to good administration including the administration's obligation to give reasons for its decisions.[484]

A more detailed refusal letter has been observed in some of the cases concerning various respondent States[485] either at the first negative response, the subsequent responses submitted during the re-examination stage or both. However, in the context of providing full and detailed reasons for the refusal an essential part of the required reasoning normally consists of making reference to the assessment of the evidence already submitted and of substantiating why it is not considered sufficient. This approach has been noted sometimes, but in a limited manner.

In the overriding majority of cases (both in the first negative response as well as in subsequent responses, when applicable) there has been no explicit reference to the documentation previously provided by the sending State. Furthermore, in certain cases, reference to the documentation has been noted without including any reference as to how it was assessed, thus not providing reasoning for the conclusion that the negative response had been maintained. Furthermore, the lack of reference to relevant evidence already submitted or of explanation why it is not sufficient has been observed even in cases where only a request for evidence had been made.

The processing of the TCR requires, according to the applicable legal provision, that the respondent States examine their potential responsibility on the basis of all the information '**directly or indirectly available'** to them.[486] With regard to article 17(2) of the Dublin III in particular, there is a respective obligation to ***carry out any necessary checks to examine the humanitarian grounds cited.***[487] **[Our emphasis]** Therefore, in the context of the obligation to state full and detailed reasons for the negative response in refusal letters, there seems to be an ensuing obligation to state the checks performed and their result, also making reference to the indirect (or direct) information, which is the basis for the refusal. Reference to direct information as supplied in the TCR [488] or further re-examination requests in negative responses has been analysed above.

[482] Article 5(1) Implementing Regulation 1560/2003.
[483] Regarding cases on the (additional or exclusive) basis of article 17(2) no reasoning other than a conclusion that the grounds put forward cannot be accepted as humanitarian grounds, has been noted in several cases, see chapter II) 5 in detail.
[484] Article 41.2 c) CFR.
[485] Indicatively some Sweden-bound, Switzerland-bound, Norway-bound, UK -bound cases etc.
[486] Article 3(2) Implementing Regulation 1560/2003.
[487] Article 17(2) Dublin III Regulation.
[488] According to our view 'information directly available' is interpreted as information deriving from the TCR, whereas 'information indirectly available' includes any other information available to the respondent State, such as information through checks.

Indirect information may arise from any checks by the respondent State and reference to indirect information has been observed repeatedly in refusal letters. Still, in several other cases, reference to indirect information was not made. However, there are varying practices in this regard. More particularly, reference to asylum records and to any contradicting evidence therein has been observed frequently and sometimes the reference to this indirect information has been made in a vague manner. For example, it is sometimes stated that there is no information available from the records (or TCR) to substantiate the family link,[489] or that the relative is not a beneficiary of international protection but not stating what is the relative's actual legal status or if it is an irregular status etc. or simply not providing sufficient information. In other situations, refusals based on indirect information might refer to social assessments and may include substantial information concerning the findings of the assessments, while in other cases receiving States have stated their intention to conduct an assessment, as the sole basis for the refusal. Furthermore, it has been noted that, sometimes, refusals based on the need to conduct a social assessment may have also made reference to the need to substantiate the family ties through the assessment. Other times, respondent States have not made reference to the need to establish family ties through the social assessment, despite the fact that the respondent States had considered that family ties had not been established by the evidence already submitted. Thus, the obligation to provide fresh evidence would be again incumbent on the sending State in these cases.

The above described practices illustrate that on many occasions the reasoning included in refusals is not well-substantiated, nor in accordance with the legal requirement to provide 'full and detailed reasons'.

With respect to cases sent under the legal basis of article 17(2), and analysed in detail in chapter II) 5, the refusal letters did not generally refer to checks regarding the existence of humanitarian grounds. In a few cases, only an interpretation of the term 'humanitarian grounds' and whether it applies in the case is sometimes provided.

It is worth noting that in a considerable number of cases, a request by respondent States for specific documentation has been observed in the first negative response, although in less than half the cases. In case of further negative responses, a request for documentation became significantly more limited. Occasionally there is a general reference to a possibility for reconsideration if further evidence would be submitted. However, in some of these cases this reference seems to be just a formality, as it was also included in some of the cases where the respondent State clearly denied responsibility on general grounds and which could not be altered by subsequent information on particular circumstances, e.g. the Dublin process was not considered to be applicable, or the three month time limit had elapsed and therefore article 17(2) was not applicable (according to the respondent State's interpretation). Additionally, in some cases, Member States clearly stated in refusal letters that it was their final answer, even at the stage of the second negative response, thus not allowing for further reconsideration requests to be submitted.

Another obligation for respondent States in the context of processing the TCR is to examine '**objectively and exhaustively'** within the set time frame (two months) whether their responsibility to examine the international protection application is established.[490] However, as it transpires from the refusal letters, in certain cases the respondent States have made reference in further responses (i.e. second) to a lack of proof or other documentation as a reason for refusal, despite this evidence having been already submitted with the TCR. Likewise, in some cases they have made checks in their records in later stages, which did not take place in previous stages[491] and included a new basis for refusal in later negative responses. This practice does not seem to comply with the requirement to exhaustively examine within the set time limit, whether the responsibility is established. **Moreover, invoking new reasons for refusals on subsequent stages when they could be invoked in the first negative response is not conducive to the stated objective of the Dublin III Regulation, namely the rapid determination of the Member State responsible and the subsequent objective of the rapid processing of the asylum application. Furthermore, the unnecessary ensuing delays are, in cases of unaccompanied children, considered to be detrimental to their best interests.**

[489] Even when there was documentation included in the TCR
[490] Article 3 (2) Implementing Regulation 1560/2003
[491] Such as during the stage of assessing responsibility following receipt of the TCR

Finally, another obligation incumbent upon respondent States when processing the TCR and before refusing it is to check whether their responsibility is established under any criterion irrespective of the criteria and provisions relied on in the TCR[492]. A proactive approach of examining responsibility under other provisions additional to article 8 as the legal basis of the TCR has been observed to occur in a very limited way, with States also making reference to articles 16 or 17(2). However, in those cases the mere reference to the article was limited to declaring a lack of its applicability under the circumstances, without including detailed reasons. In another case, already mentioned in chapter II) 5, the State limited its assessment of responsibility to the legal basis of the TCR (17(2)) without examining its potential responsibility under article 8 and examined its responsibility under this article only after the sending State invoked this legal basis.

[492] Article 3 (2) Implementing Regulation 1560/2003

8. Main observations on systemic constraints and structural issues

This chapter focuses on systemic constraints in the asylum system in general as well as some constraints more specifically related to the Dublin process and how they influence the smooth implementation of the Dublin family reunification procedure. Also, considering the fundamental structural significance of cooperation for the proper application of the Dublin III Regulation, observations are made in relation to cooperation at many levels such as: the interstate level, cooperation between the Greek Dublin Unit and the lawyer/legal representative and cooperation between lawyers or other actors, when applicable.

Systemic Constraints

- The observed shortcomings in the Reception and Identification Service and the Asylum Service, particularly present in the islands, such as understaffing or the lack of a systematic practice for prioritising unaccompanied children have impeded the prompt access to asylum as well as the access to adequate provision of information. In the majority of cases, there has been a failure to secure a prompt access to the asylum process and therefore to the commencement of the Dublin family reunification process for unaccompanied children. Furthermore, in certain cases, described in chapters II) 3 and II) 5, the overstretching of the asylum system especially in the islands created coordination issues with the Greek Dublin Unit and has resulted in surpassing the three month prescribed time limit for sending the TCR.

- Another systemic constraint, not conducive to a smooth application of the Dublin III Regulation in cases of unaccompanied children, is the lack of an effective guardianship system in place and the lack of legal support and representation upon the children's arrival, observed in several cases. Moreover, the absence of a uniform practice for prompt access to placement in accommodation facilities for children and the repeatedly observed consecutive changes in placement,[493] has been a factor burdening the Dublin process. In particular, the latter has resulted in different lawyers/representatives being successively involved in a case, when legal support and representation has been available in prior stages, with coordination issues sometimes emerging, as will be analysed in this chapter below. It is noteworthy that the change of placement and transfers of children, often in different regions, has also created further delays in cases of particular evidentiary processes such as DNA tests or age assessments. Finally, the abovementioned lack of legal support or representation in the beginning of the process, observed in several cases, has negatively affected the provision of adequate information to children in some cases.[494] Furthermore, it has affected the provision of timely information to the authorities regarding the case, in particular important information for the Dublin family reunification process such as information regarding the best interest of the child or a BIA form.

- Additionally, the lack of sufficient human resources in the Greek Dublin Unit to accommodate the highly increased number of family reunification requests in the past few years did not contribute to a smooth application of the Dublin III Regulation either. This was despite having appointed further staff and having taken special measures such as working shifts etc. In particular, limited staff capacity appears to have influenced the ability to proceed with sending the TCRs in an expeditious manner starting from the submission of the family reunification request, the ability to submit reminders more frequently etc. Furthermore, some limitations (possibly related to the austerity measures) have influenced the potential for appointing adequate new staff or have resulted in non-renewal of short-term contracts in the Greek Dublin Unit. This in turn, in some cases, led to changes in the responsible caseworkers.

- The sending State has an obligation to carry out the transfer of the applicant in accordance with its national Law and after consultation with the receiving State as well as covering the cost of the transfer.[495] In a major part of the temporal scope covered by this study, there was no centralised process for covering the cost and issuing tickets even though the scheduling of the list for transfers

[493] Sometimes from Reception and Identification Service facilities to safe spaces in camps or shelters and then successive placement to other shelters
[494] The provision of information about the Dublin process is however also a prescribed legal obligation of the State competent authorities: article 4 of the Dublin III Regulation in conjunction with Annex XI Implementing Regulation 118/2014.
[495] Articles 29, 30 Dublin III Regulation.

was conducted by the Greek Dublin Unit. This influenced the transfer process, as the children's family relations or other actors such as NGOs were charged with covering the cost in a timely manner, and thus the processing and implementation of the transfer were reliant on this precondition and the time it would be fulfilled. Still, the prescribed six- month time limit was not exceeded due to this reason. During the spring and part of the summer of 2017, a scheme was put in place for the issuing of tickets.[496] In this period, the transfer process was considered smooth and the observance of the legal requirement not to place the burden of the cost of transfer to the applicants was also secured. Likewise, the transfer process was equally compliant with the Dublin III relevant provisions when the Greek State at a later stage entered into an official cooperation with a travel agency following a tender, and also became responsible for covering the cost of all the tickets.[497] In cases of transfers of unaccompanied children to the UK in particular, a different practice was noted during the period covered by the study resulting in a more expedited transfer.[498] Finally, as observed and analysed in detail in chapter 3, the 'cap' placed in Germany- bound cases, has considerably delayed the transfer timelines, affecting cases of unaccompanied children considered in this study. In particular, the only cases in the research sample that exceeded the prescribed six month time limits have been Germany-bound cases.

Observations on cooperation within the Dublin structure

Cooperation is considered an inherent part of the structure of the Dublin process and is indispensable for the good functioning of the Dublin family reunification procedure. Observations on cooperation at an interstate level, cooperation between the Greek Dublin Unit and the lawyer/legal representative, and finally cooperation between lawyers or other actors, are analysed below.

The proposed cooperation between Member States provided in the Dublin III and the Implementing Regulation in terms of means of proof and evidence gathering, as well as in the context of assessing the best interest of the child has been analysed in detail in previous chapters. As already mentioned, the standard form for the exchange of information is not, in principle, followed in practice and the respondent States' role[499] in sharing information concerning the establishment of the family links and/or the assessment of the relative's ability to care is not perceived as being a general "obligation'" for respondent States. In principle, the sending State bears the onus of providing any relevant supportive documentation or information starting from the TCR stage and thereafter. Any cooperation between Member States to do with information sharing usually takes place in the context of formal requests (TCR or re-examination) or responses. In this context, respondent States have repeatedly shared some information deriving from checks of records or from social assessments or have requested relevant information concerning the establishment of family ties or the best interest of the child. However, the practices were varied, and there was no consistent and uniform practice of sharing information at all times. At other times information was not even requested by respondent States.

In a limited number of cases, a more distinctive approach in cooperation was noted, either by requesting additional information in informal correspondence with regard to the age assessment process conducted or requesting the filling out of a questionnaire regarding family links etc. In relation to flexibility between Member States in regard to the time required for evidence gathering or for the examination of the case, it has been observed that a 'hold' practice has been applied by both the sending and some receiving States requesting more time in the context of the re-examination stage for any of the above reasons.[500] However, towards the end of the temporal scope of the study, it has been observed that the practice of 'hold' requests from the sending State was not applied easily as a result of some respondent States becoming stricter and not accepting 'hold' requests. Similarly, some flexibility of respondent States has been observed in certain cases where the re-examination request was sent after the three week deadline,

[496] The issuing of tickets was funded by the UNHCR and the implementation was covered by the Ecumenical Refugee Program of the Church of Greece, as implementing partner of UNHCR, in collaboration with the Greek Asylum Service.
[497] Some cooperation issues with the travel agency occurred around the end of the period covered by this research study (cut -off date for developments 20/4/2018) At the time of the drafting of this study this is no longer an issue as following a new tender another travel agency was appointed for this process.
[498] Coverage of the ticket cost by IOM, see in detail analysis in chapter II) 3 .
[499] As it derives from the Implementing Regulation, in particular as described in Annex VIII, Implementing Regulation 118/2014
[500] The sending State has requested hold for the purpose of evidence gathering, predominantly related to particular evidentiary processes age assessment, DNA etc.

whereas in other cases the surpassing of the deadline was underlined in the subsequent response of the State. Flexibility by respondent States was more limited in cases where the TCR was sent after the three-month time limit.[501]

In relation to the cooperation between the caseworkers of the Greek Dublin Unit and the PRAKSIS lawyers/legal representatives, the latter stressed that in the overriding majority of cases there was very positive cooperation and coordination between them, a factor necessary for the good progress of the cases. In a limited number of cases, according to the PRAKSIS lawyers, difficulties in cooperation related to the delays of the Greek Dublin Unit in informing them about the negative response of the requested State.[502] Moreover, the role of the lawyer/legal representative is highlighted as indispensable in monitoring the course of the case in terms of timescales and in raising the need for actions such as reminders, prioritisation due to vulnerabilities etc.

Regarding cooperation between PRAKSIS lawyers and Regional Asylum Offices, no particular difficulties were raised. It was noted that, due to the Regional Asylum Office's limited resources, information was received but without actual documentation in a very limited number of cases. There appeared to be no difficulties in the required cooperation between the PRAKSIS social workers/psychologists and lawyers. Similarly, the cooperation between the Greek Dublin Unit and the PRAKSIS social service (via the PRAKSIS lawyer) was equally positive.[503] For instance, the Greek Dublin Unit never questioned the authority of an NGO to prepare and submit BIAs; they always accepted BIAs conducted by the PRAKSIS social workers/psychologists or requested particular information needed in the context of the best interest of the child from the shelter staff etc. It is also worth noting that in a few cases where the respondent State requested the completion of a questionnaire following an interview concerning family ties or a documented interview with the child, the Greek Dublin Unit requested the PRAKSIS legal representative or the social worker to proceed with the interview and the relevant filling out of the report. Finally, no difficulties were raised concerning the cooperation between the Prosecutors for Minors and the PRAKSIS staff (lawyers/legal representatives, social workers etc.), apart from some initial difficulties in gaining the Prosecutor's consent for DNA test, noted in an isolated way.

As already mentioned, the change of accommodation facilities in cases of children's transfers from RIC locations to safe zones in open camps or to other shelters (in the islands or on the mainland) until their final placement in the PRAKSIS shelter, has led to changes of the responsible lawyer/ representative in the those children's reunification cases, when legal support/representation was actually available before the child's placement in the PRAKSIS shelter. The change of representative or more particularly legal representative/lawyer in those cases is considered a complexity in the process. In some cases, changes in lawyers/representatives as well as Greek Dublin Unit caseworkers were noted. Sometimes, a lack of coordination or complete handover and update on cases was observed when different lawyers/NGO actors had been involved, though this was not always the case. In some of those cases, either the responsible PRAKSIS lawyer underlined a need for better handover between actors/NGOs involved, or highlighted other particular difficulties with cooperation such as not sharing documentation previously submitted (i.e. BIA) with the PRAKSIS lawyer who became subsequently responsible for the case.

The cooperation noted between PRAKSIS lawyers and legal and/or social actors abroad, in the respondent States, has been considered of utmost importance in the progress of cases. As it can be expected, in cases with a transnational context, such as Dublin cases, cooperation between the actors involved in the respective States is considered particularly important. A formal cooperation between the competent authorities for the protection of minors or formal cooperation between the competent authorities/services/NGOs for the assessment and a subsequent channelling of information through Member State correspondence was not observed.[504] There was, however, an informal type of cooperation between NGOs or other actors involved in the cases without State involvement or initiative. **In the context of the study, almost a 20% of the cases (15 cases) demonstrated cooperation with a legal and/or a social actor**. In 11 cases there was cooperation between legal actors and in five there was

[501] See in detail chapter II) 5

[502] Also, in an isolated case, the non-dispatch of some further evidence by the Greek Dublin Unit caseworker was noted, who had raised doubts as to whether any further reconsideration could take place due to the 'final' response of the requested State. However, the evidence was sent at a later stage.

[503] No information can be available concerning the level and quality of cooperation between the respondent competent authorities with their social services, also important for the course of the case

[504] This type of cooperation is provided in article 12(1) Implementing Regulation 1560/2003 and article 6(5) of the Dublin III combined with article 1(7) (4), (5) and (6) and Annex VIII, Implementing Regulation 118/2014.

cooperation with a social actor in the respondent State.[505] The family reunification request was accepted in 11 of those 15 cases. The contribution of the legal/social actor in the respondent State was considered conducive to the final positive result in the vast majority of cases.

In the four cases that were finally rejected, the contribution of the social/legal actor was still considered significant as it consisted of important information and documentation, which was sent to the PRAKSIS lawyer. Other positive contributions in these cases included: legal submissions directly submitted to the respondent authorities, a demonstrated willingness by the NGO to undertake legal proceedings, or in the case of the social actor, an assessment of the relative's ability to care, subsequent report and correspondence with PRAKSIS and the respondent State authorities etc. Cooperation between the PRAKSIS lawyers and the legal or social actors in the respondent States was described as very positive and information sharing among the actors involved was of pivotal importance in this context. In one case, not included in the above 15 cases, the PRAKSIS lawyer, despite several efforts, failed to reach the lawyer in the respondent State thus not receiving crucial documentation.

[505] In one case there was cooperation with a legal and a social actor, thus, in total, 15 cases.

9. Conclusions

According to the rich sample of 80 cases reviewed, in the overriding majority of cases, complications were noted in the family reunification process. In particular, in the vast majority of cases, children's reunification requests were either rejected, pending reply after one or more previous rejections, or finally accepted after several and/or lengthy reconsideration processes. In the latter cases, the positive result reached required great investment in the process by the children, their lawyers/legal representatives and the Greek Dublin Unit. A smooth completion of the family reunification process i.e. direct acceptance of the request was achieved in only approximately 25% of the cases.

Among the main challenges and deficiencies identified in a number of cases were the considerable delays in the process, the high evidential standards and the groundless rejections. These factors led to the children's ultimate loss of trust in the family reunification process and in some cases, to children absconding and resorting to irregular pathways due to their loss of hope for the completion of the reunification. Similarly, the research findings indicate that, in the overwhelming majority of cases, children had pre-existing additional vulnerabilities deriving from stressors and traumatic events experienced in their home countries and/or while in transit in third countries. These vulnerabilities were often exacerbated by unsuitable reception conditions and delays in placement to appropriate accommodation for unaccompanied children. Long delays and uncertainty in their family reunification process or final rejections of their requests exacerbated the children's vulnerabilities causing a regression of their psychological state and the emergence or re-emergence of various mental health issues.

Another important finding relates to the great disparities observed among respondent Member States in the interpretation of the provisions, the assessment of the evidence and the interpretation of their role in establishing family ties or in relation to the best interest of the child. Varying practices have been noted and a lack of a consistent interpretation or practice was observed not only among different Member States but also within the practice of the same respondent State, whereas practices that could be identified as being consistently applied within a respondent State were limited. These great disparities and lack of consistency are impeding the functionality of the Dublin III process, which is designed to be operating in the context of a common European Asylum System. This also applies to the difference in interpretation of the provisions noted repeatedly between the sending and receiving States. Furthermore, clear misinterpretations or misapplications of the Dublin III Regulation undermine both the proper application of the Regulation as well as the children's right to family reunification.[506]

In addition to the need for consistency, equally important for the effective application of the Dublin III Regulation is the cooperation between the Member States involved, in a spirit of good faith and mutual trust. The required increased cooperation between Member States in cases of unaccompanied children is not confirmed by the research findings, as cooperation was generally considered limited. The process of exchange of information through the standard form was not followed and generally the onus for providing all evidence and substantiating the request was incumbent upon the sending State and also upon the applicant and his or her legal representative, apart from some limited cases where respondent States proactively sought to establish family ties or to make contact with the family relation. Some cases of good practice of interstate cooperation in a spirit of mutual trust were also observed where, for instance, clarifications were requested from the sending State and once received, acceptance of the cases followed. However, other problematic practices were noted on repeated occasions, such as a lack of detailed reasoning in refusal letters, vague negative responses or negative responses without an assessment of and reference to the evidence previously submitted, or without a request by the respondent State for the required evidence etc. These practices, apart from not being compliant directly or indirectly with the procedural requirement for 'full and detailed' reasons in cases of negative responses, do not provide the necessary clarity of the basis for the refusal and thus impair the process of any potential re-examination. Also, they do not promote positive interstate cooperation and thus impede the smooth application of the Regulation.

[506] 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.

In relation to the 'flexibility' between Member States in terms of observance of timeframes, this has been noted mostly in the re-examination stage and less in the context of the dispatching of the TCR. In the re-examination stage, both the sending and some receiving States applied the practice of 'holding letters'. However, towards the end of the temporal scope of the study, the sending State seems to be more reluctant to apply this practice for fear of rejection. Also, the practice of 'holding letters' seems to have been applied on repeated occasions by receiving States in a way that impedes the vital objectives of the Dublin III such as swift determination of the responsible State and also violates the principle of giving fair reasoning in responses. In particular, on repeated occasions, respondent States failed to state the particular grounds for requesting a hold, often combined with protracted delays in responding. Finally, flexibility was repeatedly demonstrated on the part of the sending State in relation to the receiving State's non- compliance with the two month response period leading to a lack of observance of the acceptance by default provision in cases where there were shorter delays,[507] which is not considered to be generally conducive to preserving the child's best interest.

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. In particular, the PRAKSIS lawyer also served in practice as the representative on the basis of the authorisation of the Prosecutor for Minors and in the framework of the actions specified therein. Also, prioritisation requests for children with additional vulnerabilities during any stage of the process were generally made on the lawyer's initiative. Additionally, other actions such as monitoring the observance of the binding timeframes by the States involved, evidence gathering and submission to the competent authorities and legal submissions providing legal arguments and vital information available to the lawyer, were among the crucial actions performed by the PRAKSIS lawyers/legal representatives. Their role in particular evidentiary processes (such as DNA, age assessment) was also indispensable. Similarly, the PRAKSIS lawyers' cooperation with the Greek Dublin Unit and other actors such as the Prosecutor for Minors, as well as legal or other actors in the respondent State in cases where this was needed and feasible, was considered vital for the development of the cases.

Some more specific observations are examined below in relation to timescales, the inclusion and assessment of evidence, the assessment processes pertaining to the best interest of the child and the treatment of cases sent under the primary or alternative legal basis of article 17(2).

Timescales

In relation to timescales, the delays observed in all stages of the process impeded the smooth application of Dublin III. The systemic constraints observed in the first reception[508]/asylum system such as understaffing, lack of a systematic prioritisation process and the limited legal support and representation upon children's arrival had an impact on the Dublin procedure on repeated occasions and created subsequent delays in the lodging of the application and a lack of prompt and adequate provision of information or legal representation. Likewise, in the TCR stage, the lack of sufficient resource capacity in the Greek Dublin Unit affected the Unit's ability to send TCRs in an expeditious manner. Despite delays often being noted, the surpassing of the three month time limit was observed in a fairly limited number of cases, which was sometimes attributed to the excessive workload of the Greek Dublin Unit or to coordination issues with RAOs, procedural shortcomings in the first reception etc. The prescribed time limit for response to TCRs was respected in the majority of the cases. However, in cases where this time limit was not respected, the acceptance by default provision was enacted and followed in principle only in cases where there were exceedingly long delays. In cases of shorter delays, the failure to invoke this provision by the Greek Dublin Unit as well as the failure by respondent authorities to observe it resulted in delays in acceptance, further rejections and lengthy reconsideration stages and even final rejections in a few cases. The non-observance of this binding provision is considered detrimental to the children's best interests as it resulted in delays or even final rejections of their requests.

[507] Although it is unknown if this implies a stance of flexibility or if it is related exclusively to the Greek Dublin Unit's limited human resource capacity and thus delays in requesting an acknowledgment of the 'default' responsibility.
[508] In the great majority of cases in this study, arrivals took place in the eastern Aegean islands

The re-examination stage was marked with significant and often striking delays in several cases. Delays in submitting the reconsideration request were noted in a limited number of cases and, while lengthy, they were in principle related to the process of gathering the required evidence and were often associated with particular evidentiary processes (DNA, age assessments). Whereas delays in responding in the re-examination stage were noted in the majority of cases and were considered lengthy, especially in cases involving multiple rejections/re-examinations on repeated occasions without any evident or justified reason for this delay. Also, in some cases, no response was received despite the elapse of a lengthy period of time. Delays in the transfer process were also noted, however, the six month time limit was surpassed only in cases relating to the German 'cap' which was imposed during part of the temporal scope of the study. Overall, due to the observed delays in all stages, children had to wait long periods until the completion of the process and a lack of a systematic process for prioritisation was noted.

Evidence

In the majority of cases, evidence was fully or partly available in the TCR. Cases where evidence was only partly available required additionally a check by the respondent State in order to fully substantiate the family ties. In the overwhelming majority of cases the onus of establishing family ties and identification data (such as age) at all stages was incumbent upon the sending State and it was noted that respondent States undertook the responsibility for establishing family ties in a limited number of cases and the interpretation of their responsibility varied. It was observed that the practice of asylum record checking was applied by some Member States but, still, not consistently. Also, the purpose of applying this practice seemed sometimes to be related to crosschecking the evidence submitted rather than fully establishing ties, as it was also applied in cases where full proof of the family ties had been previously submitted. Some of the alarming practices noted were linked to the imposition of requirements not included in the Dublin III Regulation, such as respondent States requesting translation or authentication of the documents submitted, thus posing an unnecessary burden to the sending State and prolonging the process of reunification. Even though this practice was not very often noted in the context of the study, it still needs to be flagged because of its implications.

Furthermore, the repeatedly noted imposition of high evidential standards and failure to appropriately assess the submitted evidence, also led to an unnecessary prolongation of the process. It equally led to particular and often lengthy evidentiary processes such as DNA test or age assessment. These were sometimes applied in a way that did not comply with the legal requirements. As such, at the explicit or implicit request of the respondent State, age assessments were conducted even when there were no doubts raised on any specific ground or when age assessment had not been applied as a last resort and a DNA test process was initiated even when it could not be considered as 'absolutely necessary'. Also, in relation to the BIA submitted, especially at the reconsideration stage, as means of evidencing family links, or circumstantial evidence such as written statements by the family relations etc. varying practices by respondent States have been noted with regard to its impact. In relation to cases sent under article 17(2) exclusively or additionally, the above findings are generally similar. However, in cases where documentation had been previously submitted there was no challenging of family ties on the basis of the respondent State's asylum records generally noted.

Best Interest Assessment

With regard to the BIA process, both for article 8 as well as article 17(2) cases, even though Greek Dublin Unit caseworkers repeatedly included information or sometimes a position regarding the best interest of the child, a detailed and structured process was predominantly conducted by PRAKSIS shelter staff. This process generally covered the factors included in article 6 of the Dublin III Regulation for BIAs. BIA forms, social reports or the legal representative's submissions including information and sometimes recommendations regarding the best interest of the child were submitted in the overriding majority of cases and predominantly at the reconsideration stage. A request for a BIA or a similar report by respondent States was observed however, in a limited number of cases and varying practices were noted such as requesting a BIA, requesting information to check the best interest of the child, announcing an assessment process etc. These 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. In several cases, respondent States did not take due account of the BIA findings and recommendations or of the views of the legal representative. This was observed, mainly through rejections of the requests, conclusions

contradictory to the assessor's findings or a lack of reference to the findings. Among some particularly concerning practices noted, was the practice of some respondent States to invoke 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 amounts to a clear violation of the right to family life.

Institutionalised cooperation between the different States' child protection authorities or services, provided for in the Dublin III and the Implementing Regulation especially in cases of relatives or more than one family member/relative in different States, was not confirmed by the research findings. However, on some occasions PRAKSIS staff pursued an informal contact and cooperation with social actors abroad such as NGOs. An individual assessment of the relative's ability to care was undertaken in a limited number of cases by some Member States, often not consistently, while different practices were observed in this context as well. Although on some occasions emotional capacity to care was considered to outweigh the lack of material capacity in the respondent States' assessment, there have also been rejections on the sole basis of lack of material capacity of the relative, though final rejections on this exclusive ground were the exception. In cases where family relations were present in more than one Member State, the process of consultations between the different States concerned was not initiated. 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 such cases was predominantly addressed in practice by the BIAs submitted in the process by the sending State, which was sometimes complemented with crucial information included in the TCR.

Treatment of cases sent under article 17(2) (humanitarian grounds)

Cases of unaccompanied children sent under the basis of article 17(2), because the three month time limit for submitting a TCR applicable under article 8 had passed, were sometimes faced with a very restrictive interpretation of article 17(2) by respondent States and were in some cases even finally rejected due to the surpassing of the three month time limit, thus not taking into consideration the best interest of the children. Similarly, humanitarian grounds were often interpreted in quite a restrictive manner, disregarding even the high vulnerabilities evidenced in several cases and the clear family considerations also present. The very limited number of cases, in which a substantive article 8 precondition did not apply[509] demonstrated a varying threshold of assessment between the respondent States involved, 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. A strict approach was generally followed in the majority of children's cases sent under the exclusive or additional legal basis of article 17(2), with approximately half of them being finally rejected.

In conclusion, despite some good practices identified in the sample, the marked and often protracted delays noted in the family reunification process combined with high evidential requirements and the repeatedly observed failure to duly take into account the best interest of the child as it has been deduced through the relevant assessment processes, do not seem to serve any of the basic objectives of the Dublin III Regulation. In the majority of cases, the swift process of the determination of the responsible Member State and the subsequent swift access to international protection processes was not secured and neither 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 abovementioned way of applying the 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. Finally, it is evident that the absence of any independent mechanism to monitor the way States interpret and apply the Regulation, results in sustaining the disparities in practices and interpretations among different Member States. Likewise, in cases where the sending and receiving State disagree in regard to the applicability or interpretation of provisions in the context of the particular circumstances, the absence of this mechanism results in reaching a 'dead end' in relation to the dissolution of the dispute at the administrative level and in the subsequent responsibility of the examination of the application remaining with the sending State.[510]

END OF REPORT

[509] More extended family relations
[510] 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.

Annex 1

SAFE PASSAGE QUESTIONNAIRE

The purpose of this questionnaire is to facilitate Safe Passage's research on the functionality of family reunification procedures across Europe, as foreseen by the EU Dublin III Regulation (No 604/2013), with a view to better understand varying practices across Member States (MS), operational obstacles and challenges as well as to highlight best practices – in both sending and receiving MS. The research is also intended to guide Safe Passage's capacity building work as well as training initiatives to help enhance the capacity of legal practitioners and caseworkers and to build targeted partnerships between Greek and EU lawyers. Any information provided will be treated anonymously and with confidentiality.

Date: …./ …. /…..

Organisation:	**Lawyer representing the case**:
UAC Shelter:	
File number:	

Basic case and applicant information	
	Date that the case was taken on by PRAKSIS: …. / ….. / ……
Date of birth:	Gender: F □ M □
Unaccompanied minor: Yes □ No □	Nationality:
Date of applicant's arrival in Greece: Applicant's arrival point in Greece:	Vulnerability(ies) of applicant:

Take Charge Request (TCR) details	
Applicant's relative in the EU Member State (*e.g.* mother, uncle etc.):	Receiving Member State:
Date that asylum claim was lodged: …. / ….. / ……	Date that TCR was sent to the receiving Member State: …. / ….. / …… Location where the TCR was sent: Number of AS case handlers involved in the case:
Dublin article[511] under which the case was submitted:	
I. Was the TCR accepted at first instance? If yes, please complete the cells below. If no, proceed to Section II below.	
Date of TCR acceptance: …. / ….. / ……	Dublin article under which case was accepted:
Evidence submitted in client's application (please list all the documentation included in the client's file):	

[511] Art. 8: Minors / Art. 9: Family Members beneficiaries of international protection / Art. 10: Family Members applicants for international protection / Art 11.: Family procedure / Art 12.: Residence Documents and Visas/ Art 13.: Entry and/or Stay / Art 15.: Applications in an international transit area of an airport / Art. 16: Dependent persons / Art. 17: Discretionary clauses / Art. 18: Obligations of the Member State responsible (Asylum application lodged in different states)

☐ Consent form of the applicant

☐ Consent form of the relative

☐ Identity/ registration documents of the minor (please list all documents submitted):

☐ Identity documents, residency status etc. of the relative (please list all documents submitted):

☐ Evidence proving the family link, e.g. passport / birth certificates / family books (please list all documents submitted):

☐ Eurodac check

☐ Age assessment

☐ Best Interests Assessment (BIA)

☐ Psychosocial report

☐ Medical documents

☐ Photographs of applicant and family member(s) together / with related family members

☐ Evidence of contact through Viber / Whatsapp / money transfer receipts:

☐ DNA test results

☐ Other (please specify):

**** *Were the above evidential documents translated?*

Was any assistance provided by legal actors or social services from the receiving state? If so, please specify.	
Date of applicant's transfer to receiving state: …. / ….. / ……	Comments:

Was the cost of the ticket financed by state actors: Yes ☐ No ☐	
II. Was the TCR rejected?	
Date of TCR refusal: …. / ….. / …….	Dublin article under which case was refused:
Reasons for refusal, as cited in the refusal letter:	• Did the refusal letter refer to any of the evidence submitted in the applicant's TCR? • Was supplementary documentation requested in the refusal letter?

Evidence submitted in client's application, <u>prior to refusal</u> (please list all the documentation included in the client's file):

- ☐ Consent form of the applicant
- ☐ Consent form of the relative
- ☐ Identity/ registration documents of the minor (please list all documents submitted):
- ☐ Identity documents, residency status etc. of the relative (please list all documents submitted):
- ☐ Evidence proving the family link, e.g. passport / birth certificates / family books (please list all documents submitted):
- ☐ Eurodac check
- ☐ Age assessment
- ☐ Best Interests Assessment (BIA)
- ☐ Psychosocial report
- ☐ Medical documents

☐ Photographs of applicant and family member(s) together / with related family members

☐ Evidence of contact through Viber / Whatsapp / money transfer receipts:

☐ DNA test results

☐ Other (please specify):

**** *Were the above evidential documents translated?*

Supplementary evidence submitted, <u>following the refusal</u> (please list all the documentation included in the client's file):

☐ Consent form of the applicant

☐ Consent form of the relative

☐ Identity/ registration documents of the minor (please list all documents submitted):

☐ Identity documents, residency status etc. of the relative (please list all documents submitted):

☐ Evidence proving the family link, e.g. passport / birth certificates / family books (please list all documents submitted):

☐ Eurodac check

☐ Age assessment

☐ Best Interests Assessment (BIA)

☐ Psychosocial report

☐ Medical documents

☐ Photographs of applicant and family member(s) together / with related family members

☐ Evidence of contact through Viber / Whatsapp / money transfer receipts:

☐ DNA test results

☐ Other (please specify):

**** *Were the above evidential documents translated?*

Date of 2nd TCR Refusal (**if applicable**): …. / …. / ….	Dublin article under which case was refused:
Reasons for refusal, as cited in the refusal letter:	• Did the refusal letter refer to any of the evidence submitted in the applicant's TCR? • Was supplementary documentation requested in the refusal letter?

Supplementary evidence submitted, <u>following the 2nd refusal</u> (please list all the documentation included in the client's file):

☐ Consent form of the applicant

☐ Consent form of the relative

☐ Identity/ registration documents of the minor (please list all documents submitted):

☐ Identity documents, residency status etc. of the relative (please list all documents submitted):

☐ Evidence proving the family link, e.g. passport / birth certificates / family books (please list all documents submitted):

☐ Eurodac check

☐ Age assessment

☐ Best Interests Assessment (BIA)

☐ Psychosocial report

☐ Medical documents

☐ Photographs of applicant and family member(s) together / with related family members

☐ Evidence of contact through Viber / Whatsapp / money transfer receipts:

☐ DNA test results

☐ Other (please specify):

**** *Were the above evidential documents translated?*

Final outcome of TCR: Accepted □ date: …. / …. / …. Rejected: □ date: …. / …. / ….	
Date of applicant's transfer to receiving state: …. / ….. / …… Was the cost of the ticket financed by state actors: Yes ☐ No ☐	Comments:

Overall assessment of the case (optional)
Please consider main challenges encountered, operational obstacles, factors for success, access of clients to their rights etc.

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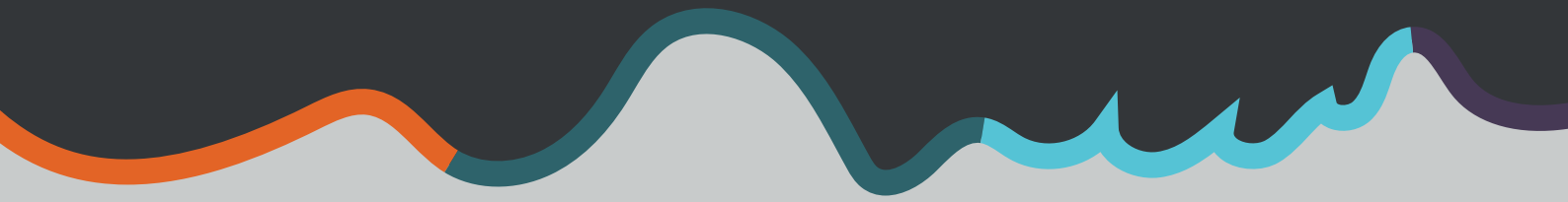

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