



AD HOC QUERY ON 2020.60 Children of Beneficiaries of International Protection

Requested by Adolfo SOMMARRIBAS on 31 August 2020

Compilation produced on 26 October 2020

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden plus Norway (23 in Total)

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1. Background information

The Asylum Procedure Directive (abbr. APD; DIRECTIVE 2013/32/EU) stipulates in Art. 33 par. 2 (a) that Member States may consider an asylum application as inadmissible if another Member State has granted international protection. According to recent jurisprudence in Germany, this rule does not apply to children who are born in Germany and who's family members are beneficiaries of international protection in another Member State. This situation happens when the child is born after the family members left the Member State that granted them protection and illegally moved to another Member State. Therefore, the child is not beneficiary of international protection as no protection was granted by the first Member State.

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This ad-hoc is launched by the EMN Luxembourg at the request of EMN Germany due to technical problems.

2. Questions

1. Do you apply Art. 33 par. 2 (a) APD for the child in these cases?

Available choices: Yes, No, Not Applicable

2. If you answer no to question 1, do you consider the child's application a Dublin-case and do you consider Art. 20 par. 3 of the Dublin-III-Regulation applicable?

3. If you answer no to question 2, do you consider the child's application inadmissible on other grounds?

4. If you answer no to question 3, do you consider the child's application admissible and conduct a normal asylum procedure (examination on the merits) for the child?

We would very much appreciate your responses by **25 September 2020**.

3. Responses

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		Wider Dissemination ²	
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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."



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	EMN NCP Austria	No	
	EMN NCP Belgium	Yes	<p>1. Yes In case the concerned child does not introduce a separate application for international protection in Belgium, a single inadmissibility decision will generally - and in the absence of observations that run counter to such a decision – be taken, covering both the parent(s) who already benefit(s) international protection in another Member State and the accompanied minor. Grounds for such a single decision can be found in both art. 11 (3) of the Asylum Procedures Directive and art. 23 of the Qualification Directive which holds certain obligations for Member States in relation to family members of beneficiaries of international protection.</p> <p>2. In case the concerned child has introduced a separate application for international protection, this application currently is not considered a Dublin-case, nor is art. 20 (3) of the Dublin-III-Regulation applied.</p> <p>3. In case the concerned child has introduced a separate application for international protection in Belgium, there generally are no grounds to consider the application inadmissible in accordance with art. 33 of the Asylum Procedures Directive. The need for international protection of the child will therefore be considered “admissible” and will be examined vis-à-vis the country of origin and according to standard procedure. However, if, subsequently, the need for international protection of the child can sufficiently be established in relation to said country of origin, the Office of the Commissioner General for Refugees and Stateless Persons is looking into the possibility to reject international protection status based on the “EU-protection” the child can reasonably be expected to benefit in the Member State that already granted its family members international protection. The reasoning for this would be largely based on article 23 of the Qualification Directive which holds certain</p>



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			<p>obligations for Member States in relation to family members of beneficiaries of international protection.</p> <p>4. See the answer under 3.</p>
	EMN NCP Bulgaria	Yes	<p>1. No</p> <p>2. Art.20 (3) of Regulation (EU) No 604/2013 of the European Parliament and of the Council should apply with regard to the child.</p> <p>3. N/A</p> <p>4. The application of the child is not examined on the merits.</p>
	EMN NCP Croatia	Yes	<p>1. No</p> <p>2. Yes The responsibility for the child's application cannot be separated from the responsibility for the parents' application.</p> <p>3. N/A</p>



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			4. N/A
	EMN NCP Cyprus	Yes	1. Yes 2. N/A 3. N/A 4. N/A
	EMN NCP Czech Republic	Yes	1. Not Applicable 2. No, it is not a part of national jurisprudence, but in theory we can imagine the applicability of this Article due to prior applicability of the best interest of the child principle. Or national law allows the possibility to issue a separate decision to the child and conduct the normal asylum procedure or issue the decision that the application is manifestly unfounded etc. (depending on the individual circumstances). In our view Dublin Regulation is not applicable in the case of beneficiaries of international protection, therefore we cannot imagine the reason to handle the child's application as a Dublin case. On the other hand in the case that the parents of the child would be asylum applicants Article 20 par. 3 would be applicable. 3. No




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			<p>4. As mentioned in answer 1: “normal asylum procedure will be conducted or there will be issued decision that the application is manifestly unfounded etc. (depending on the individual circumstances)”.</p>
	EMN NCP Estonia	Yes	<p>1. No 2. Yes 3. No</p> <p>4. There have been no such cases in practice to date. We consider it to be an unlikely scenario, however, theoretically, this would be a possibility in case it would be deemed to be in the best interest of the child.</p>
	EMN NCP Germany	Yes	<p>1. No No, due to the recent jurisprudence of the German Federal Administrative Court, we are not able to consider the child’s application as inadmissible acc. to art. 33 par. 2 (a) APD.</p> <p>2. Yes, we consider art. 20 par. 3 of the Dublin-III-Regulation applicable in these cases, the general idea being that the responsibility for the child’s application cannot be separated from the responsibility for the parents’ application. In accordance with art. 24 (2) of the Qualification Directive (Directive 2011/95/EU) states that the Member State, which granted protection for the parents, can issue a residence permit to the child and by doing so this Member State should assume responsibility for the child’s application.</p>



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			<p>3. n/a</p> <p>4. n/a</p>
	EMN NCP Hungary	Yes	<p>1. Not Applicable</p> <p>2. No such situation occurred in Hungary.</p> <p>N/A</p> <p>3. N/A</p> <p>4. N/A</p>
	EMN NCP Ireland	No	
	EMN NCP Italy	Yes	<p>1. Yes</p> <p>According to art. 29 of legislative decree 25/2008 (as modified by law 142/2015) Italy considers an asylum application as inadmissible if the applicant has been recognised as a refugee/beneficiary of subsidiary protection by another State which is a signatory to the Geneva Convention and he/she can still benefit of this protection. However, beneficiaries of international protection have the right to travel within the Schengen Area for a maximum of 3</p>


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			<p>months. After this period, the applicant is forced to the State which granted the protection. With regard to minors (in this case, accompanied child), the general rule is that the minor has to follow his parents also if they are affected by an “expulsion” order. Unlike the case of a child born in Italy whose parents were recognised as refugees in Italy. In this case the law on citizenship (n.91/1992) provides that children of stateless persons (to which refugee are assimilated) born in Italy, automatically became Italian citizens.</p> <p>2020.60_children_of_beneficiaries_of_international_protection30479.docx</p> <p>2.</p> <p>3.</p> <p>4.</p>
	EMN NCP Latvia	Yes	<p>1. No No, we don't apply Art.33 par. 2 (a) APD in these cases.</p> <p>2. Yes, the responsibility for the minor's application cannot be separated from the responsibility for the parents' application therefore Art.20 par.3 of the Dublin III Regulation is applicable in these cases.</p> <p>3. N/A</p> <p>4. N/A</p>
	EMN NCP Lithuania	Yes	<p>1. No</p>


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			<p>2. In the situation described LT would not consider the child as falling under Art. 33 para 2(a) APD for the mere reason that no other Member State has granted this particular child international protection.</p> <p>According to Migration Department experts, it could be a Dublin case falling under Art. 9 of the Dublin-III Regulation, since this Article refers to family members who have been allowed to reside as beneficiaries of international protection, which is exactly the case in the situation described. The mere fact that the parents are currently outside of the Member State which granted them protection and allowed to reside, does not affect, in our mind, the applicability of Art. 9. Provided there's a written consent, of course. It is believed that Art. 20 par. 3 is not applicable in this case, because the parents (who are beneficiaries of international protection in another Member State) are not subject to Dublin procedures and thus their situation is incompatible with the logic of Art. 20.</p> <p>3. N/a</p> <p>4. N/a</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. No</p> <p>1. No, due to a recent jurisprudence of the 3rd August 2020 of the administrative Tribunal, we are not able to consider the child's application as inadmissible according to article 33 (2) a) APD. This is because a child born on Luxembourgish territory, and for whom the parents have not yet undertaken the necessary to be granted international protection in the same Member state, where they have been granted protection, is not yet a beneficiary of international protection.</p> <p>2.</p>




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			<p>Yes. In the case mentioned above, Luxembourg will apply article 20 (3) of the Dublin III regulation. The situation of a minor who is accompanying the parents and meets the definition of family member will be considered indissociable from that of his or her parents. The Member State that granted international protection to the parents should assume responsibility for the child's application. As the status has already been granted to the parents in the first Member State, it will be in the best interest of the child to be granted the status through the application of article 24 (2) of the Qualification Directive. However, this is only applicable, if the deadlines for a Dublin transfer have not yet expired.</p> <p>3. N/A.</p> <p>4. In case the time limits for a Dublin transfer have expired, and there are no other grounds to consider the child's application as inadmissible, the application is admissible and a normal asylum procedure is conducted for the child.</p>
	<p>EMN NCP Malta</p>	<p>Yes</p>	<p>1. No</p> <p>2. No since in this case the child is not a beneficiary of international protection. This depends on a case by case basis, and specifically on the procedure adopted by the Member State responsible for the parents. We had cases where the child was transferred with the parents in accordance with the Return Directive, as well as cases where the Dublin Regulation had to be applied instead.</p> <p>3. N/A</p> <p>4. N/A</p>


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	EMN NCP Netherlands	Yes	<ol style="list-style-type: none"> 1. Yes 2. 3. 4.
	EMN NCP Poland	Yes	<ol style="list-style-type: none"> 1. No 2. We do not apply the Dublin III Regulation in such a case. 3. There are no other grounds to consider the child's application inadmissible. 4. Yes, we do. In our opinion an ordinary asylum procedure for the child (examination on the merits) should be conducted.
	EMN NCP Portugal	Yes	<ol style="list-style-type: none"> 1. Yes


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			<p>Portugal does not commonly encounter situations such as the one described, as the readmission situations that usually arise include lone individuals and not families. However, if we were to decide on such a case, we would consider the Dublin Regulation applicable to the child. In this instance, we believe article 20 par. 3 of the aforementioned Regulation applicable to the situation, as we consider the child's case cannot be separated /decided independently from that of the parents. The country that analyzed and decided on the parents' application is responsible for the analysis of the child's application and must extend the benefits of the parents' protection to the child, in accordance to art. 23 par. 2 (DIRECTIVE 2011/95/UE). Furthermore, if such a take charge request was to be submitted to our appreciation, Portugal would agree to take charge of the child.</p> <p>2. NA</p> <p>3. NA</p> <p>4. NA</p>
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. No This Article is not applied in case of a child born in our territory to a person granted international protection by another Member State and for which the parent applied for international protection, as conditions for the dismissal of the application as inadmissible are not met because the child has not been previously granted international protection by any other Member State.</p> <p>2. The criterium according to the Art. 9 of the Regulation (EU) No. 604/2013 of the European Parliament and of the Council could be applied and consequently a transfer could be carried out (upon meeting other criteria based on this Regulation) but only if the parent expresses such a desire in writing. If the parent does not request this in writing, the application of the child should be examined within the standard asylum procedure. If the parent also applies for asylum in our territory, even though s/he has</p>



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			<p>already been granted international protection in another MS, his/her application is considered as inadmissible according to the national legislation.</p> <p>The Article 20 par. 3 of the Regulation (EU) No. 604/2013 of the European Parliament and of the Council would not be applied due to the fact that this Article concerns taking charge of and taking back asylum seekers, while this does not apply to the parent of the child (his/her asylum procedure has ended by passing the final decision and s/he is not longer an asylum seeker within the Dublin procedure).</p> <p>3. The application of the child (based on the criteria specified above) is not considered as inadmissible based on the explanation provided in Q1 (<i>This Article is not applied in case of a child born in our territory to a person granted international protection by another Member State and for which the parent applied for international protection, as conditions for the dismissal of the application as inadmissible are not met because the child has not been previously granted international protection by any other Member State.</i>)</p> <p>4. Yes, if the hypothesis from the Art.9 of the Regulation (EU) No. 604/2013 of the European Parliament and of the Council is not fulfilled (i.e. the parent does not express the desire that the application of the child should be examined by the MS which granted international protection to him/her), then the Slovak Republic examines the application within the standard procedure.</p>
	<p>EMN NCP Slovenia</p>	<p>Yes</p>	<p>1. No</p> <p>2. Such an application would certainly be considered a Dublin case, but under Article 9, not Article 20 (3) of the Dublin Regulation III. A take charge would be sent for such child's asylum application. For parents, a readmission reception would be arranged through the police.</p> <p>3. No.</p> <p>4. If it is not possible to carry out the Dublin procedure under Article 9 of the Dublin Regulation III, the application in question must then be examined in the MS where it was lodged.</p>


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	EMN NCP Spain	Yes	<ol style="list-style-type: none"> 1. Yes 2. 3. 4.
	EMN NCP Sweden	Yes	<ol style="list-style-type: none"> 1. No 2. We do not apply art. 33 par. 2 (a). According to a judgement from the Migration Court of Appeal (MIG 2014:26) an asylum application from a child may not be considered as inadmissible on the grounds that the parents have been granted refugee status in another Member State, nor can the application for asylum be rejected due to the presumption that the child will be granted international protection by the other Member State. In order to be able to apply art. 33 par. 2 (a) the child has to have been granted a refugee status by the other member state. The Swedish Migration Court of Appeal (MIG 2016:20) has stated that art. 20 (3) is only applicable if the parent of the child is an asylum seeker which is not the case if the parents have been granted refugee status by another MS. If there is a written consent from the parent/s of the child we apply article 9 and send a request to the other MS based on that article.

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			<p>3. No</p> <p>4. Yes. If there is no written consent in accordance with art. 9 of the DR, and no acceptance from the other MS we have no legal grounds to transfer the child to another Member State and we therefore try out the asylum case on its merits.</p>
	EMN NCP Norway	Yes	<p>1. Not Applicable</p> <p>2. APD is not applicable for Norway, but we do have a similar procedure. In cases where the parent has been granted international protection, we assume that the baby/child will be granted this upon return to the Member State who has issued the status. We would therefore use our inadmissibility procedure for the family. No, we would preferably use our inadmissibility procedure. Should the receiving Member State refuse the transfer, we would have to use the Dublin-procedure for the child.</p> <p>3. Not Applicable in NORway. See comments under Q2.</p> <p>4. N/A</p>
