

# SAFEProject

## Ensuring the best interest of the child and family unity in the Dublin process

Based on the experiences of kinship and Dublin families in Greece, the UK and Denmark

Policy Recommendation Paper

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# Glossary / Abbreviations

**AIRE Centre:** Advice on Individual Rights in Europe

**BIA:** Best Interests' Assessment

**CEAS:** Common European Asylum System

**CRC:** The UN Convention on the Rights of the Child

**EASO:** European Asylum Support Office

**ECRE:** European Council on Refugees and Exiles

**EU:** European Union

**EU Charter:** Charter of Fundamental Rights of the European Union

**NASS:** National Asylum Support Service (UK)

**Member States:** this refers to the countries applying the Dublin Regulation, regardless of whether they are European Union (EU) Member States or associated countries

**Refugee 1951 Convention:** defines who qualifies for refugee status and sets out the rights of those who are granted asylum and the responsibilities of States that grant asylum

**SAFE:** Supporting Un-Accompanied children with Family based care and Enhanced protection project

**SOP:** Standard Operating Procedures (UK)

**UASC:** Unaccompanied asylum-seeking children/child

**UN:** United Nations

**UNHCR:** United Nations High Commissioner for Refugees

## About the SAFE Project

SAFE, which stands for Supporting Un-Accompanied children with Family based care and Enhanced protection, is a multi-national project involving the British Red Cross, the Danish Red Cross, KMOP (Greece) and CARDET (Cyprus). According to the European-level report “Reception and Living in Families: Overview of family-based reception for unaccompanied minors in the EU Member States” (2015), States should:

*...establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualised and small-group care, and should evaluate existing facilities against these standards.<sup>1</sup>*

The SAFE project is designed to enhance the quality of family based care and to promote the welfare and protection of unaccompanied children by providing training and support to frontline practitioners and professionals, foster carers, kinship and Dublin family caretakers. SAFE partners have gathered data from best practices in Greece, the UK, Denmark and Cyprus<sup>2</sup> to develop common guidelines, procedures and training at a pan-European level. This paper is one of the outputs.

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<sup>1</sup> <https://engi.eu/projects/reception-and-living-in-families/>, p.18

<sup>2</sup> Note that Cyprus is part of the SAFE project but not part of this policy paper. This is due to a greater emphasis on the training element of the project within Cyprus

# Introduction

Unaccompanied and separated children are widely considered to be amongst the most vulnerable of migrants. Generally, children are vulnerable as they are not fully developed physically, mentally or emotionally and migrant children have usually experienced trauma prior to or through their displacement.<sup>3</sup> For any number of reasons, unaccompanied and separated children are no longer with their parents or legal or customary caregiver which creates an additional layer of vulnerability. They are also navigating complex immigration systems in a variety of countries where they likely do not speak the language. Several studies and reports have indicated that family based care has been proven to be the best method for caring for children who cannot live with their immediate families.<sup>4</sup> For children migrating across Europe, the Dublin Regulation should efficiently and effectively facilitate placing children with safe family members who are already in Europe.

The Dublin Regulation<sup>5</sup> was designed to ensure that a single Member State holds responsibility for examining an asylum application and does so fairly. The law has been in place in various iterations since 1990, with the most recent Dublin III Regulation taking effect in January 2014. Historically, Dublin was used to return asylum seekers to the first European country they entered to assess their claim. Dublin III specifies a hierarchy of criteria for determining which Member State takes responsibility, with family unity as the “first in the hierarchy of responsibility criteria.”<sup>6</sup> Since the influx of asylum seekers and refugees into Europe in 2015, the weaknesses of the Dublin Regulation and the Common European Asylum System (CEAS) have been highlighted and acknowledged, leading the European Parliament to call for another reform of the Dublin system that includes, amongst other things, the incorporation of “the key concepts of family unity and the best interests of the child.”<sup>7</sup>

This policy paper aims to explore the Dublin Regulation as applied and implemented in Greece, the UK and Denmark by examining how each country considers a child’s best interests, and family unity, in the context of a Dublin application. This stems from the SAFE project’s findings in these countries, which has indicated the wide variation in approaches to the Dublin system and the impact on unaccompanied and separated children. The paper focuses on kinship families in particular and aims to help policy makers and public authorities understand the challenges, complexities and needs of the families supporting unaccompanied children in both transit and destination countries. The overall aim is to bring legislative and procedural changes to improve the experiences of these children and their kinship families.

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<sup>3</sup> [https://publications.iom.int/system/files/pdf/fatal\\_journeys\\_4.pdf](https://publications.iom.int/system/files/pdf/fatal_journeys_4.pdf)

<sup>4</sup> <https://journals.sagepub.com/doi/full/10.1177/1524838017726427>

<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>

<sup>6</sup> [http://www.asylumineurope.org/sites/default/files/aida\\_2018update\\_dublin.pdf](http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf), p10

<sup>7</sup> [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS\\_BRI%282016%29586639\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf)

# Legal Framework

## Best interests' principle

The UN Convention on the Rights of the Child (CRC)<sup>8</sup> encourages all Member States to take suitable measures to ensure the safety, protection and humanitarian assistance of a child applying for asylum and refugee status, whether the child is alone or accompanied. These measures should be taken by applying the best interests' principle, which is stated in Article 3.1 of the Convention:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.<sup>9</sup>*

These principles and responsibilities are also reflected in Article 24(2) of the EU Charter<sup>10</sup> and the preamble and Article 6 of the Dublin Regulation,<sup>11</sup> and should also be operationalised through countries' own child protection and asylum systems.

## Best Interests Assessments and family unity

Best Interests Assessments (BIA) are operational tools that should not only ensure that children have access to international protection, but also address the individual needs of children and make certain that they have sufficient information to understand their rights and entitlements. BIA as part of Dublin considerations should "take due account of the minor's well-being and social development, safety and security considerations (including risks of trafficking)<sup>12</sup> and the views of the minor in accordance with his or her age and maturity, including his or her background."<sup>13</sup> In most Member States, however, there are no Standard Operating Procedures (SOP) for conducting BIA for unaccompanied children,<sup>14</sup> nor is there a standardised system used to consider their age and maturity.<sup>15</sup> There is currently no single BIA template used in Europe for Dublin transfers.

In considering family unity and best interests, the relationship between the child and the relative in the other Dublin Regulation country needs to be considered.<sup>16</sup> If the child has relatives in more than one Member State, the responsible Member State will decide what is in the best interests of the child.<sup>17</sup> To complete a comprehensive assessment, interviews need to happen in at least two countries (more if there are family members in multiple locations being considered as carers for the child). Though assessments do often take place in multiple locations, they are rarely, if ever, joined up. This is a significant gap that needs to be addressed.

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<sup>8</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

<sup>9</sup> [https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf?\\_ga=2.32701438.1995816419.1561994090-845928689.1561994090](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.32701438.1995816419.1561994090-845928689.1561994090)

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

<sup>11</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>

<sup>12</sup> Dublin III Article 6 (3c)

<sup>13</sup> Dublin III (13)

<sup>14</sup> UNHCR, Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation, August 2017, available at: <http://www.refworld.org/docid/59d5dc64.html>, p. 56.

<sup>15</sup> The weight to be placed on the views of unaccompanied children is unclear in some Member States. This was raised as an issue as part of UNHCR, *Considering the Best Interests of a Child within a Family Seeking Asylum*, December 2013, available at: <http://www.refworld.org/docid/52c284654.html>.

<sup>16</sup> Dublin III (16)

<sup>17</sup> Dublin III, Article 8 (3)

## Dublin Regulation

Children under the age of 18 years old have the greatest range of possibilities to join family members in another European country. Under the current Dublin Regulation, the terms “family members” and “relatives” are defined differently. “Family members” for children are defined as a parent or legal guardian, though an unaccompanied child may also be reunited with a sibling. For a reunification to take place, it must be shown that:

- they are related;
- the family member is willing for the child to be reunited with them;
- it is in the child’s best interests to do so.<sup>18</sup>

“Relatives” are defined as an adult aunt, uncle or grandparent. In addition to the above three requirements for family members, relatives must prove that they are able to “take care” of the child. This means that the relative must be able to accommodate and care for the child appropriately. The suitability of the accommodation may be decided by an assessment by a social worker or another professional designated by the authorities, though there are no clear or consistent guidelines of how to make this assessment. When the applicant is a child and they wish to join a relative (adult aunt, uncle or grandparent), it must be shown that:

- they are related;
- the relative is willing for the child to live with them;
- the relative is able to “take care” of the child;
- it is in the child’s best interests to live with their relative.<sup>19</sup>

**For unaccompanied and separated children, the general process around Dublin transfers is:**

### **1. *The child claims asylum***

- The child makes an application for international protection and an initial interview establishes basic information and provides advice about rights, including information about and the examination under the Dublin III Regulation. For unaccompanied children, this generally means that the applicant will be assessed for moving to another Dublin Regulation country where family members reside.<sup>20</sup> All individuals over the age of 14 years old are fingerprinted and the fingerprints are the considered part of the evidence
- Depending on the country, the unaccompanied child should have a guardian or representative assigned who can advocate for his or her best interests. This individual should have the necessary qualifications and expertise to exercise the role<sup>21</sup>

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<sup>18</sup> Dublin III, Article 8 (1)

<sup>19</sup> Dublin III, Article 8 (2)

<sup>20</sup> Article 8, Dublin III Regulation: [https://www.asylumlawdatabase.eu/en/content/en-dublin-iii-regulation-council-regulation-ec-no-6042013-26-june-2013-recast-dublin-ii#toc\\_135](https://www.asylumlawdatabase.eu/en/content/en-dublin-iii-regulation-council-regulation-ec-no-6042013-26-june-2013-recast-dublin-ii#toc_135). Note that there are other processes if the child does not have family members in other Member States, but as this paper addresses kinship care, these are outside the scope of this discussion.

<sup>21</sup> [https://www.asylumlawdatabase.eu/en/content/en-dublin-iii-regulation-council-regulation-ec-no-6042013-26-june-2013-recast-dublin-ii#toc\\_135](https://www.asylumlawdatabase.eu/en/content/en-dublin-iii-regulation-council-regulation-ec-no-6042013-26-june-2013-recast-dublin-ii#toc_135), Dublin III, Article 6 (2)

## **2. Host country evaluates information and makes request for transfer under the Dublin system**

- The international protection officer considers the gathered information and decides whether the application should be transferred. This can result in a “take charge” request; the government must make this request on the child’s behalf
- A take charge request means that the country where the child is currently residing (Sending State) is asking another Dublin country to *take charge* of the application for international protection because the child’s family or relatives are in that country
- The take charge request must be made by the Sending State within three months of the child claiming international protection
- The best interests of the child should be a paramount consideration with any decision regarding a child, and this should be continually assessed throughout the process.<sup>22</sup>

## **3. The Receiving State makes a decision on the transfer request**

- The Receiving State has up to two months to make a decision on the take charge request and will inform the Sending State of the decision
- The Sending State will inform the child (or the child’s legal guardian or representative) of the Receiving State’s decision
- **There are two possible outcomes of the decision:**
  - Refusal of the Dublin request
    - If the take charge request is refused, the reasons should be put in writing
    - The Sending State has 21 calendar days to request a re-examination of the application and to provide more evidence
  - Acceptance of Dublin request
    - If the take charge request is accepted, the Sending State arranges the transfer with the Receiving State within six months of acceptance. This would include organising and paying for the child’s travel

## **4. Transfer and arrival**

- If the application is accepted, the child will travel to join their relatives and legally live in the same country with them. The asylum claim would then be processed by the Receiving State’s domestic asylum claim procedures

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<sup>22</sup> <https://www.easo.europa.eu/sites/default/files/Practical-Guide-Best-Interests-Child-EN.pdf>, p 26, p 32

# Common problems in the Dublin system for unaccompanied and separated children related to family unity

There are many problems in operationalising the Dublin Regulation across the European Union, which have been identified through research and interviews by the SAFE project team. A few of the common problems are addressed below:

- ***Timescales***

Since unaccompanied and separated children belong to a category of particularly vulnerable persons, it is important that Member States do not delay any processes or procedures for determining the responsible Member State more than what is strictly necessary. The time limits of a Dublin transfer are addressed in Article 29, which states that transfers should be carried out “as soon as practically possible, and at the latest within six months of acceptance of the request.” This time frame can be extended with appeals.<sup>23</sup> However, “the majority of countries applying the Dublin Regulation make a conscious policy choice to subject both asylum seekers and their own administration to lengthy Dublin procedures which in all likelihood end up in no transfer, usually due to non-compliance with the time limits for carrying out the transfer.”<sup>24</sup> It is worth noting that there are no consequences to Member States when they exceed the time limits to process Dublin applications, so there is no incentive to accelerate the process.

Mental health professionals working with children waiting for Dublin transfers have observed detrimental impacts on children’s development and well-being related to the long delays, uncertainty of the outcome of the reunification process or the rejection of their family reunification requests. These delays also adversely affect the trust that the children put in public authorities and the Dublin reunification system itself.<sup>25</sup>

- ***Statistics***

Maintaining up to date data and statistics on the Dublin system continues to be a challenge. The latest available figures for 2017 on Eurostat were only made available towards the end of 2018 and are not reflective of all Dublin Regulation countries.<sup>26</sup>

- ***Bureaucratic processes***

Member States often use restrictive and non-flexible practices such as prolonged appeals and complex administrative procedures, which extends the separations families endure.<sup>27</sup>

Because of these complex processes, families considering bringing a child into their home would benefit from legal advice, especially if they have insecure immigration statuses themselves. The ability to access high-quality free legal aid is lacking and applicants often need help to understand and navigate complicated Dublin Regulation rules.

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<sup>23</sup> [http://www.asylumineurope.org/sites/default/files/aida\\_2018update\\_dublin.pdf](http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf), p.13

<sup>24</sup> [http://www.asylumineurope.org/sites/default/files/aida\\_2018update\\_dublin.pdf](http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf)

<sup>25</sup> <http://safepassage.org.uk/wp-content/uploads/2019/03/Caught-in-the-Middle-Unaccompanied-Children-in-Greece.pdf>

<sup>26</sup> [http://www.asylumineurope.org/sites/default/files/aida\\_2018update\\_dublin.pdf](http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf), p.3

<sup>27</sup> <https://drc.ngo/media/4530554/drc-policy-brief-when-the-dublin-system-keeps-families-apart-may-2018-final.pdf>

- ***Lack of support***

The lack of support takes a variety of forms.

At the point of claiming asylum, unaccompanied children should receive an information leaflet about the Dublin Regulation adapted to their specific needs.<sup>28</sup> The current leaflet provided by the EU is not child friendly as it is very text heavy with no graphics, although some countries have created their own leaflets or videos that are more suitable.

Most families who are taking a child into their home would benefit from professional support to manage the transitions. When the child has been unaccompanied for an extended period, possibly even years, it can be a difficult transition going from being independent and on one's own (even if it has been very challenging to survive) to then following rules in someone else's house, even if they are a relative. When the child does not know these relatives well, the challenges can be even greater. These transitions prove insurmountable for some families and relationship break-downs are not uncommon.

Additionally, since most of these kinship families will also be refugees or asylum seekers themselves, many will have limited resources with which to support themselves, even without the added cost of another child in the home. The financial pressure can be more than many families can manage and countries offer inconsistent (and often minimal, if any) support to families taking these children into their homes.

- ***Lack of relationship***

Legal representatives and guardians, who are meant to represent the best interests of the child, often do not know the child well enough to be fully informed of the child's needs and wishes. This makes it difficult to determine what may be in the best interests of the child and when to override wishes and feelings of a child as the legally responsible adult. The child may also not know the adult well enough to trust sharing all the information that would allow a solid decision.

- ***Lack of clarity around BIA***

As noted before, there is not a standard template or procedure across Europe for completing the BIA. The views of the family members may not be considered next to the views of the child, as the interviews have taken place in two or more separate countries. There is no guidance on how to weigh the view of the child along with considerations of their age and maturity, next to the view of the guardian or representative. There is also no guidance for those completing the reports on how to reason and evidence best interest, or for the immigration authorities to decide how to weigh different views and arguments to determine what is in the best interest of the child. Each case is individual, unique and subjective.

- ***Lack of capacity***

Member States have often not resourced the needed capacity to deal with Dublin issues. Whether this is due to a lack of political will, funding, expertise or a combination of factors, many governments have not invested in the needed infrastructure to deliver a safe and effective Dublin process. Sometimes this is represented by

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<sup>28</sup> Dublin Regulation, Article 4(3); <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:039:0001:0043:EN:PDF>, Annex XI, pp 37-41

not developing the needed systems and processes, other times this is by not developing and staffing guardianship systems.<sup>29</sup>

## Experiences in Greece, the UK and Denmark

In the countries involved with the SAFE project there were particular areas of concern, many of which could illustrate larger problems. The recommendations from these areas can be extrapolated to improve an overall system.

### Experiences in Greece (transferring country)

According to the European Council on Refugees and Exiles (ECRE) and the AIRE Centre (Advice on Individual Rights in Europe), “Greece’s use of the Dublin procedure has been one of the more successful EU-wide vis-à-vis the number of outgoing requests resulting in effective transfers”.<sup>30</sup> That said, the numbers of children who are not able to access the support they need remains worryingly high.

Despite the general success of using Dublin III in Greece, the overall implementation of Dublin III has been acknowledged to be very lengthy process, averaging 11 months.<sup>31</sup> Common reasons for rejecting take charge requests include:

- a) Inability to prove the family link;
- b) Lack of documentary evidence required;
- c) Member States requesting age assessments and/ or DNA tests delay processes, but Greece having limited resources to conduct the various assessments;
- d) The findings from the social history reports conducted by Members States conclude that is not in the best interests for minors to be reunited with the family member.<sup>32</sup>

In 2017, other Member States began rejecting certain Dublin applications from Greece, stating that family separation was “self-inflicted” and thereby contrary to the best interests of the child. In 2018, the Greek Asylum Service partly adopted this argument and revised its Dublin policy. In cases of so-called “self-inflicted” family separations, the Dublin Unit announced it would no longer send outgoing take charge requests based on the family provisions or the humanitarian clause arguing that it was not in the best interests of the child, resulting in a drop in take charge requests.<sup>33</sup>

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<sup>29</sup> <http://safepassage.org.uk/wp-content/uploads/2019/03/Caught-in-the-Middle-Unaccompanied-Children-in-Greece.pdf>

<sup>30</sup> 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]

<sup>31</sup> <https://www.asylumineurope.org/reports/country/greece>, p.63

<sup>32</sup> Annual Report 2018 on the rights of the Children on the Move, Greek Ombudsman supported by the UN International Children's Emergency Fund (UNICEF). <https://www.synigoros.gr/?i=childrens-rights.el.epanapatrismos.577323>

<sup>33</sup> [http://www.asylumineurope.org/sites/default/files/aida\\_2018update\\_dublin.pdf](http://www.asylumineurope.org/sites/default/files/aida_2018update_dublin.pdf), pp 9-10

## **Case study**

*Mohamed was 16 and a half years old when he left Syria in the beginning of February 2017, fleeing the war with most of his village. He was following his mother (who was wearing a niqab) and many other people as they walked to the Syrian-Turkish border. Once at the border, however, Mohamed discovered that he was following another woman in a niqab who was not his mother. He was very scared and did not know what to do. He decided to stay with the woman until they both reached Greece in May 2017, at which point he contacted his uncle Ebrahim in the UK. Mohamed asked Ebrahim to help him get out of Greece and into the UK. Mohamed's uncle contacted the British Red Cross, who informed him that he cannot apply for family reunification because Mohamed was not his primary family member but said he could apply for Dublin III.*

*Despite daily efforts to get help from the Greek government to be reunited with his uncle in the UK, Mohamed was not offered any accommodation, food, legal representation, interpretation or support during the one and a half years that he stayed in Greece. Mohamed began to work at a farm to be able to have a place to sleep and survive. He eventually managed to apply for Dublin III after approaching Greek authorities' multiple times, but it took nearly 16 months for the process to be completed. His application required a lot of evidence to prove the relationship between his uncle and him. Mohamed's uncle had to make a lot of effort to try and contact family in Syria to get evidence such as IDs, birth certificates, a family tree, a letter from civil registry to prove family links, photos of both of them together and various other documents for the application. Mohamed's application was eventually accepted and he was transferred into the UK in February 2019.*

*Despite this being a "successful" case, the length of time for the process to complete meant that Mohamed was over the age of 18 by the time he arrived in the UK. This significantly decreased the level of integration support he received and meant he struggled to access classes to learn English, which impacted his ability to find work. His uncle also had debts from his effort to help Mohamed in both Greece and the UK.*

## **Experiences in UK (receiving country)**

The support for children under Dublin III in England is outlined in the "Family and Friends Care" statutory guidance.<sup>34</sup> According to this guidance, the family and friends care arrangement with the Dublin application is considered informal unless safeguarding concerns trigger other child protection mechanisms.

Implementation in the UK has been hindered by a range of factors. Legal aid has drastically reduced over the years<sup>35</sup> and families who may be willing to care for a child but need legal support are subjected to a means and merit test, which may prevent some families from engaging. Social services are also meant to assess relatives under Section 17 of the Children Act 1989<sup>36</sup> and determine if the family needs any support. However, despite many of the families being asylum seekers, local authorities often do not deem it necessary to provide Section 17 support even though this invariably contributes to successful transitions for unaccompanied children. There is no clear guidance about what financial support relatives should receive for caring for unaccompanied children, so many families struggle to afford to feed an extra child, particularly if they are restricted from receiving public funds. If the family is already in accommodation for asylum seekers, they may already be dealing with overcrowding. In some circumstances, the gender or age of the incoming child relative to the other children

<sup>34</sup> Family & Friends Care: Statutory Guidance for Local Authorities,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/288483/family-and-friends-care.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288483/family-and-friends-care.pdf)

<sup>35</sup> <https://www.theguardian.com/law/2018/dec/26/legal-aid-how-has-it-changed-in-70-years>

<sup>36</sup> <http://www.legislation.gov.uk/ukpga/1989/41/section/17>

living in the home can cause disruption. Relatives do not automatically receive parental responsibility, and have to go through additional court processes in order to make their caring responsibilities legally binding.

Home Office statistics indicate that, from the UK perspective, the effectiveness of the Dublin system has deteriorated, with more transfers into the UK than out.<sup>37</sup> These statistics do not include information about the duration of the process, as the UK does not collect statistics on this metric.<sup>38</sup>

The UK's withdrawal from the European Union ("Brexit") is also a key challenge for the implementation of the Dublin Regulation. The UK government stated in the Immigration White Paper from December 2018<sup>39</sup> their intention to seek other alternatives to participate in the Dublin Regulation after Brexit. If, however, the UK exits the EU without a deal, there will be a gap where there is no Dublin law in place.

### **Case study**

*Ali was 17 years old when he moved into his uncle's family home. His mother had died and his father refused to look after him. Due to being subjected to a lot of discrimination as a Kuwaiti Bedouin in Kuwait, Ali's uncle decided to travel to the UK to seek sanctuary.*

*Ali and his uncle's family (wife and four children) decided to join his uncle in the UK. During their journey, they were offered a place together in a camp in Greece. Ali and his kinship family did not apply for asylum in Greece, but were advised to fill in the application for family reunification under the Dublin Regulation to join the uncle in the UK. Ali felt he was offered a lot of support and was fully informed on the different stages of his application process by his legal representative in Greece. Ali and his kinship family stayed in the camp for nine months before they were moved to the UK.*

*After they moved to the UK, Ali was not offered any support by the local authority due to the discretionary nature of support for kinship carers. He is now 18 years old and is struggling to integrate into society. He did not know where to enrol to study English (or any other subject) so he faces language barriers. He has also not been able to make friends as he is not enrolled in any college. Ali dreams of being a footballer and only learned about a local football club from someone he met accidentally. He is depressed that he is not able to feel part of his new community.*

<sup>37</sup> <https://www.migrationwatchuk.org/briefing-paper/444/transfers-of-asylum-seekers-from-the-uk-under-the-dublin-system>

<sup>38</sup> (United Kingdom) Minister for Immigration, Reply, Asylum: EU Countries: Written question, 202853, 25 January 2019, available at: <https://bit.ly/2S0vCt3>

<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf) p.18

## Experiences in Denmark (receiving country)

Denmark has opted out of the EU area of Freedom, Security and Justice; however, the country has acceded to the Dublin Regulation on a parallel agreement.<sup>40</sup> The accession means that Denmark is fully obligated to implement the Dublin Regulation in national legislation, but it also means that any change made to Dublin is not automatically binding for Denmark. If any changes are made to the law, Denmark has 30 days to give the Commission notice whether the country will accept the changes and keep the parallel agreement.<sup>41</sup> If the country chooses not to accept the changes, the Dublin agreement would, by default, be annulled.<sup>42</sup>

In Denmark, it is doubtful whether the best interests of the child have been considered when reuniting the child with their extended families. Even when a child has expressed a desire to stay in Denmark and shared a reluctance to be reunited with a family member in another EU country, the outcome has tended to be the transferal of the child to be with the family member in that country. This is a situation of family unity taking priority over the voice of the child,<sup>43</sup> and a lack of clarity of how much weight to give to each aspect to determine the best interests of the child.

### Case study<sup>1</sup>

*Ismail is from Syria and he fled alone to Denmark where he applied for asylum. During an interview with the Immigration Office, Ismail stated that he had an uncle in Sweden but did not want to be reunited with him. Despite that, the Immigration Office consequently contacted the Swedish authorities with the purpose of having Ismail transferred to Sweden to be with his uncle. Only during an interview with the Danish Refugee Council did Ismail have the opportunity to elaborate on why he did not want to be reunited with his uncle. He explained that it was due to a family conflict in Syria and that his relationship to his uncle was not particularly good.*

*After the Danish Refugee Council informed the Swedish authorities about this, they chose to reject the Immigration Service's request for transfer based on the inadequate information of what was in Ismail's best interests. The inadequate assessment of Ismail's individual circumstances in the first instance meant that his case was greatly prolonged and took almost four months for the Immigration Service to decide to examine his case.*

<sup>40</sup> The agreement between European Union and Denmark can be found: [https://eur-lex.europa.eu/resource.html?uri=cellar:dd39fe5b-ec42-4c5f-a1d3-b5bef10ad0e9.0002.02/DOC\\_2&format=HTML&lang=DA&parentUrn=CELEX:32006D0188](https://eur-lex.europa.eu/resource.html?uri=cellar:dd39fe5b-ec42-4c5f-a1d3-b5bef10ad0e9.0002.02/DOC_2&format=HTML&lang=DA&parentUrn=CELEX:32006D0188)

<sup>41</sup> Article 3, pkt. 2. "Whenever a change is passed in the regulations, Denmark notify the Commission, whether the country wish to implement the content of the changes or not. The notification hereof should be given at the time of the adaption or within 30 days after". Translated from Danish: [https://eur-lex.europa.eu/resource.html?uri=cellar:dd39fe5b-ec42-4c5f-a1d3-b5bef10ad0e9.0002.02/DOC\\_2&format=HTML&lang=DA&parentUrn=CELEX:32006D0188](https://eur-lex.europa.eu/resource.html?uri=cellar:dd39fe5b-ec42-4c5f-a1d3-b5bef10ad0e9.0002.02/DOC_2&format=HTML&lang=DA&parentUrn=CELEX:32006D0188)

<sup>42</sup>[http://www.justitsministeriet.dk/sites/default/files/media/Pressemeldelser/pdf/2015/samarbejdet\\_om\\_retlige\\_og\\_inde\\_anliggender\\_pdaf.pdf](http://www.justitsministeriet.dk/sites/default/files/media/Pressemeldelser/pdf/2015/samarbejdet_om_retlige_og_inde_anliggender_pdaf.pdf)

<sup>43</sup> Dublin Article 6, Section 3

# Recommendations

The experiences of Greece, the UK and Denmark provide a snapshot of the challenges unaccompanied children and their families face around the implementation of the Dublin Regulation. To improve the experiences of young people and their relatives, some key changes should be implemented across the European Union:

**1. Agree Dublin Standard Operating Procedures that are efficient and effective, regardless which countries are involved**

This could be aided by fuller implementation of the CEAS so that processes align better. Regardless, clear steps with accountable time frames would allow smooth transitions, not only for families, but also involved governments. The SOPs should ensure that processes are efficient and effective, regardless of which countries are involved. There should be clear and consistent definitions of kinship and family. The humanitarian clause should be used with more regularity.

**2. A Best Interests Assessment procedure and format for all Dublin transfers that is used across the EU and based on recommendations from the Committee on the Rights of the Child and UNHCR**

The current BIA from UNHCR is not easily applicable to Dublin cases. A modified version that all European countries use could allow better coordination and clearer expectations. It should also be multi-disciplinary and holistic, taking into account information provided by all relevant parties and countries. Family unity and the voice of the child should be given equal, appropriate weight. Decisions should be clearly written that explain why the outcome was deemed in the child's best interest.

**3. More encouragement of kinship care across the EU**

Family based care (with appropriate aid in place) is the best support to an unaccompanied child and should be actively promoted and funded by Dublin countries.

**4. More consistent data collection (so statistics can be compared)**

Currently, different countries across Europe gather different information. If there were standardised data sets that all European countries were expected to gather, comparisons could more easily be made and statistics would be more meaningful.

**5. For the UK, to continue some version of Dublin procedures post "Brexit"<sup>44</sup>**

When any country stops participating in the process, more children and more countries are impacted. All countries have a responsibility to continue to support family unity where appropriate and possible.

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<sup>44</sup> <https://www.redcross.org.uk/about-us/what-we-do/research-publications#Refugee%20support>, British Red Cross briefing on refugee family reunion and Brexit