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UNHCR STUDY ON THE IMPLEMENTATION
OF THE DUBLIN III REGULATION

RECOMMENDATIONS

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Cover photo: Altaf holds out his palm revealing his wife's passport photograph. His wife and two of his children are in Germany where they have applied for asylum. Altaf and his oldest son Majd are in Athens, Greece. They hope to reunite with their family members who are awaiting a decision on their application for international protection in Germany. © UNHCR / A. D'Amato / June 2014.

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1. Provision of information

In light of the inherent complexities of the system, UNHCR understands the challenges that Member States face in the provision of timely and accessible information to applicants. However, a timely, accessible and accurate provision of information, whilst requiring enhanced investments, would prove beneficial and assist with ensuring swifter determination of responsibility. This, consequently, would save Member States' resources in the long run. Additionally, it would also assist in ensuring applicants' understanding of the system, and thus enhance compliance. UNHCR stands ready to assist Member States in the development and implementation of the following recommendations:

- **Member States should provide the information on the application of the Dublin Regulation as early as possible to the applicant** both orally and in writing, including before an application is lodged. Additionally, **Member States should explore ways to tackle inaccurate or misleading information** circulated amongst refugee communities including through the use of cultural mediators.
- **Appropriate identification mechanisms should be in place to identify applicants with specific needs** at the earliest possible stage so that appropriate procedural arrangements can be put in place in a timely manner, including for the purpose of the personal interview.
- **UNHCR encourages Member States to use alternative ways of providing information**, such as audio-visual materials, to ensure that applicants with specific needs receive and understand all the necessary information.
- **Information on the application of the Dublin Regulation should be provided to children in a child-friendly manner by appropriately trained staff.** UNHCR recommends that a suitably **qualified representative** always be appointed as early as possible after the arrival of an unaccompanied child in a Member State and in any case in advance of the personal interview to ensure that unaccompanied children are provided with and understand all the necessary information before the personal interview is carried out.
- Information on the application of the Dublin Regulation should be comprehensive, accurate and accessible, and provided in a language that the applicant understands; **clear and concise information should be provided on the steps and duration of the Dublin procedure** and individual follow-up should be available for applicants to receive **information on the progress of their case.** This, in turn, would reduce onward movement due to the uncertainties surrounding the Dublin procedure and its duration.

2. Personal interview

UNHCR believes that with the appropriate investments, procedures and mechanisms in place, personal interviews could effectively serve the purpose of expediting procedures by ensuring that relevant information for the correct determination of responsibility under the Dublin Regulation is provided at an early stage of the procedure. This would also prevent unwanted shifts of responsibility as well as lengthy and costly appeal procedures where deficiencies in the gathering of information lead to an erroneous determination of responsibility or to a transfer where this is unsuitable in the specific circumstances of the applicant. UNHCR therefore recommends the following:

- **The personal interview should take place as soon as possible after the applicant has lodged an asylum application and has received adequate information on the application of the Dublin Regulation; Member States should also ensure that the applicant is enabled to produce any necessary documentation and/or evidence during the interview;** the interview should be used as an occasion to clarify and/or supplement the information previously provided to the applicant.

- Where it is believed that an applicant has already provided the information relevant to determine the Member State responsible by other means and the interview is omitted, **the applicant concerned should always be given the possibility to raise circumstances that may amount to a situation that requires preclusion of transfer** due to human rights concerns and/or concerns related to the possible transfer to a third country due to the application of the safe third country concepts by the Member State presumed responsible.
- **Information on the presence of family relations in a Member State and on dependency issues should be proactively sought by the authorities during the personal interview**; this would assist the correct determination of responsibility in the interest of Member States and applicants alike. For the same reason, where such information is not available at the interview stage, applicants should be given an effective opportunity to provide further evidence for the determination of responsibility in accordance with Article 7(3).
- **Appropriate training** on the Dublin Regulation as well as on interviewing techniques should be provided to all interviewing personnel to ensure that personal interviews serve the purpose of (a) ensuring that applicants fully understand the Dublin Regulation, including its purpose and its consequences; (b) effectively facilitating the gathering of information for determining responsibility under the Dublin Regulation.
- **The personal interview should take place in an environment which is conducive to confidentiality** and enables applicants to feel they are in a place of trust to allow for the disclosure of all the relevant information.
- **Interpreters should always be used whenever necessary** to ensure the appropriate communication between the applicant and the authorities; Member States should have a sufficient pool of interpreters who have the requisite skills and knowledge to carry out their role in order to avoid delays in the procedure.
- **UNHCR recommends that quality legal advice free of charge be provided as early as possible to applicants** to ensure that applicants receive the necessary assistance also before the appeals stage including during the personal interview. This would assist in ensuring appropriate understanding of the procedure and that the applicant is properly assisted from an early stage of the procedure enabling him or her to provide all necessary information.
- **Applicants should be given an effective opportunity to verify that the information provided during the interview is comprehensive as well as correct and to make amendments if necessary.**
- UNHCR is of the view that **a personal interview should always be conducted for unaccompanied children in the presence of their representative** in order to guarantee their right to be heard, unless this is not in their best interests due, for example, to a risk of re-traumatisation; in certain circumstances, the best interests of the child may require that children have a separate interview in accordance with their right to be heard even where they are accompanied by their parents or primary caregiver.
- **Appropriate mechanisms should be established to identify applicants with specific needs as early as possible in the procedure.** Interviews should be conducted by appropriately trained staff to ensure proper identification. Tools for the identification of persons with specific needs such as the tool developed by EASO¹ and appropriate SOPs should be implemented and developed respectively. Specific procedural arrangements during the entire procedure, including transfer, should be put in place as appropriate for applicants with specific needs. UNHCR stands ready to assist Member States in the development and implementation of such mechanisms.

¹ EASO, *EASO Tool for identification of persons with special needs*, available at: <https://ipsn.easo.europa.eu/easo-tool-identification-persons-special-needs>.

3. Guarantees for children

Efficient and quality Dublin procedures would assist in ensuring swift access to the asylum procedure for child asylum-seekers and could address one of the main causes of irregular onward movement. At the same time, from a Member State's perspective, swift Dublin procedures and appropriate cooperation between Member States would serve the double purpose of: a) ensuring that resources in the frontline Member States are used efficiently so that sufficient child care resources are available for new arrivals and, b) in the longer term, reducing the amount of resources necessary to carry out Dublin procedures concerning children.

UNHCR considers that the following is needed to achieve the objective of streamlining Dublin procedures concerning children:

- **A representative should be appointed as early as possible after a child's arrival in a Member State** to support the child from the beginning of the Dublin procedure, including during the lodging of the application. The establishment of a **European guardianship network** with a clear mandate inter alia to provide representation to children in Dublin procedures and participate in BIAs should be considered; this has the potential to enhance cooperation on BIAs as well as assist with the timely exchange of relevant information.
- **Effective cooperation between Member States in the assessment of the best interests of children in Dublin procedures are essential.** To this end, **appropriate SOPs should be put in place.** Whilst in the interim EASO's existing guidance and Network of Dublin Units could be utilised and built upon to enhance common understanding and inter-state cooperation, depending on the recast of the Dublin Regulation, the new EU Agency for Asylum (EUAA), should be entrusted with providing appropriate guidance to be applied in all Member States to ensure a consistent and effective implementation of the provisions of the Dublin Regulation. Additionally, further guidance could be provided in the Implementing Regulation and Delegated Acts.
- **The BIA should start as soon as possible** and involve interviews and/or consultations with the child, as well as additional information gathering as needed by **professionals with the required expertise, knowledge and skills in child protection, including the child's representative.** The BIA should include, as a minimum, the elements listed in Article 6(3) of the Dublin Regulation, supplemented by other elements as relevant on the basis of the child's circumstance. General Comment No. 14 of the Committee on the Rights of the Child provides relevant guidance.²
- Member States should ensure the **prioritisation of cases involving unaccompanied children** for smooth family reunion; Member States must ensure the proactive tracing and identification of family members, siblings and relatives for the purpose of the Dublin procedure, provided that it is in the best interests of the child concerned.
- To assist in ensuring swift family tracing in the interest of children and Member States alike, **Member States should closely cooperate in the tracing and identification of family members, siblings and relatives and in the assessment of family links. Appropriate guidance and common standards as to the proof or evidence to be taken into account should be developed** to ensure common understanding. The new EUAA could have a role in providing guidance to be applied in all Member States to ensure a consistent and effective implementation of the provisions of the Dublin Regulation; UNHCR stands ready to assist. In the interim, EASO's existing guidance and Network of Dublin Units could assist Member

² For more information see: *Committee on the Right of the Children, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), Adopted by the Committee at its sixty-second session (14 January – 1 February 2013), 29 May 2013, available at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.*

States. Where the tracing and identification of family members is conducted with the support of external organizations, appropriate SOPs, outlining roles and responsibilities should be put in place with the aim to ensure effective cooperation and swift procedures.

- In order not to delay transfers in the best interests of the child, a mechanism or SOPs should be developed to foster mutual acceptance of age assessment outcomes to avoid duplication. UNHCR stands ready to support EASO's ongoing work in this regard. The new EUAA could have a role in providing relevant guidance to be applied in all Member States to ensure a consistent and effective implementation of the provisions of the Dublin Regulation.

4. Determining Member State responsibility for examining an application for international protection

UNHCR is aware of the difficulties faced by Member States in the implementation of the Dublin Regulation and is of the opinion that a re-think of the system is needed to overcome some of the inherent challenges of the current system. To that end, UNHCR has formulated a set of proposals in its paper "Better Protecting Refugees in the EU and Globally" of December 2016.³ However, until an agreement is reached on a new, more efficient system, a common understanding is needed to make the current Dublin system work to the best of its ability. Swift procedures, supported by common standards and enhanced cooperation between Member States, are in the interest of Member States and applicants alike. To this end, Member States are encouraged to implement the following recommendations:

- **National authorities involved in the Dublin procedure, namely the Dublin Units, should be sufficiently capacitated and equipped** to ensure that appropriate resources are made available for the effective functioning of the system, to ensure that procedures can be carried out within the prescribed time limits in the interest of Member States and applicants alike.
- **Evidentiary requirements for establishing family links should be reasonable** to ensure that Articles 8, 9, 10 and the dependency clause (Article 16) guarantee family unity in practice. All available information and evidence, including applicants' statements, should be given due consideration to ensure a correct determination of responsibility. Refugees may often be obliged to flee without their personal documents, or relevant civil status documents may not be issued in the country of origin. Hence, there may be situations in which relationships can be proved only through oral evidence.
- UNHCR encourages Member States to **assess the possibility of applying the family reunion criteria in a proactive manner and without additional requirements** beyond those foreseen under the Dublin Regulation; such additional requirements create delays which contribute to impairing the correct functioning of the system.
- In light of its humanitarian purpose, **the dependency clause (Article 16) should be applied in a flexible and inclusive manner** to keep or bring together family members and other family relations who are dependent on one another; clear and common thresholds and guidance to establish dependency would ensure a common understanding between Member States and an enhanced and effective use of the dependency clause in line with European standards. UNHCR stands ready to support the development of such guidance.

³ UNHCR, *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*, December 2016, available at: <http://www.refworld.org/docid/58385d4e4.html>.

- **The presence of liaison officers in other Member States' Dublin Units should be enhanced;** this could assist in enhancing common understanding and speeding up procedures, in particular in relation to specific caseloads, such as children, or at times of particular pressure on a Member State.

5. Discretionary clauses

The discretionary clauses provide Member States with a mechanism to address humanitarian or compassionate considerations or other exceptional situations of need within the Dublin system and they should be applied in light of the underlying humanitarian objective of these provisions. In order to enhance the application of the discretionary clauses, UNHCR recommends the following:

- **UNHCR urges Member States to make a proactive and flexible use of the discretionary clauses to ensure family unity** in accordance with the right to family life as set out in Article 8 of the ECHR and Article 7 of the EU Charter. Where family relations fall outside the scope of the family criteria leading to family separation, Member States should make use of the discretionary clauses (Article 17) to keep or bring together families, ensure respect for the principle of family unity and reduce onward movement. Family separation has significant adverse effects on applicants' and refugees' ability to plan, work, and integrate in the host society; it is therefore of utmost importance that Member States ensure family unity to the greatest extent possible, including where necessary through the exercise of their discretion under the Dublin Regulation
- **UNHCR encourages Member States to apply the sovereignty clause where the transfer may result in hardship for the applicant**, for instance due to medical or humanitarian reasons. In line with its humanitarian objective, the sovereignty clause should be flexibly interpreted and applied by Member States in light of their observance of the fundamental rights of applicants under European and International law.
- Due to the particular circumstances of a case, family tracing or the BIA may at times take longer than the time limits under the Dublin Regulation allow. Member States are encouraged to make use of the humanitarian clause with the purpose of ensuring family reunion in such situations.
- With a view to foster a consistent and more effective use of the discretionary clauses, **EASO (or the new EUAA) could offer guidance on their application by compiling best practices on their use across the Member States.** UNHCR stands ready to assist EASO (or the new EUAA) and the Member States in this regard.

6. Transfers

With a view to enhance the efficiency of the system and ensure that applicants have swift access to asylum procedures, including by ensuring that transfers are carried out in the most effective manner, UNHCR recommends the following:

- **Member States should promote voluntary transfers and applicants should always be afforded the opportunity to undertake voluntary transfers to the responsible Member State.** Swifter procedures and appropriate provision of information including on the progress of the procedure would contribute to ensuring applicants' compliance and therefore the success of voluntary transfers. Voluntary transfers would also ensure lighter and more cost-effective transfer procedures.
- **Transfer decisions should be issued as soon as possible to both applicants and their legal advisor and representative in the case of unaccompanied children** to ensure that they have access to an effective remedy in practice as well as in law. Transfer decisions should be issued in a language that the applicant understands and if not, interpretation should be provided to inform the applicant orally of the content of the transfer decision.
- **Once a decision to transfer a child is taken, appropriate capacity to ensure that children are transferred without delay should be put in place,** including where necessary to accompany the child to the responsible Member State. The setting up of a guardianship network could further assist in streamlining transfer procedures involving children.
- **All necessary information concerning the applicant, including on his or her health needs, should be submitted to the receiving Member State with the applicant's consent in a timely manner** to ensure that any specific needs can be accommodated both during transfer and upon arrival. The Dublin Regulation provides for standard forms which should be used in a more systematic manner to enhance efficient communication of such data between Member States whilst protecting the applicant's personal data.
- **Disaggregated data on the use of the provisions under the Dublin Regulation should be systematically collected and made available in a timely manner** in order to increase transparency and accountability, allowing also for the monitoring of the functioning of the Dublin system.

7. Use of detention

In order to ensure that the use of detention for the purposes of the Dublin procedure complies with international and European standards, UNHCR recommends the following:

- In accordance with the Dublin Regulation, applicants should not be detained for the sole reason that they are subject to a Dublin procedure. **Detention should only be used as a measure of last resort on the basis of an individual assessment of the necessity, proportionality and reasonableness to detain an applicant,** and after assessing that alternatives to detention (less coercive measures) cannot be applied effectively.
- **Vulnerable persons including victims of trauma or torture, victims or potential victims of trafficking, pregnant women and nursing mothers, but also elderly persons, disabled persons, and LGBTI should in principle not be detained and alternatives to detention should be actively explored where detention would otherwise be necessary, in order to secure transfer procedures.** An assessment of specific needs would need to be conducted systematically and take place prior to or as part of the decision whether or not to detain an applicant or to apply alternatives to detention in the individual case. It would also aid the identification of an alternative suitable to the individual.

- **Children should not be detained for immigration related purposes, including for the purpose of carrying out procedures under the Dublin Regulation, irrespective of their legal/migratory status or that of their parents; detention is never in their best interests.**
- **Detention of applicants under the Dublin Regulation should be based on an individual assessment of the “significant risk of absconding” on the basis of objective criteria defined in national law in accordance with the Dublin Regulation (Article 2 (n)).** UNHCR urges the Member States who make use of detention for the purposes of securing transfers under the Dublin Regulation who have not yet adopted national law clearly defining the objective criteria for determining the existence of a “significant risk of absconding” to do so in compliance with their obligations under the Dublin Regulation.
- **Judicial review of detention should be conducted in all cases in a speedy manner, ideally within 24-48 hours from the initial decision to detain the applicant and thereafter on a weekly basis until the one-month mark.**
- **Member States should accurately record their use of detention and the average duration of detention and detention should be subject to independent monitoring and inspection.**

