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# The Dublin Roadmap in action
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The correct and effective implementation of the Dublin III Regulation ([1]) is central to the Common European Asylum System ('CEAS') and is a precondition for its well-functioning. The establishment of well-structured Dublin units and the development of efficient work processes are of paramount importance to ensure an effective determination of the Member State responsible for examining an application for international protection and a rapid access to the procedure for granting international protection. A well-functioning Dublin system is also key to reduce incentives for unauthorised movements within the EU.

Following the discussions at the Contact Committee meeting on the Dublin III Regulation held on 24 June 2022, the Member States and the Associated Countries ([2]) (hereafter 'Member States'), the European Commission and the European Union Agency for Asylum ('EUAA'), as well as a working group consisting of 11 Member States agreed to work on a roadmap in order to improve and ensure better implementation of transfers in all Member States.

As a result of this work, the Roadmap on improving implementation of transfers under the Dublin III Regulation ('the Dublin Roadmap') ([3]) was endorsed by Member States at the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) meeting on 29 November 2022. The Dublin Roadmap aims to improve the overall implementation of transfers under the Dublin III Regulation and it includes a concrete timeline for the implementation of specific measures in all Member States.

Following the Contact Committee meeting on the Dublin III Regulation of 16 March 2023, the Commission organised bilateral meetings with all Member States to better understand the challenges they are facing, as well as to identify the measures taken and good practices to ensure the swift and adequate implementation of the measures set out in the Dublin Roadmap.

After the endorsement of the Dublin Roadmap, all Member States have launched multiple initiatives, aimed at increasing the efficiency of the national Dublin units and at improving existing procedures. While most of these initiatives are still in the early stages and their impact and compliance with the applicable rules cannot be fully assessed yet, several practices have already emerged that might pave the way towards more effective implementation of the Dublin Regulation. The identified emerging practices have been raised by the individual Member States, and the Member States remain fully responsible for ensuring the compliance with the applicable rules.

All Member States have carried out reviews of the available resources, possible capacity limitations, and internal organisation of the Dublin procedure. As a result, 13 Member States (AT, BE, CY, DE, DK, EE, ES, IE, IS, LT, NO, NL, LT) have already increased the capacity of their Dublin units and six Member States (CH, HR, IT, LV, MT, SK) are in the process of increasing it.

([1]) 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 (recast).

([2]) Norway, Iceland. Switzerland and Liechtenstein.

([3]) Note from the General Secretariat of the Council to delegations, 8035/23.

Member States are also implementing different measures that could have a positive impact on reducing the risk of absconding of applicants for international protection subject to the Dublin procedure. These measures include a more individual-centred approach, focusing on questions and concerns the individual applicant might have, including explaining the reasons for the transfer decision, presenting detailed information about the transfer, and what to expect when being transferred. Some Member States have also introduced "entry-exit systems" in reception centres and taken measures to ensure closer monitoring of each transfer. Given the obligation of Member States to apply less coercive alternative measures before detaining a person, and the fact that absconding is one of the main issues Member States are facing when implementing the Dublin Regulation, Member States have also provided their most used alternatives to detention set out in their national law. Those measures currently include reporting obligations and designation of special officials in the reception centres to check the physical presence of persons subject to the Dublin procedure at regular intervals.

In addition, significant efforts have been made to improve communication between Member States. To this end, the most effective instrument remains the designation of liaison officers. Currently six Member States (AT, BE, CH, DE, FR, NL) have Dublin liaison officers. Regular bilateral meetings as well as fact-finding missions to the responsible Member State have also proven fundamental to ensure an efficient cooperation between the transferring and the responsible Member States.

Upgrading existing IT systems and developing new digital solutions are of key importance for the speed and quality of the Dublin procedure. 24 Member States (AT, BE, CH, CZ. DE, DK, EE, EL, ES, FI, FR, HU, IS, IT, LU, LV, MT, NL, NO, PL, RO, SE, SI, SK) operate centralised IT case management systems or other digital platforms and envisage further upgrades to optimise these processes. It is therefore important to continue prioritising the process of digitalisation of the case files of the Dublin unit as a precondition to ensure the necessary effectiveness of the procedure and to improve identification and follow-up of Dublin cases. Centralised IT systems and enhanced digital case management solutions could allow national authorities to monitor all stages of the Dublin procedure thus facilitating the whole process.

The implementation of the Dublin Roadmap has also led to more flexibility between the Member States in organising transfers. 25 Member States have measures in place to increase their flexibility as regards incoming Dublin transfers (AT, BE, BG, CH, CY, CZ, DK, EE, ES, FI, FR, HR, HU, IS, LU, LT, LV, MT, NO, NL, PT, RO, SE, SI, SK). 14 Member States accept charter flights or group transfers (AT, BE, BG, CH, EL, ES, FI, HR, LU, LT, LV, MT, RO, SI). Four Member States have no formal limits on the number of incoming transfers that could be organised per day (BG, FR, MT, PT). 17 Member States (AT, BE, BG, CY, DK, EE, ES, FI, HR, HU, IS, LV, MT, PT, RO, SE, SK) accept transfers outside the working hours if requested and agreed before the transfer. 14 Member States also allow incoming transfers on land borders and/or can be flexible on the location, if necessary (AT, BE, CH, CZ, DK, ES, FI, FR, HR, LT LU, NL, SI, SK), including one Member State (SI) allowing land transfers with Member States without common borders. One Member State is allowing transfers through sea borders (LT).

As part of the implementation of the Dublin Roadmap, the EUAA prepared fact sheets ([4]) with relevant up-to-date information that the national authorities and courts of the transferring Member State could use as an additional source of information when assessing the concrete situation in the responsible Member State. The fact sheets consist of detailed information on reception and detention conditions, including conditions for vulnerable persons, access to basic

([4]) https://euaa.europa.eu/asylum-knowledge/dublin-procedure

care and medical service, as well as information on the asylum procedure, including access to the procedure and procedural guarantees following a transfer, as required by the relevant Directives and Regulations. The fact sheets are dynamic and will be modified according to changing circumstances in the Member State concerned.

The Commission has on multiple occasions stressed that the current Dublin system has significant shortcomings, which have been confirmed by the external study commissioned by the Commission in 2016 ([5]) and the study by the European Parliament in 2020 ([6]). Member States and stakeholders have also raised the multiple challenges to implement the Dublin III Regulation in the consultations held since 2016.The Asylum and Migration Management Regulation, once adopted, should rectify the most significant structural shortcomings. However, some of the practical implementation challenges Member States are facing today will remain, such as those related to communication with the other Member States, the structure of the Dublin units and internal cooperation, and the practical organisation and implementation of transfers. Therefore, the implementation of the Dublin Roadmap is relevant to address not only the current challenges, but also to ensure effective implementation of the Asylum Migration Management Regulation, once in force.

Achieving the goals and objectives of the Dublin Roadmap requires that Member States continue implementing it as a priority and that they allocate the necessary human and financial resources to their Dublin units. This document presents the emerging good practices identified following the endorsement of the Dublin Roadmap and the bilateral meetings held with Member States. These practices can help other Member States to implement in the most effective way the actions to which they have committed under the Dublin Roadmap, when addressing individual challenges. These practices are relevant to Member States regardless of the volume of Dublin cases handled and the size of their Dublin units. The document can also facilitate bilateral contacts between Member States on practices that could be relevant to their respective situation. The practices are presented following the structure of the objectives and actions included in the Dublin Roadmap. They are listed below, following the sequence of the different steps within the Dublin procedure.

Furthermore, although not specifically included in the Dublin Roadmap, delays in uploading data in Eurodac are also having an impact on the effective functioning of the Dublin system. Registration of fingerprints in Eurodac should be done as soon as possible and no later than 72 hours after the lodging ([7]) of the application for international protection as well as within 72 hours from the date of apprehension in case of irregular border crossings. Delays in registration can significantly affect the possibility for other Member States to determine who is responsible if a person moves from one Member State to another and applies for protection again. Therefore, taking action to limit such delays is also important for achieving the objectives of the Dublin Roadmap.

The practices outlined in this document will be analysed within the Contact Committee on the Dublin III Regulation and updated regularly.

([5]) evaluation_of_the_implementation_of_the_dublin_iii_regulation_en.pdf (europa.eu) evaluation_of_the_dublin_iii_regulation_en.pdf (europa.eu)
([6]) https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS_STU(2020)642813_EN.pdf
([7]) According to Article 20(2) of the Dublin III Regulation.

## OBJECTIVE 1: LIMITING ABSCONDING

*Providing better information to the applicants on the Dublin procedure*

The misconceptions of what awaits the applicant after the transfer, and sometimes more generally a lack of provision of information on the application of the Dublin III Regulation, could contribute to the absconding of applicants. It is important to highlight that Article 4 of the Dublin III Regulation sets out the obligations of the Member States to provide information to the applicants. The following practices focus on how additional information could effectively be presented, i.e., the means, the timing and what it should include, in an applicant-friendly manner, in order to facilitate the cooperation of the applicant throughout the procedure.

The following practices that have been identified so far in the implementation of the Dublin Roadmap could improve the awareness and the understanding of the applicants about the Dublin procedure and thus increase their willingness to be transferred:

- Provision of specific information to applicants on the responsible Member State, in particular how the transfer will be organised, access to the asylum procedure and the reception system in the responsible Member State, with a view to reassure the applicant, allowing him/her to raise concerns regarding the transfer (AT, BE, DK, LI, LT, MT, PT).
- Possibility for the applicant to contact the Dublin unit of the transferring Member State by email to request information about their application or even to request a meeting (MT, LT).
- Individualised preparation of the transfer for each applicant by setting up a pre-transfer interview where the reasons for the transfer decision is explained, specific information is provided on the different steps to be taken before, during and after the transfer, and the possibility for the applicant to raise concerns and ask questions, including transfer requirements/conditions and/or flight information and other procedural questions (BE, CH, DK, MT, LT, NL).
- Provision of information to the applicants on their obligation to remain in the Member State where they lodged their application pending the examination of that application (AT, SI, BG), including by means of a separate declaration of rights and duties that applicants are asked to sign, and in addition, making the necessary information available in the common areas of the reception centres, thus ensuring that the information is visible to anyone who is accommodated in the centre (BG).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Providing for individualised information or communication channels for the applicants throughout the Dublin procedure, including possibility for Q&A sessions with applicants to be transferred under the Dublin Regulation.
- Developing additional targeted declarations focusing on certain obligations, such as the obligation to remain in the Member State where the application is lodged during its examination, to be signed by applicants in the Dublin procedure.
- Distributing brochures and/or introducing information boards in the reception centres.
- Organising pre-departure interviews with the applicants.

*Preparing the Dublin transfer better*

Absconding continues to represent a significant challenge, both for the EU as a whole because applicants move unauthorised between Member States, and for the effective functioning of the Dublin system. Assessment of the "risk of absconding", the application of alternatives to detention and the average time necessary to prepare and execute a Dublin transfer, especially in case of an appeal, remain key drawbacks. In addition, measures to ensure that the applicant is present in the responsible Member State is of key importance to limit unauthorised movements in the first place. The following practices that have been identified so far might impact positively the preparation of transfers in the Member States ([8]):

- Alternatives to detention:
  - Designation of an area in which the applicant must remain present:
    - If the applicant does not present herself/himself to the accommodation centre within 3 days, the applicant is considered as not complying with his or her obligations and more coercive measures could be applied to successfully carry out the transfer (RO).
    - Applicants are designated a specific geographical area in the Member State where they are allowed to move freely. If they go outside this area and are apprehended by the police, they may be detained (AT, BG).
  - Obligation to report frequently to the authorities, including at the designated reception centre (AT, BG, FI, LT, LU, PL, NL, SE), in particular:
    - Introduction of an "entry-exit system" to monitor the presence in the reception centre (BG).
    - Daily self-registration at the reception centre and transmission of the list of applicants residing in the centre routinely to the Dublin unit to determine which applicants are still residing in the centre or are no longer present in the centre (LU).
    - Assignment of specific employees to check whether all applicants are in their designated area every day. If they are not present within the specific timeframes in which they are obliged to be present in the reception centre, a protocol is activated and the applicants are informed that further measures can be taken, including detention (BG).
    - Obligation to contact the government once a week in order to get social welfare benefits, together with the obligation to report to the reception centre in a regular manner (CH).
- Assistance by staff to carry out the transfers to guarantee that the transfer is completed (AT, BG, DK, FI, LI).
- National police assisting the transfer do not wear a uniform for transfer (BG, DK, LI).
- Prioritisation of Dublin appeals by national courts and tribunals to ensure that requests for suspensive effect or the final decision on an appeal or review (in case suspensive effect is granted) are taken as quickly as possible (CH, CZ, DK, EL, FI, IS, LI, LU, LV, NO, NL, RO, SE). Decisions on the suspensive effect on the same day through a standby system where a judge and clerk address interim requests. (FI).

([8])These practices must be seen in combination with the requirements set out in the Reception Conditions Directive, and for Dublin cases, with Article 28 of the Dublin III Regulation, namely that the objective criteria for considering that there is a risk of absconding shall be defined by national law, and this risk must be significant in order to detain an applicant to secure the transfer procedures.

- Automatic referral to the Asylum Appeals Board when a transfer decision is taken, to accelerate the Dublin procedure by providing for an automatic appeal, thus shortening the length of that procedure (IS).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Introducing reporting obligations for applicants at short intervals, supported by a mechanism for effective monitoring of their presence and proportionate consequences in accordance with the Reception Conditions Directive if those obligations are not met.
- Applying IT tools and other technical solutions to oversee effectively and proportionately the presence of the applicant for the transfer, e.g., "entry-exit systems", etc.
- Making use of different types of alternatives to detention, e.g., designation to specific areas, registration mechanisms, etc.
- Designating officials to oversee the transfer at every stage.
- Improving the collection of information at every stage of the procedure by introducing standardised models for cooperation and exchange of information between the national authorities.
- Providing for the specific treatment of Dublin appeals, e.g., prioritisation of cases, decisions on suspensive effect taken in the shortest possible period of time, etc.

## OBJECTIVE 2: IMPROVING COMMUNICATION BETWEEN THE MEMBER STATES

The effective implementation of the Dublin III Regulation, especially when it comes to transfers, is fully dependant on the level of cooperation among the Member States. The level of cooperation itself depends on the mutual trust and mutual understanding as well as on the existence of a structured framework for cooperation and communication. The increased volume of information exchanged between Member States might also impact the speed and the quality of the communication. Exploring new channels for general communication and developing the existing ones are crucial. In light of this, the following practices that have been identified so far can potentially enhance the cooperation among the Member States:

- Establishment of bilateral arrangements with other Member States to enhance cooperation on Dublin transfers, in particular with neighbouring Member States (AT, BE, BG, CH, CZ, DE, EE, FR, HR, HU, IT, LI, LU, NL, PT, RO, SI, SK).
- Designation of liaison officers facilitating the exchange of information on individual Dublin cases, and the bilateral cooperation on Dublin transfers in general (AT, BE, CH, DE, FR, NL).
- Organisation of bilateral fact-finding missions to evaluate the asylum procedure and reception facilities for Dublin returnees (BE, BG).
- Bilateral meetings between Dublin units in neighbouring countries on an annual basis to discuss jurisprudence and common challenges (CH, LI, LU, BE, NL).
- Introduction of an additional email address/point of contact available for urgent cases (BG, CH, EE, FR, LT, LU, NL, RO, SE, SK), and the identification of a point of contact for general communication outside of DubliNet (NL).

- Designation of senior case workers specialised on enhancing communication and cooperation between Member States in the Dublin units (BE).
- Caseworkers in the Dublin unit specialised on particular Member States being assigned the direct contact with the respective Dublin unit (CH).
- Inclusion of information in writing, in each acceptance of a take back request, about possible ongoing Dublin procedures with other Member States, and the time limits for those procedures so that responsibility may be easily established (to facilitate the implementation of joined cases C-323/21, C324/21 and C-325/21, B., F. and K.) (RO).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Entering into bilateral arrangements under Article 36 of the Dublin III Regulation.
- Designating liaison officers.
- Organising regular bilateral meetings.
- Creating an alternative communication channel for flagging cases where there are issues that need to be solved immediately concerning an imminent transfer ([9]).
- Designating incoming and outgoing cases to and from individual Member States to specific caseworkers, specialising them on that particular Member State.

## OBJECTIVE 3: OVERCOMING PRACTICAL OBSTACLES WHEN IMPLEMENTING TRANSFERS

During recent years, the EU has faced a significant raise in the number of applications for international protection which has put the Dublin system under heavy pressure. Transferring an applicant as quickly as possible to the Member State responsible is crucial to avoid backlogs in the national systems, as well as to limit keeping applicants in limbo and with no decision in the substance of their applications for long periods of time. Flexibility is necessary both in the responsible and in the transferring Member State so that transfers can easily be carried out, and to overcome practical obstacles in a more structured way. The resources within the transferring and the responsible Member State need to match the increased volume of Dublin cases. As these measures require both immediate or short-term improvements and long-term planning on the necessary capacity, the following practices have been identified so far:

([9]) Excluding any personal data on the applicant, which would require the information to be sent through DubliNet.

*Increasing flexibility in the Member States for incoming and outgoing transfers*

- Group transfers or charter flights allowed (AT, BE, BG, CH, ES, FI, HR, HU, LU, LV, MT, RO, SK).
- Arrival periods increased so that transfers can be carried out after working hours, in particular for Member States with limited available flights (AT, BE, BG, CY, DK, EE, ES, FI, HR, HU, MT, PT, RO, SE, SK).
- Transfers to more than one designated place allowed (AT, BE, CH, DK, ES, FI, FR, IT, LT, LU, NL, SE, SI), in particular:
  - Allowing land transfers (AT, BE, CH, ES, FI, FR, HR, LT, LU, NL, SI, SK), including with Member States without common borders (SI).
  - Allowing transfers by sea (LT).
- Transfers at the request of the applicant ([10]) encouraged if the Member State of destination agrees (LT).
- Removal of limitations on the number of incoming transfers that can be organised per day (BG, FR, MT, PT).
- Reduced period for the transferring Member State to notify the responsible Member State of a Dublin transfer, in particular for cases where the transfer time limit is approaching, or the person is detained (HU).
- Proposal by default of alternative dates that suit both Member States for the transfer when the responsible Member State cannot receive the transfers during the suggested date (BG).
- Adoption of national measures whereby a fixed day per week will be set for incoming transfers to be received after working hours (FI, LV).
- State-owned planes used to carry out charter flights (FR, SK).
- Transfers carried out by a designated Return unit to enhance the applicant's cooperation (DK).
- Flight bookings handled by the Dublin unit to streamline the procedure (CZ, LI).
- Inclusion of pictures of all accompanying minor children subject to a Dublin transfer in the laissez-passer documents of one of the parents or another adult responsible (ES).

*Addressing capacity limitations and long-term planning*

- A Dublin reception centre set up at the airport for applicants with a category 1 Eurodac hit in another Member State and the fast-tracking of these cases. Staff from the Dublin unit is present, conducting interviews within three or four days from arrival and notifying applicants of the transfer decisions, along with case managers from the responsible authority to encourage voluntary cooperation. An initial assessment of such a system currently in place indicates that this shortens the Dublin procedure and increases the number of voluntary transfers (BE).
- Procedures launched to increase accommodation for applicants under the Dublin procedure (BE, CH).
- Training of staff from other units to deal with Dublin-related issues to guarantee sufficient capacity through replacement of staff when/if required (EE, LI).
- Organisation of staff availability that ensures that at least one staff member is always available for transfers (DK, LI).

([10]) In accordance with recital 24 of the Dublin III Regulation and Article 7(1)(a) of the Commission Implementing Regulation (EC) No 1560/2003, i.e the transfer may be carried out at the request of the applicant, by a certain specified date.

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

1. ***For the incoming transfers:***

- Introducing several simultaneous measures to reach a higher level of flexibility, i.e., no daily limits for incoming transfers, setting up possibilities for arrival after working hours – as a minimum, on certain days of the week.
- Exploring possibilities for using more than one place of arrival, in particular through designating several airports, allowing transfers at land borders, including with Member States without common borders, or allowing sea transfers where applicable.
- Being proactive in suggesting alternative dates and places of arrival if the suggested date is not possible.

2. ***For the outgoing transfers:***

- Using State-owned planes for the transfers, if necessary.
- Simplifying the national procedures for making travel arrangements.
- Assigning a sufficient number of officials to accompany the transfers, where necessary.
- Deploying caseworkers from the Dublin units to the reception centres.

3. ***Other measures:***

- Establishing specific Dublin reception centres in the vicinity of the places where outgoing transfers are carried out (e.g., close to airports).
- Increasing accommodation to allow for a sufficient number of incoming transfers.

## OBJECTIVE 4: ENSURING SUFFICIENT RESOURCES TO EFFECTIVELY IMPLEMENT DUBLIN TRANSFERS

The current practice of implementing Dublin transfers shows that the more time it takes to carry out a transfer, the higher the possibility that the transfer would not be successfully executed. The implementation of a Dublin transfer requires the application of different internal procedures, following different steps and ensuring interaction between different actors at the national level. As some of these procedures and internal rules have been established at a time of lower numbers of applications for international protection, they may need to be revised and upgraded to cater for the current migratory pressure and volume of cases handled by the Dublin units. Having sufficient and well-trained staff, as well as effective and streamlined procedures supported, where possible and necessary, by state-of-art technologies, and different IT solutions could significantly improve the speed and the quality of the Dublin procedure, allowing the national Dublin units to adapt quickly and effectively to the current needs. The following practices have been identified so far in this regard:

*Staffing*

- Recruitment of additional staff (AT, BE, CH, CY, DE, EE, ES, HR, IE, LT, NO, SK) or providing flexible solutions to enhance the capacity of the Dublin unit through secondments between authorities or mobility within the respective asylum or immigration service (EE, FI, NL).
- Modernisation of the implementation plan intended to increase the capacity for processing applications for international protection (IE).

*Training*

- EUAA and national training modules made mandatory (or highly encouraged) and accessible to staff (BE, BG, CH, CY, CZ, EL, ES, FI, HR, HU, IS, IT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK).
- Provision of simplified national training modules (including training on the national case management system) to new staff upon arrival in the Dublin unit, and more comprehensive EUAA training modules after 6-12 months (FI, NO, PL).
- Organisation of training cycles for persons daily applying the Dublin Regulation (prefectures, Dublin regional services and the Dublin unit). These training courses also make it possible to raise awareness of the Dublin system to public officials working indirectly in connection with the Dublin Regulation (FR).
- Appointment of a national trainer trained by EUAA to conduct annual trainings for both new and experienced staff members (BG).
- Development of a shadowing (buddy) system so that experienced colleagues can follow-up on work being implemented by new colleagues (BE).
- Organisation of Dublin-specific trainings for all relevant staff which could facilitate early identification of Dublin cases by default and/or upon request if needed, more specifically for:
  - First contact officials (BG, FR, IT, IS, LV, PL, RO);
  - Border guards (FI, PL);
  - Police officials (FI, IT);
  - Registration officers (RO);
  - Staff at the reception centres (BG);
  - Personnel in detention centres (CZ);
  - Staff in other units responsible for examining the application on the merits (HU).

*Guidelines and Protocols*

- Development of guidelines to streamline and enhance the application of the Dublin procedure, in particular:
  - Guidelines and trainings shared with personnel responsible for registering applications (HU).
  - Internal guidelines shared with other relevant units to facilitate the identification of possible Dublin cases (HU).
  - Protocol/guidelines for the outgoing transfers developed (ES).
  - Extensive internal guidelines developed and updated regularly to reflect new jurisprudence and new workflows (AT).
  - Internal guidelines to ensure consistency throughout the national authorities responsible for applying the Dublin Regulation (CH, DE, EL, HU).
- Checklists to help first contact officials in identifying possible Dublin cases (DE, SE).

- Development of questions for the personal interview pursuant to Article 5 of the Dublin Regulation, in line with EUAA guidelines (BE).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Recruiting additional staff in the Dublin unit to allow for effective organisation of the workflow.
- Providing more flexibility within the asylum system by facilitating the outsourcing/sharing of staff among different units.
- Introducing regular training for all staff with a focus on specific aspects of the Dublin procedure depending on the staff needs.
- Attending systematically Dublin-related training for staff working in the reception centres, detention facilities, immigration and border authorities or any other national authorities that have responsibilities under the Dublin Regulation.
- Developing modules/platforms for exchange of information at national level on Dublin cases and sharing best practices among staff.
- Developing and disseminating checklists and guidelines to improve the identification of possible Dublin cases.

*Enhancing the structure and functioning of the Dublin units*

- Assignment of caseworkers to individual cases and not to tasks, i.e., caseworkers will focus on individual cases taking all the procedural steps on the respective case and not dividing them according to specific tasks within an individual case (LU).
- Establishment of a hybrid structure: all the staff are allocated common operational tasks whilst at the same time each staff member is specialised on a specific subject matter (ES).
- Reorganisation of the Dublin unit in accordance with the steps under Standard Operating Procedures, structuring the work within the unit (EL).
- Centralised and specialised internal organisation of the Dublin unit with six branch offices taking care of all matters relating to the Dublin procedure itself, including incoming and outgoing requests and coordination of Dublin transfers (DE).
- Decentralised Dublin unit with a small team at central level which deals with incoming cases. Outgoing cases are handled by the several Dublin units across the country which function as a network steered by the central team (FR).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Creating internal divisions allowing specialisation in different parts of the Dublin procedure, i.e., outgoing requests, incoming requests, transfers, absconding, cooperation with other Member States, etc.
- Adapting the national system of the Member State to the current needs, e.g., establishing a centralised system with a strong specialisation role or setting up a decentralised system with a strong central coordination unit.

*Digitalisation*

- Digitalisation and centralisation of the asylum case management through IT systems allowing for more efficient processing of Dublin cases (AT, BE, DE, DK, EE, EL, ES, FI, FR, HU, IS, IT, LU, NL, NO, RO, SE, SI, SK).
- Integration of a Share-Point system with other asylum and migration entities, which incorporates different modules for different purposes, including the asylum procedure, Dublin procedure, Eurodac records, reception, immigration status, detention, boat arrivals etc (MT).
- IT case management system updated in real time allowing for up-to-date information on the status of Dublin transferees (FI).
- Access to all IT systems from laptops through the direct access to databases (FI).
- Automatic calculation of all the time limits in the procedure through the Dublin IT system (FI).
- IT systems updated to notify case workers by email of the approaching deadlines for submitting requests, for transfers, etc. This system will be linked with other databases to ensure that all the information is centralised whilst ensuring that it is secure (SI).
- Development of new tools for the better management of both outgoing cases and appeals against transfer decisions, and new processes and tools to speed up the procedure and comply with the time limits (IT).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Developing centralised case management systems.
- Ensuring access to all relevant information for assessing Dublin cases within one common system.
- Introducing dedicated secure platforms for exchange of information among national asylum and migration authorities.
- Designing and upgrading dedicated databases to improve the identification of potential Dublin cases and follow up measures, including by introducing technical possibilities for flagging urgent cases, as well as functionalities notifying approaching deadlines.

*Workflows*

- Adoption of guidelines for standard operating procedures to structure the workflows (EL).
- Possibility to make the initial registration outside of working hours (LI).
- Deployment of Dublin experts at the reception centres to screen files that will subsequently be handled by the Dublin unit (CY, SI).
- Age assessments fast-tracked for Dublin applicants, where necessary and appropriate (CY).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Developing guidelines and/or Standard Operating Procedures to streamline the processes and manage the workflows more effectively.

- Providing for possibilities that some procedural steps can also be done outside of working hours.

*Coordination (within Member States)*

- Regular meetings between the national institutions and services responsible for implementing the Dublin procedure (AT, LI, NO).
- Possibilities for direct contact between different services and for establishing relations on an individual basis with police and other institutions to facilitate the whole Dublin procedure (MT, LT, SI).
- Established points of contact with the Border Police for transfers (SK).
- Organisation of visits for the Dublin unit to the Border Guard premises and visits in some reception centres so that staff will be familiar with all systems (PL).
- Dublin unit and other immigration or border services situated in the same building to enhance efficiency of the whole Dublin procedure (EE, FR, LI, PT, SI).
- Organisation of a "Dublin Day" to engage and inform stakeholders about the Dublin procedure (NL).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Designating specific contact points in every service that is competent to implement the Dublin procedure.
- Organising recurring meetings between the national services competent to implement the Dublin procedure.
- Locating the national services responsible for implementing the Dublin Regulation in close proximity.
- Providing possibilities for direct contact between staff of different services on operational matters.

## OBJECTIVE 5: INCREASING COMPLIANCE WITH EU LAW, INCLUDING COURT RULINGS

The application of the Dublin III Regulation has been subject to many rulings of the Court of Justice of the European Union in recent years and it is of paramount importance that Member States ensure compliance with those. The increased numbers of applications for international protection have led to increased workload for both the Dublin units and the judiciary system. Ensuring specialised and effectively structured divisions within the national courts is equally important for the successful and correct implementation of the Dublin procedure. This also requires objective and reliable information to be available to the national courts when deciding on an appeal or review against a transfer decision. In addition, specialised trainings and seminars for judges also contribute to increased compliance with EU law. The following practices have been identified so far in this regard:

- Organisation of specialised Dublin trainings for judges provided by the EUAA (IT, RO, SI).
- Signature of a Memorandum of understanding between the EUAA and the National school for judges, which envisages cooperation and training for judges (IT).

- Frequent organisation of trainings/seminars for judges and lawyers, by the national authorities in cooperation with non-governmental organisations, to raise awareness about the actual migration situation in the EU, the jurisprudence of the Court of Justice and recent developments in the Common European Asylum System (RO).
- Development of a national repository incorporating a forum/chat where the decentralised staff implementing the Dublin Regulation in the regions will be able to discuss with each other and with the centralised Dublin unit; good practices are flagged, and staff are provided with the possibility to identify changes and provide solutions (FR).
- Organisation of regular meetings (twice a month) between representatives from the Unit for General Judicial Cases and the specialised unit in the Appeals Board (including all case workers and relevant board leaders) to provide updated information about new rulings of the Court of Justice and other relevant EU law updates, etc. (NO).
- Adoption of a national Dublin appeal database (SI).
- Presentation of additional reports to the courts at the appeal stage by the Dublin unit with updated country specific information on the responsible Member State (CZ, HR).
- Establishment of specialised units at appeal courts for Dublin cases (AT, CH, DK, IT, LI, NO, SE):
  - Specific Court Chamber dealing with all Dublin cases (AT): the Chamber consists of 10 judges, specialised in Dublin cases, cases where an application is rejected as inadmissible because the person has already been granted international protection in another Member State, and visa cases.
  - Specialised unit within the Migration Court handling all Dublin cases: the unit engages five judges, all of whom are specialised in questions related to the Dublin Regulation (SE).
  - Specialised sections in the court dealing mainly with asylum and Dublin cases (CH).
  - Specialised section on migration within the national Civil Court responsible for the appeal/review of transfer decision (IT).
  - Establishment of an independent, quasi-judicial body specialised in the field of asylum, including cases concerning transfers pursuant to the Dublin Regulation (the chairperson of the Refugee Appeals Board must be a High Court judge or a Supreme Court judge, and the deputy chairpersons must be judges, while the other members must be attorneys or serve in the Department of the Ministry of Immigration and Integration) (DK).

**Based on the practices listed above, the following measures have been identified as capable of reaching the above objective:**

- Providing specialised training for judges and lawyers on the Dublin III Regulation.
- Organising seminars and workshops for discussing the recent CJEU rulings.
- Developing mechanisms for raising awareness of the national courts about the updated information on the responsible Member State.
- Establishing units specialised on Dublin cases and/or asylum within the national courts.

# ANNEX

## Compilation of the case law of the Court of Justice of the European Union ("the Court") regarding the interpretation of provisions of 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 (recast) ([11]) ("Dublin III Regulation")

### *Article 1 – subject matter*

([11]) The present document has been compiled by the Commission services. Only the Court of Justice of the European Union is competent to give a final binding interpretation of provisions of Union law. Some judgments of the Court on the interpretation of certain provisions may have an impact on the interpretation of other provisions that the Court may have given in earlier judgments. The document contains also references to judgments in which the Court interpreted the Dublin II Regulation (Council 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), the Implementing Regulation (Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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), the Charter of Fundamental Rights of the European Union (2012/C 326/02), the Reception Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers), the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted), the Asylum Procedures Directive (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status), the 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)), the Visa Code (Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas), the Schengen Borders Code (Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders) and the Eurodac Regulation (Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)).

**C-620/10, *Kastrati* (3 May 2012) ([12])**

The question for the Court was whether the Dublin Regulation remains applicable where the applicant withdraws his or her application for international protection ([13]) before the Member State responsible for examining that application has agreed to take charge of the applicant for international protection ([14]). The Court replied to this question in the negative.

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***Article 3(1)***

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**Joined cases C-323/21, C-324/21 and C-325/21, *B, F & K* (12 January 2023) – first question in C-323/21 and C-325/21 and the only question in C-324/21**

*The questions related to the expiry of the time limits set out in Article 29, but it should be noted that the Court also attached importance to the essential principle underlying the Dublin Regulation, which is set out in Article 3(1), namely that the application must be examined by a single Member State only, which means that only one Member State can be determined as being responsible for examining an application at any given time. See below more information under Article 29.*

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***Article 3(2) cf. Article 4 of the Charter of Fundamental Rights of the European Union ([15])***

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**Joined cases C-411/10 and C-493/10, *N.S. and M.E. and others* (21 December 2011) – second, third, fourth and sixth question in C-411/10 and both questions in C-493/10**

*This case-law, concerning the interpretation of Dublin II Regulation, has been codified in the second and third subparagraphs of Article 3(2) of the Dublin III Regulation. However, given its fundamental importance for the interpretation of the Regulation and Article 4 of the Charter, it is necessary to summarise the Court's reasoning regarding the principle of mutual trust and the risk of inhuman and degrading treatment in the Member State responsible. The Court's reasoning regarding the determination of responsibility when it is impossible to transfer the applicant to the Member State primarily designated as responsible has been codified in Article 3(2) of the Dublin III Regulation.*

The main question for the Court was whether the transferring Member State is obliged to accept responsibility for examining the application under Article 3(2) of Council Regulation (EC) No 343/2003 where the transfer of the applicant to the Member State

([12]) This case concerned the interpretation of the Dublin II Regulation (Council 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).
([13]) Hereinafter referred to as « application» throughout the present document.
([14]) Hereinafter referred to as « applicant » throughout the present document.
([15]) Charter of Fundamental Rights of the European Union (2012/C 326/02).

responsible would expose him or her to a risk of violation of his or her fundamental rights, in particular the rights set out in Articles 1, 4, 18, 19(2) and/or 47 of the Charter, and/or to a risk that the minimum standards set out in the Asylum Procedures Directive, the Qualifications Directive and the Reception Conditions Directive ([16]).

The Court noted that the Dublin system forms part of the Common European Asylum System (CEAS), which was conceived in a context making it possible to assume that all the participating States, whether Member States or third States, observe fundamental rights, including the rights based on the Geneva Convention and the 1967 Protocol, and on the ECHR([17]), and that the Member States can have confidence in each other in that regard. It is precisely because of that principle of mutual trust that the EU legislature adopted the Dublin II Regulation in order to rationalise the treatment of the applications to international protection and to avoid blockages in the system resulting from the obligation to examine multiple claims by the same applicant, and in order to avoid forum shopping.

However, the Court acknowledged that it cannot be ruled out that the asylum system may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that applicants may be treated in a manner that is incompatible with their fundamental rights, when transferred to that Member State. Therefore, a conclusive presumption that the applicant's fundamental rights will be observed in the Member State primarily responsible for his application is incompatible with the duty of the Member States to interpret and apply the Dublin II Regulation in a manner consistent with fundamental rights.

The Court referred to the case law of the European Court of Human Rights ('ECtHR')([18]), relating to Article 3 of the ECHR, which must be taken into account when interpreting Article 4 of the Charter, where the ECtHR assessed whether the transferring Member State knew or ought to have known that the applicant had no guarantee that his application would be seriously examined by the responsible Member State, and whether it knowingly exposed him to degrading detention and living conditions. The Court noted that the elements taken into account by the ECtHR were: regular and unanimous reports of international non-governmental organisations showing the practical difficulties in the implementation of CEAS in the responsible Member State, correspondence sent by the UNHCR to the transferring Member State, and also the Commission reports on the evaluation of the Dublin system and the proposals for recasting the Dublin II Regulation in order to improve the efficiency of the system and the effective protection of fundamental rights. That information made it possible for the transferring Member State to assess the functioning

([16]) The Reception Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers), the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted) and the Asylum Procedures Directive (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status).

([17]) The 1951 Geneva Convention and the 1967 Protocol relating to the Status of Refugees ('the Geneva Convention'), and on the European Convention on Human Rights ('ECHR').

([18]) Particularly M.S.S. v. Belgium and Greece, GC, Application No. 30696/09, judgment of 21 January 2011.

of the asylum system in the responsible Member State, and to evaluate the risks the applicant would face if transferred there. The Court concluded that Member States may not transfer an applicant for international protection where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the applicant would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

However, the Court highlighted that it cannot be concluded that any infringement of a fundamental right by the Member State responsible will affect the obligations of the other Member States to comply with the provisions of the Dublin II Regulation. At issue here is the raison d'être of the European Union and the creation of an area of freedom, security, and justice and, in particular, the Common European Asylum System, based on mutual confidence and a presumption of compliance, by other Member States, with European Union law and, in particular, fundamental rights.

In addition, it would not be compatible with the aims of the Dublin II Regulation were the slightest infringement of Directives 2003/9, 2004/83 or 2005/85 ([19]) to be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible.

**C-578/16 PPU, *C.K.* (16 February 2017) – second, third and fourth questions**

The question for the Court was whether a transfer of an applicant with a particularly serious mental or physical illness, which would result in a real and proven risk of a significant and permanent deterioration of the person's state of health, would constitute inhuman or degrading treatment pursuant to Article 4 of the Charter. The Court replied to this question in the affirmative.

The Court reaffirmed that the Dublin III Regulation must be interpreted in a manner that is consistent with the fundamental rights guaranteed by the Charter. In that regard, the prohibition of inhuman or degrading treatment or punishment in Article 4 of the Charter is of fundamental importance, given its absolute nature and that it is closely linked to the respect for human dignity foreseen in Article 1. Therefore, even if there are no substantial grounds for believing that there are systemic deficiencies in the responsible Member State, the transfer of an applicant within the framework of the Dublin III Regulation can take place only in conditions which preclude that transfer from resulting in a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

([19]) The Reception Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers), the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted) and the Asylum Procedures Directive (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status).

The Court noted that, in accordance with the principle of mutual trust, there is a strong presumption that the medical treatments offered to applicants in the Member States, including the responsible Member State, will be adequate, given that Member States bound by the Reception Conditions Directive ([20]) are obliged to give applicants the necessary health care and medical assistance. This includes at least emergency care and essential treatment of illnesses and of serious mental disorders.

However, the Court noted that it cannot be ruled out that the particularly serious state of health of an applicant may entail that the transfer itself leads to a risk of inhuman or degrading treatment, irrespective of the quality of the reception conditions and the care given to applicants in the responsible Member State. According to the case law of ECtHR ([21]), which must be taken into account when interpreting the Charter, the suffering that flows from naturally occurring illness, whether physical or mental, may be covered by Article 3 of the ECHR if it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible, provided that the resulting suffering attains the minimum level of severity required by that article. If the transfer of an applicant with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in his state of health, that transfer would constitute inhuman and degrading treatment.

The Court noted that if the person concerned provides objective evidence, such as medical certificates, which is capable of showing the particular seriousness of his or her state of health and the significant and irreversible consequences the transfer can have, the national authorities and the courts must assess the risk that these consequences could occur, and must eliminate any serious doubts about the impact of the transfer on the person's state of health. In particular in the case of a serious psychiatric illness, the authorities must consider both the consequences of transporting the person concerned from one Member State to another, and all the significant and permanent consequences that might arise from the transfer.

Specifically, regarding mental illnesses with suicidal tendencies, the Court noted that the ECtHR has held that a State can carry out the transfer of a person who threatens to commit suicide if the authorities take concrete measures to prevent the realisation of those threats. The Court noted that such measures are foreseen in Article 8 of the Commission Implementing Regulation ([22]), where the transferring Member State may cooperate with the responsible Member State to ensure that the applicant receives health care during and after the transfer. In this situation, the transferring Member State must organise the transfer in such a way that adequate medical staff accompanies the applicant during transportation

([20]) 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)).

([21]) Particularly *Paposhvili v. Belgium*, GC, Application No. 41738/10, judgment of 13 December 2016.

([22]) The Implementing Regulation (Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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).

with the necessary equipment, resources and medication, to prevent that his or her health worsens or that he or she acts violently towards him or herself or other persons. The transferring Member State must also ensure that the applicant receives care upon arrival in the responsible Member State, pursuant to Articles 31 and 32 of the Dublin III Regulation.

The Court noted that the authorities of the Member State concerned, including the courts, must verify if the precautions envisaged by the Dublin III Regulation can appropriately and sufficiently protect the person's state of health. If yes, they must ensure that those precautions are implemented. If no, the transfer must be suspended for as long as his health renders him or her unfit for transfer. If the situation is not expected to improve in the short term, or the suspension would risk worsening the situation, a Member State may, upon its own discretion, decide to apply Article 17(1). In any event, if the transfer is not carried out within the six months' period set out in Article 29(1), responsibility will eventually shift to the transferring Member State.

Finally, the Court noted that this interpretation fully respects the principle of mutual trust, given that this interpretation only ensures that exceptional situations such as those at issue are duly taken into account by the Member States. If a Member State nevertheless would proceed with the transfer, the inhuman or degrading treatment would be attributable to the authorities of the transferring Member State alone not the Member State responsible.

**C-661/17, *M.A.* (23 January 2019) – see '*Article 27(1) cf. Article 17(1)*' and C-163/17, *Jawo* (19 March 2019) – third question**

The question for the Court was whether a transfer of an applicant to the responsible Member State is precluded if the living conditions he or she could be expected to encounter, in case he or she is granted international protection in that Member State, would amount to inhuman or degrading treatment. The Court replied to this question in the affirmative.

The Court noted that the Dublin III Regulation must be interpreted in a manner that is consistent with the fundamental rights guaranteed by the Charter, in particular Article 4, which prohibits, without any possibility for derogation, inhuman or degrading treatment in all its forms. It is therefore closely linked to the respect for human dignity in Article 1.

The Court noted that the principle of mutual trust between the Member States is of fundamental importance, because it allows the creation and maintenance of an area without internal borders. In the area of freedom, security and justice, it requires that all Member States trust that the other Member States comply with EU law and particularly with fundamental rights, except in exceptional circumstances. The Court further noted that the CEAS, and in particular the Dublin III Regulation, is based on the principle of mutual trust. The aim of both CEAS and the Regulation is to streamline applications for international protection and to accelerate their examination, which is in the interests of both the Member States and the persons concerned. Therefore, it must be presumed that all Member States comply with their obligations under the Charter, the Geneva Convention, and the ECHR.

However, the Court acknowledged that it cannot be ruled out that the asylum system may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that applicants may be treated in a manner that is incompatible with their fundamental rights, if they are transferred to that Member State.

The Court noted that, due to the absolute nature of Article 4 of the Charter, in addition to situations where there are systemic deficiencies in the asylum procedure and reception conditions for applicants in the responsible Member State, a transfer is precluded in any situation where there are substantial grounds for believing that the applicant runs a risk of inhuman or degrading treatment either during his transfer, during the asylum procedure, or after the asylum procedure is concluded.

Therefore, if the applicant provides evidence to establish that such a risk exists, the national authorities and the courts must assess whether there are deficiencies, either systemic, generalised, or which only affect certain groups of people, based on objective, reliable, specific and properly updated information and having regard to the standard of protection of fundamental rights guaranteed by EU law.

In order to fall within the scope of Article 4 of the Charter, these deficiencies must attain a particularly high level of severity, which depends on all circumstances of the case. The Court noted that the high level of severity is reached where a person, who is wholly dependent on support from the State, cannot meet his most basic needs, such as for example food, personal hygiene and a place to live, because, irrespective of his or her wishes and personal choices, he or she is in a situation of extreme material poverty because of the indifference of the authorities in the receiving State, and that undermines his or her physical or mental health or puts him or her in a state of degradation incompatible with human dignity.

That threshold cannot cover situations characterised even by a high degree of insecurity or a significant degradation of the living conditions of the person concerned, where they do not entail extreme material poverty placing that person in a situation of such gravity that it may be equated with inhuman or degrading treatment. The Court therefore noted that shortcomings in the implementation of integration programmes for beneficiaries in the Member State normally responsible cannot be considered to constitute inhuman or degrading treatment. Nor can the mere fact that social protection and/or living conditions are more favourable in the requesting Member State support such a conclusion.

Nevertheless, the Court noted that it cannot be entirely ruled out that an applicant may be able to demonstrate the existence of exceptional circumstances that are unique to him and mean that, in the event of transfer to the Member State normally responsible for processing his or her application for international protection, he or she would find himself, because of his or her particular vulnerability, irrespective of his or her wishes and personal choices, in a situation of extreme material poverty meeting the aforementioned criteria, which would preclude the transfer.

***Article 6(1) – the best interests of the child***

**C-661/17, *M.A.* (23 January 2019) – see '*Article 17(1) – discretionary clause*'**

**C-262/21 PPU, *A v B* (2 August 2021) – see '*Brussels II bis Regulation*'**

***Article 8(2) – unaccompanied minor with a relative in a Member State***

**C-19/21, *I & S* (1 August 2022) – see '*Article 27(1) – scope of the right to an effective remedy*'**

***Article 8(4) – unaccompanied minor without family members or relatives in the Member States***

**C-648/11, *MA & Others* (6 June 2013)**

*This case concerned the interpretation of Article 6(2) of the Dublin II Regulation whose wording is identical to that of the current Article 8(4).*

The question for the Court was whether the Member State responsible for examining an application lodged by an unaccompanied minor who does not have family members in any Member State is the Member State where the first application was lodged, or the Member State where the most recent application is lodged and where the unaccompanied minor is present. The Court replied that it is the latter Member State.

The Court noted that the wording of the provision does not in itself establish which of the two Member States shall be responsible for examining the application. Contrary to Article 5(2) ([23]) and Article 13 ([24]), which both include the word "first", that word is not repeated in Article 6(2). The Court therefore considered that, if the EU legislature had intended to place responsibility on the first Member State in which the application was lodged, it would have used the same precise terms as in Article 13.

The Court also highlighted that the provision must be interpreted in light of its specific objective, which is to focus particularly on unaccompanied minors, who form a category of particularly vulnerable persons. It is therefore important to ensure that the determination procedure is not prolonged more than is strictly necessary, which means that, as a rule, unaccompanied minors should not be transferred to another Member State. Consequently, the taking into account of the child's best interests requires, in principle, the designation

([23]) Article 7(2) of the Dublin III Regulation.
([24]) Article 3(2) of the Dublin III Regulation.

of the Member State in which the minor is present after having lodged an application there as responsible.

### *Article 9 – family members who are beneficiaries of international protection*

**C-720/20, *RO* (1 August 2022) – see '*Article 20(3) – accompanying children*'**

### *Article 12 – residence permits and visas*

**C-646/16, *Jafari* (26 July 2017) – questions 1, 2(a) and 3(d)**

The question for the Court was whether entries into the territory of a Member State faced with the arrival of an unusually large number of third-country nationals seeking transit through that Member State in order to lodge an application for international protection in another Member State, which did not fulfil the entry conditions generally imposed in that Member State but which were tolerated, can be considered as constituting issuance of a 'visa'. The Court replied to this question in the negative.

The Court noted that the definition of a 'visa' in Article 2(m) covers both short-stay visas and airport transit visas, which are regulated by the Visa Code ([25]), and long-term visas, which fall outside the scope of the latter. The Court also noted that there are Member States that do apply the Dublin III Regulation but not the Visa Code, and visas issued by those Member States must be regarded as 'visas' within the meaning of Article 2(m) and Article 12 of the Regulation. The EU legislature has provided a definition of the term 'visa' in Article 2(m) of the Dublin III Regulation without referring to the Visa Code or any other EU act specifically governing visas. In those circumstances, the concept of a 'visa', within the meaning of the Regulation, cannot be inferred directly from those acts and must be construed on the basis of the specific definition found in Article 2(m) and the general scheme of the Regulation.

However, that definition stipulates that a visa is the 'authorisation or decision of a Member State' which is 'required for transit or entry' into the territory of that Member State or several Member States. It therefore follows from the actual wording which the EU legislature adopted that, first, the term 'visa' refers to an act formally adopted by a national authority, not to mere tolerance, and second, a visa is not to be confused with admission to the territory of a Member State, since a visa is required precisely for the purpose of such admission. In that regard, the Court also noted that the issuing of a visa, which is the subject matter of Article 12, is distinguished from actual entry or stay, which is the subject matter

([25]) The Visa Code (Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas).

of Article 13. In addition, the criterion referred to in Article 14 of the Regulation, namely entry without a visa, is indicative of the fact that the EU legislature distinguished entry from the visa itself.

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***Article 13 – irregular entry***

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**C-646/16, *Jafari* (26 July 2017) – questions 1, 2(e) and 3(a)-(c) and (h)**

**C-490/16, *A.S.* (26 July 2017) – second and third questions**

The question for the Court was whether a third-country national whose entry was tolerated by the authorities of one Member State faced with the arrival of an unusually large number of third-country nationals seeking transit through that Member State in order to lodge an application for international protection in another Member State, without fulfilling the entry conditions generally imposed in the first Member State, must be regarded as having 'irregularly crossed' the border of the first Member State. The Court replied to this question in the affirmative.

The Court noted that the concept of an 'irregular crossing' of a border is not defined in the Dublin III Regulation and it is used in Article 13(1) for the specific purpose of establishing responsibility for examining an application for international protection. The Court also noted that there are Member States that do apply the Dublin III Regulation but not the Schengen Borders Code, and entries into those Member States must be regarded as 'regular' or 'irregular' for the purpose of establishing responsibility under the Dublin III Regulation, even though the admission into those Member States is not regulated by the Schengen Borders Code ([26]). This is also supported by the fact that Article 13(1) does not refer to the Return Directive or the Schengen Borders Code, but to the Eurodac Regulation ([27]).

Therefore, within the usual meaning of the concept of an 'irregular crossing', where a person crosses the border into a Member State without fulfilling the entry conditions generally imposed in that Member State, the entry must consequently be considered as 'irregular' within the meaning of Article 13(1).

The Court noted that Member States may, by way of derogation from the rules on external border crossings, allow a third-country national to enter the territory on humanitarian grounds, on grounds of national interest or because of international obligations. However,

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([26]) The Schengen Borders Code (Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders).

([27]) The Eurodac Regulation (Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)).

the Court pointed out that such authorisation is only valid in respect of the territory of the individual Member State, and not the territory of the Member States as a whole. Otherwise, the Member State authorising such an entry would not be responsible vis-à-vis the other Member States where the person may lodge an application, which would be against the general scheme and objectives of the Regulation.

In that regard, the Court noted that there is a direct link between the responsibility criteria and the management of external borders, the latter being both in the interest of the Member State at whose external borders the border control is carried out and all other Member States that have abolished internal border controls. In addition, the criteria were established on the basis of the idea that each Member State is answerable to all the other Member States for its actions regarding the entry and residence of third country nationals and must bear the consequences thereof in a spirit of solidarity and fair cooperation. Therefore, the criteria laid down in Articles 12-14 cannot be interpreted as relieving a Member State of its responsibility where it has decided to allow a third-country national who does not hold a visa and is not entitled to the waiver of a visa to enter its territory on humanitarian grounds. The Court also noted that a third-country national admitted into the territory of one Member State, without fulfilling the entry conditions generally imposed in that Member State, for the purpose of transit to another Member State in order to lodge an application for international protection there, must be regarded as having 'irregularly crossed' the border of that first Member State, irrespective of whether that crossing was tolerated or authorised in breach of the applicable rules or whether it was authorised on humanitarian grounds by way of derogation from the entry conditions generally imposed on third-country nationals. The purpose of the responsibility criteria is not to penalise unlawful conduct of the person concerned, but to determine the Member State responsible based on the role that that Member State played when the person entered the territory of the Member States.

Finally, the Court noted that the fact that the border crossing happened during a situation characterised by the arrival of an unusually large number of third-country nationals seeking international protection does not alter that conclusion. The EU legislature has taken into account that there is a risk of such arrivals, and provided other measures to appropriately respond to those situations. That the risk is taken into account is evident from Article 33, which sets out a mechanism for early warning, preparedness and crisis management, Article 18 of the Temporary Protection Directive ([28]), which sets out that the Dublin III Regulation nevertheless applies in the event of a mass influx of displaced persons, and finally the fact that Article 3(1) of the Dublin III Regulation does not make any exceptions to its scope regarding which applications shall be subject to the responsibility determination.

([28]) Temporary Protection Directive (Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof).

## *Article 16 – dependent persons*

**C-245/11, *K* (6 November 2012)**

*This case concerned the interpretation of Article 15 of the Dublin II Regulation, which has a different wording than the current Article 16 of the Dublin III Regulation.*

The Court held that the application of this provision is not excluded by the fact that the applicant is already present on the territory in which he or she seeks "family reunification". The purpose of the provision is to allow Member States to go beyond the binding provisions that seek to preserve family unity with persons covered by the definition of 'family members' under the Regulation in order to bring other family members together on humanitarian grounds. However, it is necessary to establish that either the applicant or the person with whom he has family ties actually requires assistance, and that the person who must provide that assistance is actually in a position to do so. Finally, the Court noted that the obligation of the Member States to 'normally' bring or keep the persons together means that the Member States may derogate from that obligation only if it is justified because an exceptional situation has arisen. Consequently, where the conditions of the provision are satisfied, the Member State concerned is obliged to take charge of the person and becomes the responsible Member State.

**C-745/21, *L.G.* (16 February 2023) – second and third questions**

The question for the Court was whether Article 16(1) applies where there is a dependency link either between an applicant and that applicant's spouse, or between the unborn child of the applicant and the father of that child. The Court replied to this question in the negative.

First, the Court noted that the provision does not apply where there is a dependency link between an applicant and his or her spouse since such a dependency link is not covered by that provision.

Second, the Court noted that the provision only applies where there is a dependency link involving the applicant, whether that person is dependent on the persons listed in that provision, or that, conversely, those persons are dependent on the applicant. Therefore, it does not apply where there is a dependency link between the child of such an applicant and one of the persons listed in the provision, in this case the father of the child, who is also the spouse of the applicant.

## *Article 17(1) – the discretionary clause*

**Joined cases C-411/10 and C-493/10, *N.S. and M.E. and others* (21 December 2011) – first question in case C-411/10**

*This case concerned the interpretation of Article 3(2) of the Dublin II Regulation. However, the terms of this article coincide in essence with those of Article 17(1) of the Dublin III Regulation.*

The question for the Court was whether the decision of a Member State on whether to examine an application pursuant to Article 3(2) of the Dublin II Regulation, for which that Member State is not designated as responsible for according to the responsibility criteria, falls within the scope of EU law. The Court replied to this question in the affirmative.

The Court found that Article 3(2) grants Member States a discretionary power, which forms an integral part of the Common European Asylum System and is developed by the EU legislature. A Member State must exercise that discretionary power in accordance with the other provisions of the Regulation. In addition, the application of that provision gives rise to specific consequences, namely that that Member State becomes responsible for examining the application, and must, where applicable, inform other Member States concerned. Therefore, a Member State that exercises that discretionary power must be considered to implement EU law and must therefore also respect the Charter in those situations.

**C-528/11, *Halaf* (30 May 2013) – first question**

*This case concerned the interpretation of Article 3(2) of the Dublin II Regulation. However, the terms of this article coincide in essence with those of Article 17(1) of the Dublin III Regulation*

The question for the Court was whether Article 3(2) of the Dublin II Regulation allows a Member State, which is not responsible pursuant to the binding criteria, to examine an application where the requested Member State did not reply to the take back request and thereby tacitly accepted the request. The Court replied to this question in the affirmative.

The Court noted that it is clear from the wording of Article 3(2) that the application of that provision is not subject to any particular condition. According to the Commission proposal (COM (2001) 447 final) that led to the adoption of the Dublin II Regulation, the rule was introduced to allow each Member State to decide sovereignly, for political, humanitarian or practical considerations, to agree to examine an application even if it is not responsible under the criteria in the Regulation. Therefore, whether the requested Member State has responded to a take charge or take back request or not has no bearing on the possibility of another Member State to examine the application pursuant to this provision.

**C-578/16 PPU, *C.K.* (16 February 2017) – first question**

The question for the Court was whether the application of the discretionary clause laid down in Article 17(1) is a question of interpreting EU law within the meaning of Article 267 TFEU. The Court replied to this question in the affirmative.

The Court noted that it has already held in *N.S.* that the discretion given to Member States through this clause forms an integral part of the Dublin system, which is developed by the EU legislature. Therefore, when a Member State makes use of the discretionary clause, it implements EU law.

**C-213/17, *X* (5 July 2018) – sixth question**

The question for the Court was whether a Member State that has not received a new application, but that is applying the take back procedure under Article 24, should decide to examine the application for international protection under Article 17(1) because the requested Member State has previously surrendered the person concerned to the requesting Member State under a European arrest warrant. The Court replied to this question in the negative.

The Court noted that Article 24 does not contain any conditions for applying the take back procedure regarding how the person concerned entered the territory of the requesting Member State. Therefore, the requesting Member State can send a take back request after the person concerned has been surrendered by the requested Member State to the requesting Member State under a European arrest warrant. Additionally, the Court noted that Article 17(1) does not even allow a Member State to take responsibility for an application that has not been lodged in that Member State. Therefore, Article 17(1) cannot in any event prevent a Member State from making a take back request pursuant to Article 24.

**C-661/17, *M.A.*, (23 January 2019) – first and third question**

The first question for the Court was whether the determining Member State is obliged to examine the application for international protection under Article 17(1) where the responsible Member State has notified its intention to withdraw from the European Union. The Court replied to this question in the negative.

The Court noted that the intention to withdraw from the European Union does not have the effect of suspending the application of EU law in that Member State. Therefore, EU law continues in full force and effect in that Member State until its actual withdrawal from the EU.

The Court noted that this provision is optional and leaves it for the discretion of each Member State to decide to take responsibility for an application on the basis of political, humanitarian or practical considerations, without being subject to any particular condition. The exercise of the option afforded to Member States by the discretionary clause set out in Article 17(1) of the Dublin III Regulation is not subject to any particular condition and in principle, it is for each Member State to determine the circumstances in which it wishes to

use that option. Therefore, the fact that a Member State, designated as responsible, has notified its intention to withdraw from the European Union in accordance with Article 50 TEU, does not oblige the determining Member State to itself examine, under the discretionary clause set out in Article 17(1), the application for protection at issue.

The third question for the Court was whether Article 6(1) obliges a Member State to take into account the best interests of the child and to itself examine the application under Article 17(1). The Court replied to this question in the negative.

The Court noted that, since the application of Article 17(1) is not subject to any particular condition and, in principle, it is for the Member State concerned to determine the circumstances in which it wishes to apply Article 17(1), considerations regarding the best interests of the child can also not oblige a Member State to apply Article 17(1).

**C-745/21, *L.G.* (16 February 2023) – first question**

The question for the Court was whether Article 17(1) precludes national legislation requiring the Member State to apply that provision on the sole ground of the best interests of the child where the applicant was pregnant at the time the application was lodged, even though the criteria laid down in Chapter III indicate that another Member State is responsible. The Court replied to this question in the negative.

The Court noted that, even though a Member State is not obliged to examine an application under Article 17(1) on the basis of the best interests of the child, there is nothing preventing that Member State from doing so. Article 17(1) allows a Member State to decide, in its absolute discretion on the basis of political, humanitarian or practical considerations, to examine the application, without being subject to any particular condition. Therefore, it is for the Member State concerned to determine the circumstances in which it wishes to apply Article 17(1).

The Court found noted that Article 17(1) must be interpreted as not precluding the legislation of a Member State from requiring the competent national authorities to exercise the option permitted under the discretionary clause provided for in Article 17(1) of that regulation on the sole ground of the best interests of the child. It is for the national court to examine whether such national legislation is infringed.

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***Article 18(2)***

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**C-695/15 PPU, *Mirza* (17 March 2016) – third question**

The question for the Court was whether the procedure for examining the application must be resumed at the stage where it was discontinued by the authorities of the responsible Member State. The Court replied to this question in the negative.

The Court noted that the second subparagraph of Article 18(2) obliges the responsible Member State to complete the examination, but it does not oblige the Member State to

resume the examination at a specific procedural stage, nor prescribes the manner in which it must be resumed or deprive the responsible Member State of the possibility to declare the application as inadmissible. That provision merely guarantees that the examination of the application satisfies the requirements laid down by the Asylum Procedures Directive for first-time applications at first instance, and allows the applicant to request that a final decision regarding his application be taken, whether it be by continuing the procedure that was discontinued or by starting a new procedure that is not to be treated as a subsequent application. Further, the last subparagraph of Article 28(2) of the Asylum Procedures Directive expressly provides that Member States may allow the authority responsible for examining, at first instance, applications for international protection to resume the examination of an application at the stage at which it was discontinued, without, however, requiring them to do so.

**C-213/17, *X* (5 July 2018) – second question**

The question for the Court was whether a Member State, which had previously rejected an application on the merits and the appeal against that rejection is still pending before the national court or tribunal, but which is applying the take back procedure because responsibility has in the meantime shifted to another Member State, has to suspend the examination of the pending appeal pending the take back procedure and to terminate that examination if the requested Member State accepts the take back request. The Court replied to this question in the negative.

The Court noted that the obligations set out in Article 18(2) intend to ensure that the asylum procedure continues and do therefore not require that a Member State suspends or interrupt that procedure. In addition, the provision is addressed to the responsible Member State, by setting out procedural obligations that must be guaranteed after the transfer to that Member State.

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***Article 19 – cessation of responsibilities***

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**C-155/15, *Karim* (7 June 2016) – second question**

The question for the Court was whether the process for determining responsibility shall start anew for an application lodged after the person concerned provides evidence that he left the territory of the Member States for at least three months before lodging a new application in another Member State. The Court replied to this question in the affirmative.

The Court noted that while it is in principle the responsible Member State that shall establish that the person concerned left the territory of the Member States for at least three months, the second subparagraph requires the Member State that received the new application after the person has left the territory for at least three months to complete the process for determining responsibility on the basis of the rules laid down in the Dublin III Regulation.

*Article 20(2) – start of the determination process*

**C-670/16, *Mengesteab* (26 July 2017) – fifth question**

The question for the Court was whether an application shall be considered to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority. The Court replied to this question in the affirmative.

The Court noted that, although the wording used clearly refers to a written document, the EU legislature has not set out any procedure on how to draw up that document, or which information it should contain.

When taking into account the context of the provision and the objectives of the Regulation, the Court relied on several factors:

First, since the time between the person concerned expresses his or her intent to apply for international protection and the preparation of the report should be as short as possible, the preparation of the report is merely a formality to record the request, and must not be delayed.

Second, the purpose of the determination process is also to collect the information that is necessary to establish the Member State responsible. This includes provision of information about the responsibility criteria, the organisation of the personal interview and the possibility to provide information to the authorities, as well as the procedure for tracing family members of unaccompanied minors. However, all these mechanisms are intended to be applied only from the moment the application has been lodged. Therefore, the Court considered that to be able to start the determination process, the competent authority needs to be informed with certainty that the person has requested international protection, but it is not necessary that the written document has a precisely defined form or that it includes additional information which is relevant for applying the responsibility criteria or to examine the application on the merits.

Third, if the document in question was not sufficient to establish that the person concerned had requested international protection, the person concerned would not have effective access to important guarantees provided to applicants, such as the right to family tracing for unaccompanied minors, and the time in detention would be extended given that the maximum detention period pending the submission of a take charge request is calculated from the lodging of an application.

Fourth, the first Member State which receives an application has a specific role under the Regulation, such as the obligation under Article 20(5) to take back a person pending the determination process, and to become the Member State responsible where no Member

State responsible can be designated on the basis of the criteria listed in that regulation. To ensure the effective application of those provisions, Article 9(1) of the Eurodac Regulation provides that the fingerprints of every asylum seeker must, in principle, be transmitted to the Eurodac system no later than 72 hours after the lodging of the application. If the registration in Eurodac was delayed because the document in question would not be considered as a "report", that third-country nationals would be in practice allowed to request international protection in multiple Member States, without the risk of being transferred back to the first Member State, because it would not be possible to trace these requests in Eurodac. The Court noted that this would seriously affect the functioning of the Dublin system, and would call into question the special status the first Member State of application has.

Fifth, the objective set out in recital 5, that applications must be processed rapidly, is achieved by interpreting that the document in question constitutes a "report" in order for the determination process to start as soon as possible.

Although Article 6(4) of the Asylum Procedures Directive and Article 20(2) of the Dublin III Regulation show considerable similarities, the Court noted that those provisions differ; the first of them envisages the taking into account of a document prepared by the authorities only if it is provided for by national law.

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***Article 20(3) – accompanying children***

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**C-661/17, *M.A.*, (23 January 2019) – fifth question**

The question for the Court was whether Article 20(3) establishes a presumption that it is in the best interests of the child to treat the child's situation as indissociable from that of its parents, in the absence of evidence to the contrary. The Court replied to this question in the affirmative.

The Court noted that it is clear from the wording of the provision in question that it is only necessary to treat the child's situation separately from that of his or her parents when it is established that it is *not* in the best interests of the child to carry out the examination in conjunction with that of the child's parents. It follows from recitals 14 to 16, Article 6(3)(a) and (4), Article 8(1) and Article 11 that respect for family life and preserving the family unity is, as a general rule, in the best interests of the child.

**C-720/20, *RO* (1 August 2022) – first question**

The question for the Court was whether Article 20(3) is applicable by analogy to the situation where a child and his or her parents have lodged applications for international protection in the Member State where the child was born, but the parents have already been granted international protection by another Member State. The Court replied to this question in the negative.

The Court noted that it is clear from its wording that this provision presupposes that the family member of the child still has the status as 'applicant' and therefore it does not cover the situation where the family member has already been granted international protection. It is irrelevant whether the family members lodged applications together in the Member State where the child was born, since that Member State cannot apply the take back procedure for a person who has been granted international protection by another Member State.

The Court further noted that neither can that provision be applied by analogy because the situation of a child whose family members are applicants is not comparable to the situation of a child whose family members are already beneficiaries. The statuses of 'applicant' and 'beneficiary' are two separate legal statuses governed by different provisions of that regulation. The EU legislature has made a clear distinction between the two situations, by regulating that, where the family member is an applicant, Articles 10 and 20(3) apply, and where the family member is a beneficiary, Article 9 applies. Consequently, if Article 20(3) could be applied by analogy, it would mean that neither the minor applicant nor the Member State that granted international protection to his or her parents would be subject to the rules and safeguards laid down in the Dublin Regulation. This would entail that no take charge procedure would be applied to the child, in contrast to the situation of a child who is accompanying an applicant, who would rather be included in the already ongoing take charge or take back procedure.

In addition, the Court noted that if a transfer decision could be adopted based on the application of Article 20(3) by analogy, that decision would circumvent the strict time limits set out in the Regulation, in particular the obligation to send a take charge request within three months from the application was lodged to the Member State that had granted international protection, and that Member State would neither be informed of that decision nor be able to recognise its responsibility to examine the minor's application.

Pursuant to this latter Article 9, the Member State that granted international protection to the family member shall be responsible for examining the application lodged by the applicant, provided that the persons concerned have expressed their desire in writing.

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***Article 20(5)***

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**Joined cases C-582/17 and C-583/17, *H. & R.* (2 April 2019) – see '*Article 27(1) – scope of the appeal or review*'**

### *Article 21 – take charge requests*

**C-670/16, *Mengesteab* (26 July 2017) – fourth question**

The question for the Court was whether a take charge request can be made more than three months after an application is lodged if it is still made within two months of receipt of a Eurodac hit. The Court replied to this question in the negative.

The Court noted that it is clear from the wording of the third subparagraph of Article 21(1) that the absolute maximum time limit to make a take charge request is three months after an application is lodged ([29]). The Court highlighted that, since a Eurodac hit showing that the applicant has irregularly entered the territory of the Member States through another Member State constitutes formal proof to determine responsibility pursuant to Article 13 of the Dublin Regulation, the reference to the Eurodac hit in the second subparagraph of Article 21(1) intends to simplify the process of determining responsibility, and thereby justifies a shorter time limit than the three-month period. Consequently, the Eurodac hit cannot be considered as being supplementary to or having the effect of extending that three-month period.

### *Article 23 – take back requests*

**C-36/17, *Ahmed* (5 April 2017) – first question**

The question for the Court was whether the take back procedure set out in the Dublin III Regulation is applicable to a third-country national who has already been granted subsidiary protection by another Member State. The Court replied to this question in the negative.

The Court noted that the scope of the take back procedure is defined in Articles 23 and 24. In the former case, where the person concerned has lodged a new application in the second Member State, the take back procedure may cover only applicants whose application is under examination, third-country nationals whose application has been withdrawn, and third-country nationals whose application has been rejected. However, the Court found that a person who has been granted subsidiary protection by a Member State cannot be considered as falling within any of those categories. In addition, the EU legislator has made a clear distinction in Article 33 of the Asylum Procedures Directive between cases in which an application is not examined in accordance with the Dublin III Regulation, and cases in which an application may be considered as inadmissible because another Member State has granted international protection. Therefore, the EU legislature considered that the rejection of an application lodged by a third-country national had to be made by a decision of inadmissibility under that directive, pursuant to its Article 33, rather than by means of a decision to transfer and not to examine the application, pursuant to Article 26 of the Dublin

([29]) However, see case C-19/21, paragraphs 41 and 45.

III Regulation. The Court also noted that the objective of the rapid determination of the Member State responsible for the purpose of ensuring effective access to the asylum procedure is not compromised by this interpretation, given that the person concerned already benefits from international protection.

**C-213/17, *X* (5 July 2018) – first question**

The question for the Court was whether a Member State that fails to send a take back request within the time limit set out in Article 23(2) becomes responsible for examining the application, even though the first Member State rejected the application on the merits and the appeal against that rejection is still pending before the national court or tribunal. The Court replied to this question in the affirmative.

The Court noted that the take back procedure is applicable to a third-country national whose application has already been rejected by a Member State, including where the application has only been rejected at first instance, and even if that decision has not yet become final.

Therefore, a Member State where the new application is lodged must send a take back request within the time limit set out in Article 23(2). If no take back request is made within that time limit, the Member State where the new application is lodged will become responsible pursuant to Article 23(3). Since this rule is general and does not make a distinction between different situations, the EU legislature has decided that delays in sending a request, which can be attributed to the Member State where the new application is lodged, shall result in a transfer of responsibility even if an appeal against the rejection of the application is still pending in the first Member State.

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***Article 24 – no new application is lodged***

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**C-360/16, *Hasan* (25 January 2018) – questions 1(b), 2 and 3**

The question for the Court was whether a take back procedure may be undertaken in respect of that third-country national who, after having made an application in a first Member State, was transferred to that Member State as a result of the rejection of a fresh application lodged in a second Member State and has then returned illegally to the second Member State. The Court replied to this question in the affirmative.

The Court noted that Article 24 applies to the person concerned in the main proceedings. The analysis is not affected by the fact that that person had made, during a first stay in the second Member State, an application for international protection, which was rejected, and that there is a pending appeal against the decision rejecting the application whose bringing has no suspensive effect. That application is no longer under examination. Therefore, the situation of such a person cannot be equated to that of a person who applies for international protection. There is a specific procedure set out in Article 24 applicable to applicants such as the person concerned in the main proceedings, which involves making

a request within mandatory time limits. Therefore, the person concerned cannot be transferred to another Member State on the basis of a previously adopted transfer decision, which has already been implemented in the past, without the procedure set out in Article 24 being duly completed. Since the transfer that was previously carried out does not in itself definitely establish responsibility, it is necessary to re-examine the situation of the person concerned to verify that responsibility has not in the meantime been transferred to another Member State. The changes that may have occurred since the first transfer decision was adopted must be taken into account.

**C-360/16, *Hasan* (25 January 2018) – questions 5(a), (b), (c) and (d)**

Question 5(a): the Court was asked whether in a situation in which a third-country national has returned illegally to the territory of a Member State that has previously transferred him to another Member State, a take back request must be submitted within the periods prescribed in Article 24(2) and, if so, whether those periods may begin to run before the requesting Member State has become aware that the person concerned has returned to its territory. The Court replied to the first part of the question in the affirmative, and to the second part of the question in the negative.

The Court noted that the take back procedures must necessarily be conducted in compliance with a series of mandatory time limits. Since the EU legislature has not drawn any distinction in Article 24 of the Dublin III Regulation between situations in which a take back procedure is begun for the first time and situations in which that procedure would have to be conducted afresh as the result of the return, without a residence document, of the person concerned to the requesting Member State after a transfer, the time limits prescribed in Article 24 must therefore be complied with in the latter case as well.

Those time limits ensure that the requesting Member State initiates the take back procedure within a reasonable period, starting from the point at which it has information allowing it to submit a take back request to another Member State, the time limit applicable in that context varying according to the nature of that information. The time limits cannot, as a matter of logic, begin to run at a time when the requesting Member State did not have information allowing it to initiate the take back procedure. This is the case, not only where the requesting Member State has no knowledge of the matters establishing the responsibility of another Member State but also where the requesting Member State is not aware that the person concerned is in its territory, in a context in which the internal borders may in principle be crossed without border checks.

Finally, where a Member State has chosen not to search in Eurodac, the time limit starts to run from the moment the Member State becomes aware of (i) of the presence of the person concerned on its territory and (ii) of matters establishing the responsibility of another Member State for the person concerned.

Question 5(b): the Court was asked whether, where a take back request is not made within the periods laid down in Article 24(2), the Member State on whose territory the person concerned is staying without a residence document is responsible for examining the new application. The Court applied to this question in the affirmative.

The Court noted that, in accordance with Article 6(1) and (2) of Directive 2013/32, the Member States are, generally, obliged to register any application for international protection made by a third-country national to the national authorities falling within the scope of that directive and that they must ensure that the persons concerned have an effective opportunity to lodge their application as soon as possible. In order to ensure the effectiveness of Article 24(3) of the Regulation, this provision must be interpreted as meaning that, where the periods laid down in Article 24(2) have expired, in case the person concerned decides to lodge a new application for international protection, that Member State is responsible for examining the new application.

Question 5(c): the Court was asked whether the fact that an appeal procedure brought against a decision rejecting a first application made in a Member State is still pending should be considered as equivalent to the lodging of a new application in that Member State. The Court applied to this question in the negative.

The Court noted that Article 24(3) of the Regulation refers explicitly to the obligation of the Member State in question to give the person concerned the opportunity to lodge a new application. Therefore, the EU legislature intended that the expiry of the periods laid down in Article 24(2) should bear on the opening of a new international protection procedure, rather than on the outcome of procedures for processing applications that are under way.

Question 5(d): the Court was asked whether, where the take back request is not made within the periods laid down in Article 24(2) and the person concerned has not lodged a new application, the Member State on whose territory that person is staying without a residence document can still make a take back request. The Court applied to this question in the affirmative.

The Court noted that Article 24(3) can be distinguished from other provisions in the Regulation that regulate time limits, since the expiry of the time limits in Article 24(2) does not in itself entail transfer of responsibility to another Member State. Such a transfer of responsibility depends on whether the person decides lodging a new application in the Member State on whose territory he is staying. If he decides not to do so, it remains open for the Member State where he or she is present to take appropriate action by initiating a new take back procedure. However, Article 24(3) cannot be understood as allowing the Member State to transfer the person to another Member State, without making a take back request.

**C-213/17, *X* (5 July 2018) – fourth question**

The question for the Court was whether the requesting Member State, which had previously rejected an application on the merits and the appeal against that rejection is still pending before the national court or tribunal, has to inform the requested Member State of the fact that the appeal is still pending. The Court replied to this question in the negative.

The Court noted that the obligation of the requesting Member State is to provide information that enables the requested Member State to determine whether it is responsible for examining the application or not. In a situation in which the responsibility of the

requested Member State is based on the expiry of the periods laid down in Article 23(2) of that regulation, the fact that an appeal brought against the rejection of an application for international protection lodged previously is pending before a court of the requesting Member State is irrelevant for the purposes of determining the Member State responsible. Therefore, the information relating to such an appeal cannot be considered as useful for enabling the requested Member State to assess whether it is responsible, and therefore such information does not have to be provided pursuant to Article 24(5).

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***Article 26(1) – notification of a transfer decision***

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**C-647/16, *Hassan*, (31 May 2018)**

The question for the Court was whether a Member State can adopt a transfer decision and notify that decision to the person concerned before the requested Member State has replied, either explicitly or tacitly, to that request. The Court replied to this question in the negative.

The Court noted that according to the wording of Article 26(1) the notification of a transfer decision to the person concerned may take place only if, and therefore after, the requested Member State has agreed to the request to take charge or take back, or, where appropriate, after the expiry of the period within which the requested Member State must reply to that request. The EU legislature has established a specific procedural order between a request is accepted and the person concerned is notified of the transfer decision.

Further, Article 26(1) aims at strengthening the protection of the applicant's rights by ensuring that he or she is fully informed of all the reasons underpinning the transfer decision when another Member State has accepted to take charge of or to take back him or her, so that the applicant is able to challenge that decision before a court or tribunal and to request that the enforcement of the decision be suspended.

The Court also referred to its interpretation of the right to an effective remedy in *Ghezelbash* and *Mengesteab*, highlighting the fact that the EU legislature did not intend that the requirement of rapid processing of applications should sacrifice the judicial protection that applicants enjoy. An appeal against a transfer decision must cover, on the one hand, the examination of the application of that Regulation, concerning both the implementation of the criteria set out in Chapter III and compliance with the procedural safeguards provided for in, inter alia, Chapter VI and, on the other hand, the examination of the legal and factual situation in the Member State to which the applicant for international protection is to be transferred.

If it were to be accepted that a transfer decision may be notified to the person concerned before the requested Member State has replied to the request to take charge or take back, that could result in that person's obligation to lodge an appeal within a period ending at the time when the requested Member State is supposed to provide its reply or even before that reply has been given, since, in accordance with Article 27(2), it is for the Member States to determine the period within which the person concerned may exercise his right to

an effective remedy, the only obligation imposed by that provision being that that period is reasonable. In that situation, the transfer decision could only be based on evidence gathered by the requesting Member State, but would not include relevant information from the requested Member State, such as the date of its reply to the request to take charge or take back or the wording of the reasons for accepting that request, where its reply is explicit. Such information from the requested Member State is of particular importance in appeals brought against a transfer decision taken as a result of a take charge procedure, since the requested Member State has to check exhaustively whether it is responsible on the basis of the criteria laid down in the Dublin III Regulation and also to take account of information of which the requesting Member State is not necessarily aware.

In addition, the Dublin III Regulation does not contain a rule ensuring that the enforcement of a transfer decision is suspended until the reply of the requested Member State to the request. The possibility to notify such a decision before the reply from the requested Member State would expose the person concerned to the risk of a transfer to that Member State even before that State had given its consent in principle. Therefore, the Court did not consider it acceptable that the protection of applicants' rights would vary depending on national legislation.

Finally, the Court found that Article 26(1) also precludes the adoption of a transfer decision before the requested Member State has accepted the take charge or take back request.

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***Article 27 – effect of an appeal or review on the periods laid down in Articles 13(1) and 29(2)***

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**C-490/16, *A.S.* (26 July 2017) – fifth question**

The question for the Court was whether the time period set out in Article 13(1) and Article 29(2) continue to run in the event of an appeal against a transfer decision, including when the national court has referred the question to the Court for preliminary ruling. The Court replied to this question in the negative for Article 13(1), and in the affirmative for Article 29(2).

The Court noted that the periods which those articles lay down are both intended to limit in time the responsibility of a Member State under the Dublin III Regulation.

However, the Court highlighted that both their wording and their placement entail that they apply at two different stages of the procedure. The time limit laid down in Article 13(1) constitutes a condition for the application of the irregular entry criterion and must be observed in the procedure for determining the Member State responsible. Taking into account the rule set out in Article 7(2) that responsibility must be determined on the basis of the situation obtained when the applicant lodged his or her first application, the time limit laid down in Article 13(1) must be interpreted as meaning that, where an application has been lodged more than 12 months from the irregular crossing of an external border, the Member State whose external border has been irregularly crossed by a third-country

national can no longer be held responsible, on the basis of that provision. Consequently, the lodging of an appeal against a transfer decision, which necessarily postdates the notification of that decision and therefore the lodging of an application for international protection, cannot, by its very nature, have any effect on the running of the period laid down in Article 13(1) of the Dublin III Regulation.

However, Article 29(2) may be applied only when responsibility has been established, which means that it may only apply from the moment a Member State has accepted a take charge or take back request. The Court noted that the provision only specifies the consequences of the expiry of the period for carrying out the transfer, laid down in Article 29(1). Where suspensive effect has been granted pursuant to Article 27(3), the period for carrying out the transfer will not, in principle, expire until six months after the final decision on that appeal.

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***Article 27(1) – scope of the right to an effective remedy***

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**C-63/15, *Ghezelbash* (7 June 2016) – first question**

The question for the Court was whether an applicant has the right to an effective remedy against the application of the criteria for determining the Member State responsible laid down in Chapter III of the Regulation. The Court replied to this question in the affirmative.

The Court noted that, according to Article 27(1), the legal remedy must be effective and cover questions of both fact and law. The provision makes no reference to any limitation of the arguments that may be raised by the applicant. The scope of the remedy is explained in recital 19, according to which the legal remedy should cover the examination of both the application of the Regulation, and the legal and factual situation in the Member State to which the asylum seeker is to be transferred. Given that the application of the Dublin III Regulation is essentially based on the process for determining the responsible Member State as designated by the criteria laid down in Chapter III, the reference to 'the application of the Regulation' in recital 19 must consequently mean that the right to an effective remedy includes the obligation to ensure that the criteria are correctly applied.

The Court noted that, compared to the Dublin II Regulation, the Dublin III Regulation significantly differs with regard to rights and mechanisms guaranteeing the involvement of asylum seekers in the process for determining the Member State responsible introduced or enhanced by the EU legislature. In particular, the Member States are obliged to inform applicants of the criteria for determining the Member State responsible and the relative importance of those criteria, to conduct a personal interview or to allow the applicant to present further information that may be relevant for determining responsibility and respect the provisions setting out the arrangements for notification of a transfer decision and the rules regarding remedies at considerable length. In addition, the applicant shall have the right to request a court or tribunal to suspend the implementation of the transfer decision.

Consequently, the EU legislature has decided not only to introduce organisational rules simply governing relations between Member States for the purpose of determining responsibility, but also to include applicants for international protection in that process. A restrictive interpretation of the scope of the remedy would deprive the rights conferred by the Regulation to the applicants of any practical effect if an incorrect application of the responsibility criteria were not subject to judicial scrutiny.

The Court noted that the national court is required to verify whether the responsibility criteria have been correctly applied, not to place responsibility on the Member State of the applicant's liking. Therefore, an appeal or review lodged by the applicant cannot be equated with forum shopping, which the Dublin system seeks to avoid.

The Court also noted that a conclusion that the criteria have been incorrectly applied would not affect the principle of mutual trust between the Member States, which is the basis for the Common European Asylum System. The conclusion would only entail that the Member State to which the applicant was to be transferred was not responsible within the meaning of the criteria laid down in Chapter III.

Finally, the Court noted that the EU legislature did not intend that the requirement of rapid processing of applications should sacrifice the judicial protection enjoyed by applicants. The Court considered that the determination would not be excessively delayed even if an applicant has the right to appeal the incorrect application of the criteria, given that Article 22(4) and (5) set out that the requirement of proof should not exceed what is necessary for the proper application of the Regulation, and if there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish that responsibility. In addition, the EU legislature acknowledges that the Member States may decide that the lodging of an appeal against a transfer decision does not, of itself, have suspensory effect with regard to the transfer, which may therefore go ahead without waiting for the examination of the appeal, provided that suspension has not been requested or the request for suspension has been refused.

**C-155/15, *Karim* (7 June 2016) – first question**

The question for the Court was whether the applicant has the right to invoke the incorrect application of the rule set out in Article 19(2). The Court replied to this question in the affirmative.

The Court referred to its interpretation of the right to an effective remedy in *Ghezelbash*, highlighting that an applicant has the right to an effective remedy against a transfer decision which may, inter alia, concern the examination of the application of the Regulation and which may therefore result in a Member State's responsibility being called into question, even where there are no systemic deficiencies in the asylum process or in the reception conditions for asylum applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.

The Court noted that the rule set out in the second subparagraph of Article 19(2) establishes the framework within which that process must be conducted when the third-country national in question, after having made a first asylum application in a Member State, left the territory of the Member States for a period of at least three months before making a new asylum application in another Member State. That new determination process is distinct from the one conducted initially by the Member State in which the first asylum application was made and may result in the designation of a new responsible Member State on the basis of the criteria set out in Chapter III of the Regulation.

**Joined cases C-582/17 and C-583/17, *H. & R.* (2 April 2019)**

The question for the Court was whether an applicant, who lodged an application in a first Member State, then left to a second Member State, where the person lodged a new application, has the right to rely, in an action brought in the second Member State against a decision to transfer him or her, on the criterion for determining responsibility set out in Article 9. The Court replied to this question in the negative, unless the applicant is in a situation referred to in Article 20(5) and he or she has provided information clearly establishing that the second Member State is responsible for examining the application.

The Court referred to its interpretation of the right to an effective remedy in *A.S.*, *Mengesteab* and *Shiri*, highlighting that the appeal must be capable of relating both to the observance of the rules attributing responsibility to a Member State and to the procedural safeguards laid down in the Regulation. The Court noted that the scope of this remedy is the same, irrespective of whether the transfer decision against which the action is exercised is adopted at the end of the take charge or the take back procedure, and irrespective of which provision has been applied in the take back procedure.

However, the Court noted that an applicant cannot rely on provisions that are not applicable to his or her situation, and which therefore did not bind the competent authorities when conducting the take charge or take back procedure and when adopting the transfer decision.

The Court noted that the scope of the take back procedure is defined in Articles 23 and 24, and is applicable to persons referred to in Article 20(5) or in Article 18(1)(b) to (d). For persons referred to in Article 20(5), the Court noted that a person who has left a Member State pending the determination of the Member State responsible without informing the authorities of his or her wish to withdraw the application should be treated in the same way as a person who has given formal notice of that wish to the authorities, for the purpose of applying Article 20(5). For persons referred to in Article 18(1)(b) to (d), the Court noted that Article 18(1)(b) to (d) is only applicable if the Member State in which an application was previously lodged has completed the procedure for determining responsibility by accepting that it is responsible for examining the application and has started to examine it pursuant to the Asylum Procedures Directive.

Further, the Court noted that the take charge and take back procedures must be carried out in accordance with the rules laid down in Chapter IV of the Dublin III Regulation.

For the take charge procedure, a take charge request can only be sent pursuant to Article 21(1) if the Member State in which an application is lodged considers that another Member State is responsible, as indicated by the criteria set out in Chapter III which shall be examined by the requested Member State on the basis of elements of proof and circumstantial evidence that enables the requested Member State to establish whether it is responsible. In the take charge procedure, the process of determining the responsible Member State on the basis of the criteria set out in Chapter III is of crucial importance.

However, the Court noted that the same is not true for the take back procedure. That procedure is governed by provisions that are substantially different. First, a take back request can be sent pursuant to Articles 23 and 24 when a Member State considers that another Member State is 'responsible in accordance with Article 20(5) and Article 18(1) [(b) to (d)]', and not when it considers that another Member State is 'responsible for examining [the] application'. The option to submit a take back request presupposes not that the responsibility of the requested Member State is established but that that Member State satisfies the conditions laid down in Article 20(5) or Article 18(1)(b) to (d).

The Court therefore noted first that to oblige a Member State to complete the process of determining responsibility before a take back request can be sent would be contrary to the very logic of Article 20(5), given that the purpose of the transfer is to enable the requested Member State to complete the process of determining the Member State responsible. Second, Article 18(1)(b) to (d) can only be applied when a Member State has acknowledged its responsibility, and it is therefore not necessary to re-apply the rules for establishing responsibility again. If the requesting Member State would have an obligation to re-examine the decision taken by the authorities in the first Member State regarding its own responsibility, it would encourage secondary movements, that the Dublin III Regulation specifically seeks to prevent by establishing uniform mechanisms and criteria for determining the Member State responsible. However, the Court noted that in the cases referred to in Article 20(5), where the person concerned has provided information that clearly would establish responsibility on the requesting Member State, that Member State cannot, in accordance with the principle of sincere cooperation, make a take back request pursuant to Article 20(5). In such a situation, that Member State has to accept its own responsibility.

**C-92/21, *VW* (26 March 2021) – second question and C-134/21, *EV* (26 March 2021) – second question**

The question for the Court was whether a Member State is allowed to take measures to prepare a transfer, such as allocating a place in a specialised reception facility where those accommodated receive support in preparation of their transfer, when the applicant has lodged an appeal against the transfer decision. The Court replied to this question in the affirmative.

The Court noted that no provision in the Dublin III Regulation prohibits the adoption of measures which do not, in themselves, constitute the beginning of the implementation of the transfer decision within the meaning of that Regulation. Measures such as allocating a place in a specialised reception facility in preparation of the transfer, should not be

considered as measures implementing the transfer, but as measures preparatory to the implementation procedure, since the execution of the measures themselves does not result in the person concerned leaving the territory of the requesting Member State nor do they infringe the applicant's freedom to come and go, or the exercise of the procedural rights he or she enjoys under the Regulation.

Finally, the Court noted that such measures are in line with the objective set out in Article 29, since they intend to prepare the applicant to be transferred as soon as possible, in the event that the appeal against the transfer decision is dismissed.

**Article 27(1) cf. the Charter of Fundamental rights:**

- **C-194/19, *H.A.* (15 April 2021)**

The question for the Court was whether Article 27(1), read in conjunction with Article 47 of the Charter, requires a national court, in order to guarantee the right to an effective remedy, to take into consideration, where appropriate, circumstances arising subsequent to a transfer decision. The Court replied to this question in the affirmative.

The Court referred to its interpretation of the right to an effective remedy in *Shiri and H. & R.*, highlighting that the remedy which it provides against a transfer decision must be capable of relating both to observance of the rules attributing responsibility for examining an application for international protection and to the procedural safeguards laid down by that regulation. In addition, the applicant must have an effective and rapid remedy available to him or her which enables him or her to rely on circumstances subsequent to the adoption of the transfer decision, where the taking into account of those circumstances is decisive for the correct application of the Regulation.

However, the Court noted that Member States are not required to organise their judicial system in such a way that decisive circumstances are taken into account in the same remedy that assesses the legality of the transfer decision. The EU legislature has only harmonised some of the procedural rules for appeals or reviews against a transfer decision, and, contrary to the Asylum Procedures Directive, Article 27 of the Dublin III Regulation does not specify whether the court or tribunal must carry out an *ex nunc* examination.

Therefore, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy. However, those rules cannot be less favourable than those governing similar domestic situations (principle of equivalence) and they cannot make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness).

Regarding the principle of equivalence, the Court noted that all rules must apply irrespective of whether the action is brought against a possible infringement of EU law or of national law. Regarding the principle of effectiveness, the Court noted that a person will not be able to exercise his or her rights under the Regulation and Article 47 of the Charter if the court or tribunal cannot take into account circumstances subsequent to the transfer decision that are decisive for the correct application of the Regulation. However, the Court

noted that it is possible that sufficient judicial protection can be guaranteed in other forms within the national judicial system viewed as a whole. Such other forms must be able to guarantee, first, that the applicant can prevent the authorities to carry out the transfer where circumstances arising after the transfer decision preclude implementation of that decision, and second, that when that circumstance mean that the requesting Member State is responsible, the authorities are obliged to take the necessary measures to acknowledge that responsibility and to initiate the examination of the application without delay. Where the national legislation provides for a specific remedy that can take into account circumstances subsequent to the adoption of the transfer decision, the exercise of the remedy cannot be made conditional on whether the person has been deprived of his or her liberty or that the implementation of the transfer decision is imminent.

Consequently, the Court concluded that Article 27(1), read in light of Article 47 of the Charter, precludes national legislation that does not allow a court or tribunal hearing an appeal or review of a transfer decision to take into account circumstances subsequent to the adoption of the transfer decision that are decisive for the correct application of the Regulation, unless the legislation provides for a specific remedy entailing an *ex nunc* examination of the situation of the person concerned, which may be exercised after the circumstances have arisen and which binds the authorities, and which is not made conditional on the deprivation of the person's liberty or on the fact that the implementation of the transfer decision is imminent.

- **C-19/21, *I & S* (1 August 2022) – first and second questions**

The question for the Court was whether Article 27(1), read in conjunction with Article 47 of the Charter, requires a Member State to which a take charge request has been made based on Article 8(2) to make available a judicial remedy against that refusal to the unaccompanied minor or to a relative of that minor, or, if not, if such a right is granted directly by Article 47 of the Charter, read in conjunction with Articles 7 and 24(2).

The Court acknowledged that Article 27 in its wording only refers to appeals or reviews against a transfer decision. However, the wording does not exclude that an unaccompanied minor may also have a right to challenge a decision to refuse a take charge request based on Article 8(2). The Court noted that secondary legislation must be interpreted and applied in compliance with fundamental rights, and recital 39 of the Dublin III Regulation also emphasizes the importance that the EU legislature attaches to the full observance of the fundamental rights enshrined in Articles 7, 24 and 47 of the Charter.

According to Article 47 of the Charter, a person whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy in compliance with the conditions laid down in that Article. The Court then referred to the judgment in *Ghezelbash*, recalling that in the Dublin III Regulation, the EU legislature decided not only to set out rules simply governing relations between the Member States when determining the responsible Member State, but also to involve applicants for international protection in that process, and conferring them a right to appeal a transfer decision that may be taken at the end of that process. In *Ghezelbash*, the Court concluded that the applicant has the right to plead, in an

appeal against a transfer decision, the incorrect application of the criteria laid down in Chapter III of the Regulation.

On that basis, the Court noted that the judicial protection of an unaccompanied minor cannot vary, as regards compliance with the binding responsibility criterion set out in Article 8(2) of the Regulation, depending on whether the applicant is the subject of a transfer decision taken by the requesting Member State, or a decision to refuse to take charge of an applicant taken by the requested Member State. Since both decisions are liable to undermine the right the applicant has pursuant to Article 8(2) to be united with a relative who can take care of him or her, for the purposes of the examination of his or her application for international protection, the minor concerned must in both cases be allowed to bring proceedings in order to plead the infringement of that right, in accordance with the first paragraph of Article 47 of the Charter. Consequently, under Article 27(1), an unaccompanied minor applicant must have access to an effective remedy both when the requesting Member State adopts a transfer decision, and when the requested Member State refuses to take charge of the person concerned.

The Court noted that, although Article 7 of the Charter does not generally enshrine a right to unity of the extended family, that provision must be read in conjunction with the obligation to have regard to the best interests of the child as a primary consideration in all actions relating to children, recognised in Article 24(2) of the Charter and Article 6(1) of the Dublin Regulation. Therefore, those provisions must be regarded as protecting the interests an unaccompanied minor may have in being reunited with his or her extended family for the purpose of examining the application for international protection, also taking into account that unaccompanied minors are particularly vulnerable and in require specific procedural guarantees, as stated in recital 13 of the Regulation. The Court also noted that, pursuant to Article 8(2), Article 6(3)(a) and (4), and recitals 14 and 16, respect for family life and the possibility for an unaccompanied minor to be united with a relative who can take care of him or her pending the outcome of the application for international protection is, as a general rule, in the best interests of the child.

However, the Court noted that Article 27(1) of the Regulation does not confer any right to a remedy for the applicant's relative residing in the requested Member State. Neither do Article 7 and Article 24(2) of the Charter or Article 8(2) of the Dublin III Regulation confer on him or her any rights on which he could rely in legal proceedings against such a rejection decision, with the result that that relative also cannot derive a right to a remedy against such a decision on the basis of Article 47 of the Charter alone.

**Article 27(1) cf. Article 13:**

- **C-490/16, *A.S.* (26 July 2017) – first question**

The question for the Court was whether an applicant may, in an appeal against a transfer decision, plead incorrect application of the criterion for determining responsibility relating to the irregular crossing of a Member State's border, laid down in Article 13(1) of the Dublin III Regulation. The Court replied to this question in the affirmative.

The Court referred to its interpretation of the right to an effective remedy in *Ghezelbash*, highlighting that in that judgment, the Court already held that the applicant has the right to plead the incorrect application of the criteria laid down in Chapter III of the Dublin III Regulation. Although *Ghezelbash* concerned the application of Article 12, the Court did not draw a distinction between the various criteria and the reasons given in *Ghezelbash* therefore also apply *mutatis mutandis* to the criterion set out in Article 13(1). The Court noted that both Articles 12 and 13 play a comparable role when determining responsibility, and the developments and objectives of the system as noted in *Ghezelbash* are also relevant for reviewing the correct application of Article 13. The fact that another Member State has accepted the request cannot exclude a judicial review of the application of the criteria set out in Chapter III.

**Article 27(1) cf. Article 17(1):**

- **C-661/17, *M.A.*, (23 January 2019) – fourth question**

The question for the Court was whether Article 27(1) requires a remedy to be made available against the decision not to apply the discretionary clause in Article 17(1). The Court replied to this question in the negative, without prejudice to the fact that that decision may be challenged in the appeal against the transfer decision.

The Court noted that Article 27(1) does not expressly provide for an appeal against the decision not to apply Article 17(1), and given the objective of rapid processing of applications for international protection, multiple remedies should be discouraged.

However, the Court considered that a Member State has two options under the Dublin III Regulation: either apply the discretionary clause, or adopt a transfer decision. Therefore, when a Member State has chosen not to apply the discretionary clause and to take a transfer decision, that choice may be challenged in the appeal against the transfer decision.

Finally, given that the questions of the case arose due to the notification by the responsible Member State of its intention to withdraw from the European Union, the Court also noted that a transfer of an applicant to such a Member State cannot take place if there are substantial grounds for believing that that notification would result in a real risk that the applicant would suffer inhuman or degrading treatment within the meaning of Article 4 of the Charter in that Member State. However, the notification itself cannot be regarded as presenting such a risk, given that it does not suspend the application of EU law in that Member State until the actual withdrawal. The Common European Asylum system is built on the assumption that all participating States, whether they are Member States or third States, observe fundamental rights, including those of the Geneva Convention and the 1967 Protocol, namely the principle of *non-refoulement*, and the ECHR, and Member States can therefore have confidence in each other as regards respect for those fundamental rights, including the principle of *non-refoulement*. Since the Member States are parties to the Geneva Convention and the 1967 Protocol, as well as to the ECHR, two international agreements upon which that Common European Asylum System is based, the continuing participation of a Member State in those conventions and that protocol is not linked to its being a member of the European Union. A Member State's decision to withdraw from the

European Union has no bearing on its obligations to respect the Geneva Convention and the 1967 Protocol, including the principle of *non-refoulement*, and Article 3 ECHR.

**Article 27(1) cf. Article 21:**

**The applicant's right to rely, in an appeal against a transfer decision, on the expiry of the time limit to send a take charge request**

- **C-670/16, *Mengesteab* (26 July 2017) – first and second questions**

The question for the Court was whether an applicant may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant. The Court replied to this question in the affirmative.

The Court referred to its interpretation of the right to an effective remedy in *Ghezelbash*, highlighting that the procedure for determining responsibility must be carried out in accordance with the rules laid down in Chapter IV of the Dublin III Regulation, in compliance with a series of specified time limits. In that regard, the Court noted that the EU legislature has decided that, where that request is not made within the periods set out in Article 21(1), responsibility for examining the application for international protection is to lie with the Member State in which the application was lodged. While the time limits set out in Article 21(1) intend to provide a framework for the take charge procedure, they also contribute to determining the responsible Member State, in the same way as the responsibility criteria. When that time limit has expired, a Member State cannot validly adopt a decision to transfer the applicant to another Member State. The fact that another Member State has accepted the request cannot lead to a limitation of the scope of the remedy provided for in Article 27(1). Nor does Article 21(1) require that the requested Member State reacts to the fact that responsibility shifts to the Member State where the application was lodged.

**Article 27(1) cf. Article 29:**

**The right to rely, in an appeal against a transfer decision, on the expiry of the transfer time limit**

- **C-201/16, *Shiri* (25 October 2017) – first question**

The question for the Court was whether an applicant for international protection may rely, in an action brought against a decision to transfer him or her, on the expiry of the six-month period as defined in Article 29(1) and (2) of that Regulation. The Court replied to this question in the affirmative.

The Court referred to its interpretation of the right to an effective remedy in *Mengesteab*, highlighting that that the remedy must be capable of relating, inter alia, to observance of the procedural safeguards laid down by the regulation. While the provisions that set out the time limits intend to provide a framework for the take charge and take back procedures, they also contribute to determining the responsible Member State, in the same way as the

responsibility criteria. Where the six-month period has expired without the transfer having been carried out, responsibility automatically shifts to the requesting Member State. Therefore, the court or tribunal dealing with an action challenging a transfer decision must be able to examine the claims made by an applicant that that decision was adopted in breach of the provisions set out in Article 29(2) of the Dublin III Regulation.

The Court noted that the periods set out in Article 29 of the Regulation aim at providing a framework not only for the adoption but also for the implementation of the transfer decision. Those periods may expire after the transfer decision has been adopted. In such situation, the requesting Member State cannot carry out the transfer any longer and is, on the contrary, required to take, on its own initiative, the measures necessary to acknowledge the responsibility of the first Member State and to initiate without delay the examination of the application lodged by that person. Consequently, in accordance with Article 47 of the Charter, the applicant must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of the Regulation that occurred after the adoption of the transfer decision.

**The applicant's right to rely, in an appeal against a transfer decision, on the expiry of the transfer time limit because the applicant has not absconded.**

- **C-163/17, *Jawo* (19 March 2019) – second part of the first question**

The second part of the first question for the Court was whether, in proceedings brought against a transfer decision, the person concerned may rely on Article 29(2) of the Regulation by pleading that the transfer time limit has expired because he had not absconded. The Court replied to this question in the affirmative.

The Court referred to its judgment in *Shiri*, where the Court held that the court or tribunal dealing with an action challenging a transfer decision must be able to examine whether the requesting Member State had already become the Member State responsible on the day when that decision was adopted, because of the prior expiry of the six-month period in accordance with Article 47 of the Charter, a court or tribunal must be able to examine whether the six months' time limit has expired after the transfer decision was adopted.

**The applicant's right to rely, in proceedings brought in a third Member State, on the shift of responsibility from the first Member State to the second Member State ("chain rule")**

- **Joined cases C-323/21, C-324/21 and C-325/21, *B, F & K* (12 January 2023) – second question in C-323/21 and C-325/21**

The question for the Court was whether an applicant, having lodged applications in three Member States, has the right, in an appeal against a transfer decision adopted by the third Member State, to rely on the fact that responsibility has shifted from the first Member State to the second Member State pursuant to Article 29(2) after the transfer decision was adopted. The Court replied to this question in the affirmative.

The Court noted that the appeal should cover the examination of both the application of the Dublin III Regulation and the legal and factual situation in the responsible Member State. Therefore, the appeal must make it possible to assess whether the rules attributing responsibility to a Member State have been observed, as well as the procedural safeguards laid down in the Regulation. In accordance with Article 47 of the Charter, the appeal must be able to take into account circumstances that took place after the transfer decision was adopted, if those circumstances are decisive for the correct application of the Regulation. The Court thereby noted that the fact that the time limit set out in Article 29(1) has expired is decisive for the correct application of the Regulation.

However, the Court noted that Member States are not required to organise their judicial system in such a way that decisive circumstances have to be taken into account in the same remedy that assesses the legality of the transfer decision, on the condition that sufficient judicial protection can be guaranteed in other forms within the national judicial system considered as a whole. Such other forms must be able to guarantee that the applicant can prevent the authorities from carrying out a transfer where responsibility has shifted from one Member State to another due to the expiry of the time limit set out in Article 29, and that the Member State where the applicant is present can give effect to that transfer of responsibility without delay.

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### *Article 27(4) – ex officio suspensive effect*

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**C-60/16, *Amayry* (13 September 2017) – see '*Article 28 – detention*'**

**Joined cases C-245/21 and C-248/21, *MA, PB & LE* (22 September 2022) – see '*Article 29(1) cf. Article 27(4): ex officio suspension of the transfer time limit*'**

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### *Article 28 – detention*

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**C-528/15, *Al Chodor* (15 March 2017)**

The question for the Court was whether Member States are required to establish, in their national legislation, objective criteria underlying the reasons for believing that an applicant who is subject to a transfer procedure may abscond, and if those criteria are not set out in national law, whether that means that Article 28(2) cannot be applied. The Court replied to both parts of the question in the affirmative.

The Court noted that, although provisions of EU Regulations, by virtue of the very nature of regulations and of their function in the system of sources of EU law, generally have immediate effect in the national legal systems and do not need measures of application, some provisions may require the adoption of measures of application for their implementation. Given that Article 2(n) of the Dublin III Regulation explicitly requires that objective criteria defining the existence of the risk of absconding are 'defined by law',

and those criteria have not been established in the Regulation nor in another EU legal act, the elaboration of those criteria is a matter for national law.

However, the Court noted that a purely textual analysis of 'defined by law' cannot determine whether that concept also covers case-law or a consistent administrative practice, and the concept must therefore be interpreted in the context of which it occurs and the objectives of the rules of which it forms part. The Court noted that the high level of protection afforded to applicants covered by the Dublin III Regulation is also provided for with regard to the detention of those applicants, and Article 28 places significant limitations on the power of the Member States to detain a person. The Member States may not hold a person in detention for the sole reason that he or she is subject to the procedure established by the Dublin III Regulation. Further, Article 28(2) of the Dublin III Regulation permits the detention of a person in order to secure transfer procedures only where there is a significant risk of absconding, the assessment of which must be based on an individual assessment. In addition, the detention must be proportional and is justified only where other less coercive alternative measures cannot be applied effectively. Moreover, under Article 28(3), the detention must be for as short a period as possible. Finally, Article 2(n) of the Dublin III Regulation requires that the finding of a risk of absconding be based on objective criteria which must be defined by law and applied on a case-by-case basis.

Given that Article 28(2) and Article 2(n) allow a Member State to detain a person when there is a risk of absconding, they provide for a limitation on the exercise of the fundamental right to liberty enshrined in Article 6 of the Charter. In this regard, Article 52(1) of the Charter requires that any limitation of that right must be provided for by law, it must respect the essence of that right, and it must be proportional. For the purpose of interpreting Article 6 of the Charter, account must therefore be taken of Article 5 of the ECHR as the minimum threshold of protection.

The ECtHR has held that any deprivation of liberty must be lawful not only in the sense that it must have a legal basis in national law, but also that lawfulness concerns the quality of the law and implies that a national law authorising the deprivation of liberty must be sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness ([30]). According to the case-law of the Court, the objective of the safeguards relating to liberty is the protection of the individual against arbitrariness. There can be no element of bad faith or deception on the part of the authorities ([31]).

The individual discretion enjoyed by the authorities concerned in relation to the existence of a risk of absconding, should be exercised within a framework of certain predetermined limits. The criteria which define the existence of such a risk must be defined clearly by an act which is binding and foreseeable in its application. The adoption of rules of general application provides the necessary guarantees. By contrast, settled case-law confirming a consistent administrative practice cannot suffice. Regarding Article 2(n) and Article 28(2) of the Regulation, the Court noted that the discretion that is given to the authorities in relation to a risk of absconding should be exercised within a framework of predetermined

([30]) Del Río Prada v Spain, CE:ECHR:2013:1021JUD004275009, §125.
([31]) N., C-601/15 PPU, paragraph 81.

limits. Therefore, the criteria which define such a risk must be set out in an act which is binding and foreseeable in its application. Given the purpose of the provisions and their high level of protection they provide, only a provision of general application meets the requirements of clarity, predictability, accessibility, and in particular protection against arbitrariness. Therefore, settled case-law confirming a consistent administrative practice does not suffice.

**C-60/16, *Amayry* (13 September 2017)**

The first and second questions for the Court related to whether the Dublin III Regulation allows national legislation according to which, where the detention of an applicant begins after the requested Member State has accepted the request to take charge, that detention may not exceed two months, which can be extended to three months if there are serious reasons to extend that period, or to 12 months if it is probable that the transfer will take longer because of the applicant's lack of cooperation or if it takes time to obtain the necessary documents.

The Court noted that detention shall be as short as possible and for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer is carried out.

The Court noted that the power the Member States have under certain conditions to detain a person seeks to secure transfer procedures. The choice of period of six weeks within which to carry out the transfer pursuant to Article 28(3) shows that the EU legislature considered that six weeks could be necessary in order to transfer a detained person to another Member State.

However, the Court noted that that time limit only applies where the person was already detained when the requested Member State accepted the request or when the suspensive effect pending an appeal or review ended. If the rule was extended so that it would also apply to the situation where the person was detained after the other Member State accepted the request, Member States would not be able to secure the transfer procedures if the risk of absconding only became evident at a later stage than six weeks after the acceptance of the request. That would in turn risk encouraging applicants to abscond for at least six weeks in order to prevent being transferred, barring the application of both the principles and the procedures of the Regulation.

However, even in the absence of a specific time limit in the Dublin Regulation for the situation in question, detention must still be for as short as possible, be no longer than the time it reasonably takes to carry out the administrative transfer procedures, be in compliance with the Reception Conditions Directive, and be in compliance with Article 6 of the Charter. Consequently, Member States must carry out diligently the transfer procedure, and cannot extend the period of detention beyond what is necessary for that procedure, taking into account the specific requirements in each specific case. However, the Court considered that 3 or 12 months exceeds what is reasonable necessary to carry out the transfer with due diligence.

The third question for the Court was whether, in case suspensive effect has been granted, it is necessary to deduct from the six-week period, from the moment when the appeal or the review no longer has suspensive effect, the number of days during which the person concerned was already detained after a Member State has accepted the take charge or take back request. The Court replied to this question in the negative.

The Court noted that the third subparagraph of Article 28(3) sets out two distinctive periods of six weeks; one which runs from the moment a take charge or take back request was accepted, and one which runs from the final decision on an appeal or review where suspensive effect was granted pursuant to Article 27(3). The provision does not indicate whether they have to be taken together, or whether the duration of the second time limit has to be reduced in certain situations.

The Court noted that, although the aim of the periods of six weeks is to ensure that detention is for as short time as possible, they also determine the period in which a transfer must be carried out. Where an appeal or review has suspensive effect, it is by definition impossible to carry out the transfer. Therefore, the transfer time limit can only start to run from the time the future implementation of the transfer is agreed upon in principle, and only the practical details remain to be decided, that is from the date when the suspensive effect is lifted. The Court noted that a Member State is confronted with the same practical difficulties in organising a transfer, regardless of whether the implementation of the transfer decision has been suspended or not. The fact that the person was already detained when the suspensive effect was lifted cannot substantially facilitate the transfer since the practical details for the transfer can only be made once the date for the lifting of suspensive effect is settled. If the person had appealed a transfer decision after several weeks in detention, a possible reduction of the number of days that the person had already been detained could in practice deprive the authorities of any possibility of carrying out the transfer before the detention ends. This would also prevent the authorities from making effective use of the possibility to detain a person to counter the significant risk of that person absconding. The fourth question for the Court was whether the six-week period beginning from the moment when the appeal or review no longer has suspensive effective also applies when the suspension of the execution of transfer decision was not requested by the person concerned but was granted by the authorities. The Court replied to this question in the affirmative.

The Court noted that the aim of the six-week period is to give the authorities sufficient time to carry out the transfer from the moment that suspensive effect is lifted. Therefore, what is decisive is not whether the person concerned requested the suspension or not, but rather the fact that the appeal or review is recognised as having suspensive effect, since it is the latter that prevents the transfer.

The Court noted that the EU legislature refers to the lifting of the suspensive effect in accordance with Article 27(3) of the Dublin III Regulation, without drawing a distinction between the Member States which have decided to give an appeal or a review an automatic suspensive effect pursuant to Article 27(3)(a) and (b) and the Member States which have chosen to make the grant of that suspensive effect subject to the intervention of a judicial

decision to that effect on the request of the person concerned within the meaning of Article 27(3)(c) of that regulation. The Court also referred to the fact that the EU legislature did not intend that the requirement of rapid processing of applications sacrifice the judicial protection that applicants enjoy. Therefore, Member States that wish to strengthen applicants' judicial protection by giving automatic suspensive effect should not, for the sake of meeting the requirement of expedition, be placed in a less favourable position than those Member States that did not decide to do so. The Court noted that a person finding himself in a situation covered by Article 27(4) is comparable in every aspect to that of a person whose appeal or review is recognised as having suspensive effect pursuant to Article 27(3) of that Regulation. Given the similarities in wording in Article 28(3) and Article 29(1), the Court noted that if Article 27(4) would not have the effect of suspending the transfer time limit, it would in practice be deprived of its effect, since its application would entail a risk that the transfer could not be carried out within the time limits laid down by the Dublin III Regulation.

Finally, the Court noted that its interpretation does not expand the possibility for maintaining detention, but rather ensures that all cases in which detention has been extended due to the granting of suspensive effect are subject to a precise limit to the maximum period of detention.

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***Article 29(1) – the transfer time limit***

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**C-19/08, *Petrosian* (29 January 2009)**

*This case concerned the interpretation of Article 20(1)(d) of the Dublin II Regulation. This wording has been clarified in Article 29(1) of the Dublin III Regulation.*

The Court noted that the purpose of the six-month' time limit is to allow the two Member States concerned to collaborate on the practical complexities and organisational difficulties related to implementing transfers, and in particular to allow the transferring Member State to determine the practical details to be carried out in accordance with national law. A Member State is confronted with the same practical difficulties in organising a transfer, regardless of whether the implementation of the transfer decision is suspended or not. Therefore, the transfer time limit can only start to run from the time the future implementation of the transfer is agreed upon in principle, and only the practical details remain to be decided.

**Article 29(1): automatic shift of responsibility upon expiry of the transfer time limit**

- **C-201/16, *Shiri* (25 October 2017) – second question**

The question for the Court was whether responsibility automatically shifts from the requested Member State to the requesting Member State when the transfer is not carried out within the 6-month time limit, without the need for the responsible Member State to

refuse a take charge or take back request. The Court replied to this question in the affirmative.

The Court noted that it is clear from the wording of Article 29(2) that the responsibility shifts automatically to the requesting Member State if the transfer is not carried out within the six-month time limit. Given that there is no condition that the responsible Member State has to react, responsibility thereby automatically shifts to the requesting Member State.

**Article 29(1) cf. Article 27(3): suspension of the transfer time limit**

**National law suspending the transfer time limit pending the outcome of an appeal against a decision not to grant the person a residence permit as a victim of trafficking in human beings.**

- **C-338/21, *S.S., N.Z., & S.S.* (30 March 2023)**

The question for the Court was whether a national legislation providing the suspension of the implementation of a previously adopted transfer decision and of the transfer time limit laid down in Article 29, pending the outcome of an appeal against a decision rejecting an application for a residence permit as a victim of trafficking in human beings is precluded by the Regulation. The Court replied that the Dublin III Regulation does not preclude national legislation which provides that the submission of a request for review of a decision refusing to grant a third-country national a residence permit as a victim of trafficking in human beings entails the suspension of the implementation of a previously adopted transfer decision concerning that third-country national, but precludes national legislation which provides that such a suspension entails the suspension or interruption of the period for the transfer of that third-country national.

In the first place, the Court assessed whether Directive 2004/81 requires, or at least allows, that a transfer decision is suspended pending the outcome of the appeal against the decision not to grant such a residence permit.

The Court noted that a third-country national who can reasonably be considered to be or to have been the victim of offences related to trafficking in human beings must be given a reflection period ([32]). During this reflection period, it is not possible to enforce any expulsion order against that person, including a Dublin transfer. However, the Directive does not prohibit the enforcement of an expulsion order (or a Dublin transfer) after the expiry of that reflection period, or after the decision of the competent authorities not to grant a residence permit.

The Court noted that, although the Directive does not contain any rules relating to the right to an administrative or judicial remedy against a decision rejecting an application for a residence permit as a victim of trafficking in human beings, it follows from article 47 of the Charter that the person concerned must have such a right.

([32]) See case C-66/21, *O.T.E.*, second question.

However, after recalling the objective of the protection against an expulsion order provided by the Directive ([33]), the Court found that a Member State is not required to extend that protection to the period between the expiry of the reflection period or the decision to reject an application for a residence permit and the outcome of the appeal against that decision.

In that regard, the Court put specific emphasis on the fact that the situation of a person who is the subject of both a decision rejecting an application for a residence permit as a victim of trafficking in human beings and a transfer decision cannot be treated in the same way, in general terms, as that of a person in respect of whom there are substantial grounds for believing that removal to a third country would be contrary to the principle of *non-refoulement*, who must be entitled to an appeal with automatic suspensive effect against the enforcement of the decision permitting that expulsion, in order to avoid serious and irreparable harm pending the outcome of that appeal ([34]). Even if the implementation of a transfer decision would entail, exceptionally, harm of that kind, that complaint can be examined in the context of an appeal brought against that decision or against its implementation and not in the context of an appeal against a decision on residence as a victim of trafficking in human beings ([35]).

Nevertheless, the Court noted that Member States are allowed under Directive 2004/81 to adopt more favourable provisions than those required by the Directive and can therefore provide in national law that third-country nationals have the right to remain in their territory pending the outcome of the appeal against the rejection of the application for a residence permit.

However, in the second place, the Court examined whether the Dublin Regulation precludes Members States from making use of the discretion they enjoy under Directive 2004/81.

The Court noted that it is clear from Article 29(1) that the EU legislature has intended that the transfer time limit can be suspended in specific situations. Those situations are where suspensive effect has been granted on the basis of Article 27(3), or on the basis of Article 27(4).

However, an appeal against a decision that is not a transfer decision cannot be regarded as an appeal or review under Article 27(3) or (4) of the Dublin III Regulation. Therefore, the derogation in Article 29(1), that the transfer time limit only starts to run from the final decision on an appeal or review, cannot be applied to an appeal or review against a decision rejecting an application for a residence permit as a victim of trafficking in human beings. Nor can the obligation to carry out the transfer "in accordance with national law" be interpreted as referring to the rules for calculating the transfer time limit, as this would lead

([33]) The aim of the protection against any expulsion order conferred by directive 2004/81 is to ensure (i) that the persons concerned may receive the treatment which must be granted to them, in accordance with Article 7 of that directive, during the reflection period and (ii) that those persons are not compelled to leave the territory of the Member State where they reported acts of trafficking in human beings before they have even been able, during that period, to comment on their willingness to cooperate in the criminal investigation into those acts.

([34]) Abdida, C-562/13, paragraphs 50 and 52, and 19 June 2018, Gnandi, C-181/16, paragraph 54.

([35]) Tall, C-239/14, paragraphs 56 to 58, and of 19 June 2018, Gnandi, C-181/16, paragraphs 55 and 56.

to a change in the allocation of responsibilities between the Member States under the Regulation with the possibility to indefinitely extend the transfer time limit for reasons that have not been adopted by the EU legislature. Such an interpretation would render the transfer time limit redundant, and would unduly delay the examination of the application.

Consequently, where the transfer cannot be carried out within the time limit laid down in Article 29(1) of the Dublin III Regulation because the Member State has provided for more favourable provisions under the Directive, allowing that person to remain in that Member State pending the appeal against the rejection of an application for a residence permit, it merely entails that that Member State becomes responsible for examining the application pursuant to Article 29(2) of the Dublin III Regulation.

**National law allowing for an interim measure suspending the running of the transfer time limit where the competent authorities have appealed at second instance a judgment annulling a transfer decision.**

- **C-556/21, *E.N., S.S., & J.Y.* (30 March 2023)**

The question for the Court was whether the Dublin Regulation allows for a national legislation which allows a court or tribunal hearing an appeal at second instance against a judgment annulling a transfer decision to adopt, on the application of the competent authorities, an interim measure having the object or effect of suspending the running of the transfer time limit. The Court replied to this question in the affirmative, on the condition that the adoption of such a measure is possible only when the implementation of the transfer decision has been suspended pursuant to Article 27(3) or (4) during the examination of the appeal at first instance.

The Court noted that it is clear from Article 29(1) that where the suspension of the implementation of the transfer decision results from the application of Article 27(3) or (4) of the Dublin III Regulation, it is clear from Article 29(1) that the transfer time limit is to run not from the acceptance of the request to take charge or to take back but, by way of derogation, from the final decision on the appeal against the transfer decision the EU legislature has intended that the transfer time limit can be suspended in specific situations. Those situations are where suspensive effect has been granted on the basis of Article 27(3), or on the basis of Article 27(4). In those situations, it is clear from Article 29(1) that the transfer time limit does not start to run from the acceptance of the take charge or take back request, but, by way of derogation, from the final decision on the appeal against the transfer decision, meaning from when all remedies provided for by the legal order of the Member State concerned have been exhausted.

However, the Court also noted that the EU legislature has not specified the detailed procedural arrangements for the application to that rule in case of appeals at second instance and in particular whether the application of that rule may involve the imposition of interim measures by the court hearing that appeal.

The Court considered that it is the addressee of a transfer decision who must have the right to an effective remedy under Article 27(1) the competent authorities having moreover no

interest in challenging their own decisions. Therefore, Article 27(3) governs exclusively suspensive effect granted on the basis of the appeal or review lodged by the person concerned at first instance. It does not regulate suspensive effect which may be granted in the context of an appeal at second instance brought by the competent authorities. Nor can Article 27(4) apply in that situation, since there is no longer any transfer decision the implementation of which could be suspended.

The Court noted that, since EU law does not regulate the matter, in accordance with the principle of procedural autonomy, it is for the national legal order of each Member State to decide whether to introduce such a second level of jurisdiction and, where appropriate, to lay down the detailed procedural rules of that second level of jurisdiction, including the granting of any interim measures.

While the national legislation in question allows the competent authorities to request the granting of interim measures in the context of an are appeal at second instance, the Court noted that such legislation cannot derogate from Article 29(1) by providing that, outside the situations referred to in Article 27(3) and (4), the interim measure has the effect of postponing the transfer time limit.

Consequently, national legislation which allows a national court or tribunal hearing an appeal at second instance against a judgment annulling a transfer decision to adopt, on the application of the competent authorities, an interim measure enabling those authorities to refrain from taking a fresh decision pending the outcome of that appeal and having the object or effect of suspending the running of the transfer time limit until that outcome is not precluded by the Regulation, on the condition that such a measure may be adopted only where the implementation of the transfer decision has been suspended pursuant to Article 27(3) or (4) of that regulation during the examination of the appeal at first instance. an interim measure, requested by the competent authorities and granted by the court at second instance, can only suspend the transfer time limit if the implementation of the transfer decision was already suspended during the examination of the appeal at first instance pursuant to Article 27(3) or (4). Where the transfer cannot be carried out within the time limit laid down in Article 29(1) of the Dublin Regulation because the implementation of the transfer decision was only suspended on the request of the authorities at second instance, but not at first instance, it merely entails that that Member State becomes responsible for examining the application pursuant to Article 29(2) of the Dublin Regulation..

**Article 29(1) cf. Article 27(4): *ex officio* suspension of the transfer time limit**

- **Joined cases C-245/21 and C-248/21, *MA, PB & LE* (22 September 2022) – first and second questions**

The question for the Court was whether the transfer time limit is interrupted where the competent authorities of a Member State adopt a revocable decision to suspend the implementation of a transfer decision on the ground that such implementation is materially impossible because of the COVID-19 pandemic. The Court replied to this question in the negative.

The Court noted that Article 29(1) does not directly refer to Article 27(4), but it is clear from the Court's case-law ([36]) regarding Article 28(3) that the provision must have the same effect, given that both Article 28(3) and Article 29(1) determine the time period in which the transfer can be carried out, and must therefore be interpreted in the same way. Where suspensive effect is granted pursuant to Article 27(3), it is by definition impossible to carry out a transfer until that suspensive effect is lifted. Therefore, the transfer time limit can only start to run when it is clear that the transfer can effectively be carried out, and only the practical details regarding the transfer remain to be settled. For the person concerned, the situation would be the same irrespective of whether suspensive effect has been granted pursuant to paragraph 4 or paragraph 3 of Article 27. If the transfer time limit set out in Article 29(1) could not be extended where suspensive effect is granted pursuant to Article 27(4), this provision would be largely deprived of its useful effect since it could not be used without the risk of preventing the transfer being carried out within the six-month time limit. Consequently, where suspensive effect has been given to an appeal against a transfer decision in accordance with Article 27(4), the time limit for transfer runs from the final decision on that appeal, so that the transfer decision must be enforced no later than six months from the final decision on that appeal.

However, the Court noted that the decision to suspend the implementation of the transfer decision must be adopted by the competent authorities within the scope of Article 27(4). The application of that provision is closely linked to the appeal lodged by the person concerned, and the suspension ordered by the authorities must take place 'pending the outcome of the appeal'. The Court also noted the context of the provision, namely in the Article titled 'Remedies', in the Section titled 'Procedural safeguards'. The provision therefore allows the authorities to suspend the implementation of the transfer decision in cases where the applicant has lodged an appeal against a transfer decision, but suspension does not result from the effects of legislation or a judicial decision as set out in Article 27(3). Further, the Court noted that it follows from the link between that provision and Article 29(1) of the Dublin III Regulation that the suspensive effect thus granted necessarily ceases when the final decision on the appeal against the transfer decision is adopted, since Article 29(1) does not contain any rules on the calculation of the time limit for transfer in the event that the suspension is lifted by the competent authorities before or after the outcome of the appeal against that decision. Finally, given that the main objective of the Dublin III Regulation is to set out a clear and workable method for determining responsibility, both for the Member States and the persons concerned, an interpretation allowing the authorities to suspend the transfer time limit for reasons not directly linked to the judicial protection of the person concerned would risk rendering that time limit as ineffective, altering the division of responsibilities between the Member States as set out by the Regulation, and prolonging access to the procedure for granting international protection for the person concerned.

Therefore, a suspension of the implementation of a transfer decision may be ordered by the competent authorities, in accordance with Article 27(4) of the Regulation, only where the circumstances surrounding that implementation imply that the person concerned must,

([36]) C-60/16, *Amayry, paragraph 70.*

in order to ensure his or her effective judicial protection, be allowed to remain in the territory of the Member State which adopted that decision until a final decision on the appeal has been taken. A revocable decision to suspend the implementation of a transfer decision due to the material impossibility to carry out a transfer because of the COVID-19 pandemic cannot be considered as falling within the scope of Article 27(4) of the Dublin III Regulation, since such ground does not have a direct link with the judicial protection of the person concerned. Nor can reasons set out in national law justify the application of Article 27(4) and prevent the time limit laid down in Article 29(1) from expiring.

**Article 29(1) and (2): successive lodging of applications in a number of Member States ("chain rule")**

- **Joined cases C-323/21, C-324/21 and C-325/21, *B, F & K* (12 January 2023) – first question in C-323/21 and C-325/21 and the only question in C-324/21**

The question for the Court was whether a Member State, that has already established that another Member State is responsible pursuant to the Dublin III Regulation but has not carried out the transfer because the applicant has absconded, becomes responsible for examining the application at the expiry of the 18 months' time limit even if the applicant has lodged a new application in a third Member State within that time limit. The Court replied to this question in the affirmative.

The Court noted that Article 29 does not specifically regulate the situation where an applicant lodges a new application in a Member State after the responsible Member State accepted a take back request sent by another Member State. Therefore, the Court assessed whether the fact that an applicant lodged a new application in a new Member State must be taken into account when applying that provision.

The Court noted that the EU legislature did not make any distinction depending on whether it is the second Member State of application that applies the take back procedure, or if it is the third Member State of application. The complementary nature of Article 20(5), which is applicable to situations when responsibility has not yet been determined, and Article 18(1)(b) to (d), which are applicable to situations where responsibility has already been established, therefore shows that the take back procedure can be applied by both Member States.

Consequently, any Member State applying the take back procedure is obliged to comply with all the mandatory time limits set out in the Regulation. If no take back request is made within the time limit set out in Article 23(2), the Member State where the new application is lodged will become responsible pursuant to Article 23(3) ([37]). Similarly, the time limit

([37]) In the situation that an applicant has lodged several multiple applications in the same Member State, and that Member State has adopted a transfer decision but not yet implemented the transfer, it is not necessary for the requesting Member State to send a new take back request, even if the applicant in the meantime lodged a new application in another Member State. Consequently, in those situations, the Member State that adopted the transfer decision will not become responsible for examining the application solely on the basis of Article 23(3). However, a new take back request must be sent pursuant to Article 23(3) if the transfer decision has already been implemented (see C-360/16, *Hasan*).

set out in Article 29 for any requesting Member State to carry out a transfer starts to run once the request has been accepted by the requested Member State.

However, given that the various take back procedures are conducted independently by each requesting Member State, and the Regulation does not set out a coordination mechanism in case of multiple applications in different Member States, the time limits set out in Article 29 cannot be derogated from. Therefore, the time limit of one Member State cannot be interrupted or extended by the fact that the applicant lodged a new application in another Member State, or that the other Member State has sent a new take back request which has even been accepted by the requested Member State. In both situations, the requesting Member State will become responsible upon expiry of the 18-months' time limit. The Court pointed out that that time limit is an expression of the balance struck by the EU legislature between the different objectives of the Regulation, as well as the competing interests involved. Therefore, it will apply in all cases of absconding, that is both when the person concerned absconds and remains on the territory of the requesting Member State, and when he or she absconds to another Member State.

Finally, the Court noted that, where responsibility has shifted to another Member State due to the expiry of the time limits set out in Articles 23 and 29, any Member State applying the take back procedure must take this shift of responsibility into account. In this regard, the Court notes the importance of the essential principle underlying the Dublin III Regulation, and which is set out in Article 3(1), namely that only one Member State can be determined as being responsible for examining an application at any given time. Accordingly, where responsibility has shifted to a Member State *before* a third Member State has been able to send a request to another Member State, the request should be made to the newly responsible Member State. Where responsibility has shifted to a Member State *after* the request of a third Member State has already been accepted, the transfer cannot take place to the Member State that accepted that request, but the requesting Member State may send a take back request to the newly responsible Member State. In the latter situation, the time limit set out in Article 23(2) should start to run from the date on which the requesting Member State becomes aware that another Member State is responsible, and it is able to send a take back request to the new Member State.

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***Article 29(2)***

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**Absconding**

- **C-163/17, *Jawo* (19 March 2019) – first part of the first question**

The first part of the question for the Court was whether it is necessary that an applicant has deliberately evaded the reach of the authorities in order to prevent his or her transfer, in order to consider that the applicant has absconded within the meaning of Article 29(2).

The Court noted that the Dublin III Regulation does not define the concept of 'absconding' and none of its provisions expressly specifies whether that concept implies that the person

concerned had the intention of evading the reach of the authorities in order to prevent his transfer.

The Court noted that it follows from the ordinary meaning of the term 'absconds', which is used in most language versions of the second sentence of Article 29(2) and implies the intent of the person concerned to escape from someone or to evade something, that that provision is, in principle, applicable only where that person deliberately evades the reach of those authorities.

However, the Court noted that the provision should not be interpreted in a way that the authorities have to provide proof that that person actually had the intention of evading the reach of those authorities in order to prevent his transfer, where the person concerned has left the accommodation allocated to him without informing the competent authorities of his absence. Such a requirement is liable to enable applicants who do not wish to be transferred to the Member State designated as responsible to elude the authorities of the requesting Member State until the expiry of the six-months' time limit so that responsibility for that examination falls on the latter Member State.

In that context, the Court noted that the aim of the transfer time limit is to ensure that the person is actually transferred to the responsible Member State as quick as possible, while allowing, given the practical complexities and organisational difficulties associated with implementing the transfer of that person, the time necessary for the two Member States concerned to collaborate with a view to carrying out the transfer and, in particular, the requesting Member State to determine the details for implementing the transfer. The second sentence of Article 29(2) therefore exceptionally allows for an extension of the time limit where it is not practically possible for the requesting Member State to carry out the transfer because the person concerned has either been imprisoned or absconded. In order to ensure the effective functioning of the Dublin system and the achievement of its objectives, where the transfer of the person concerned cannot be carried out due to the fact that he has left the accommodation allocated to him, without informing the competent national authorities of his absence, those authorities are entitled to assume that that person had the intention of evading their reach for the purpose of preventing his transfer, provided, however, that that person had been duly informed of his obligations in that regard. An applicant cannot be criticised for leaving the accommodation allocated to him without informing the competent authorities and, as the case may be, without requesting prior authorisation from them, if that applicant had not been informed of those obligations.

- **C-163/17, *Jawo* (19 March 2019) – second question**

The question for the Court was whether, in order to extend the transfer time limit by a maximum of 18 months, it is sufficient that the requesting Member State informs the Member State responsible, before the expiry of the six-month transfer time limit, that the person concerned has absconded and specifies, at the same time, a new transfer time limit. The Court replied to this question in the affirmative.

The Court noted that the second sentence of Article 29(2) of the Regulation does not require, for the extension of the transfer time limit in the situations referred to therein, any

consultation between the requesting Member State and the Member State responsible. That provision can therefore be distinguished from Article 29(1) of the Regulation, which expressly provides that the transfer is to be carried out after consultation between the Member States concerned. In addition, Article 9(2) of the Commission Implementing Regulation states that a Member State which, for one of the reasons set out in that Article 29(2), cannot carry out the transfer within the normal time limit of six months must inform the Member State responsible before the end of that time limit, and does not impose an obligation to consult in that regard.

**Imprisonment**

- **C-231/21, *IA*,(31 March 2022)**

The question for the Court was whether the fact that an applicant has been admitted to a hospital psychiatric department, authorised by a judicial decision because the applicant is a serious danger to him- or herself or to society due to his or her mental illness, can be considered as 'imprisonment' for the purpose of extending the transfer time limit in Article 29(2). The Court replied to this question in the negative.

The Court noted that the literal interpretation of 'imprisonment' essentially signifies a penalty involving a deprivation of liberty which is imposed in the context of criminal proceedings due to the commission of an offence of which the person concerned is found guilty or of which that person is suspected. In its ordinary meaning, this would also mean that the penalty involving a deprivation of liberty must be served in a prison and be imposed by a court when that court rules, at the end of criminal proceedings, that a person can be found guilty of an offence.

The Court also noted that Article 29(2) authorises the extension of the six-month transfer time limit exceptionally in two situations, where it would in fact not be practically possible to carry out the transfer because the person concerned has been imprisoned or has absconded. Therefore, according to the principle established in the Court's case-law, those exceptions must be interpreted strictly. The exceptional nature of the extension emphasised by the Court, would be disregarded if 'imprisonment' was interpreted broadly as including all measures depriving a person of liberty, including measures not imposed in the context of criminal proceedings as a result of an offence committed by the person concerned.

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***Article 35 – competent authorities***

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**C-661/17, *M.A.* (23 January 2019) – second question**

The question for the Court was whether it has to be the same national authority that determines responsibility pursuant to the criteria laid down in Chapter III, and that exercises the discretionary clause set out in Article 17(1). The Court replied to this question in the negative.

The Court noted that the discretion conferred on Member States in Article 17(1) is an integral part of the mechanisms laid down by that regulation for determining the Member State responsible for an asylum application. Thus, a decision adopted by a Member State on the basis of that provision, implements EU law. However, the Dublin III Regulation does not specify which authority has the power to establish responsibility, either on the basis of the criteria or under the discretionary clause. Nor does the Regulation specify whether a Member State must entrust the task of applying such criteria and applying that discretionary clause to the same authority.

It is for the Member States to determine which national authorities shall have the power to apply the Dublin III Regulation, and to notify those authorities to the Commission as the 'authorities responsible' for fulfilling the obligations arising under the Regulation pursuant to Article 35(1). The wording of that provision further implies that the Member States are free to entrust different authorities with different tasks, including the task of applying the responsibility criteria and the task of applying the discretionary clause.

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***Implementing Regulation Article 5(2) ([38])***

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**Joined cases C-47/17 and C-48/17, *X & X* (13 November 2018)**

The question for the Court was whether a requested Member State, which has previously rejected a take charge or take back request and has consequently received a request for re-examination, is obliged to reply to that second request. If yes, the question is also what that time limit should be, and what the consequences are if the requested Member State fails to reply in time. The Court replied to these questions that the requested Member State shall endeavour, in the spirit of sincere cooperation, to reply within two weeks, after which the requesting Member State becomes responsible unless it still has time pursuant to Articles 21(1) and 23(2) to send a new take charge or take back request.

The Court noted that, the procedural rules and time limits for sending and replying to take charge and take back requests all entail the establishment of responsibility if the request is accepted or if the time limits expire. Therefore, the Court emphasised that a Member State cannot send a purely formal reply to the requesting Member State in order to circumvent those consequences. According to the clear wording of Articles 22(1) and 25(1), the requested Member State has the obligation to make all the necessary checks to be able to reply to the request within those mandatory time limits. In addition, Article 5(1) of the Commission Implementing Regulation obliges the requested Member State to state the full and detailed reasons for the refusal.

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([38]) Implementing Regulation (Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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).

Given the objective to ensure that the Member State responsible is determined as rapidly as possible, to ensure effective access to the procedure for granting international protection, the Court highlighted that there are situations in which the EU legislature intended that the application may have to be examined by another Member State than the one which the criteria indicated as being responsible in order to achieve these objectives.

The Court noted that the additional re-examination procedure is optional. Given that the aim of the Commission Implementing Regulation is to ensure the effective application of the Dublin Regulation, then the re-examination procedure must also be strictly and foreseeably circumscribed to ensure both legal certainty for all parties concerned and achievement of the objective of rapid processing of applications for international protection.

Where a request for re-examination is not sent within the three weeks set out in Article 5(2), the requesting Member State cannot anymore challenge the refusal by the requested Member State. Where the requesting Member State has sent a re-examination request, the requested Member State should engage in sincere cooperation with the requesting Member State and re-examine the request within the time limit.

However, the Court noted that, unlike Article 22(7) and Article 25(2) of the Dublin III Regulation, Article 5(2) of the Implementing Regulation does not provide that a failure to reply before the expiry of the two-week period would be tantamount to accepting the request and would entail the obligation to take charge of or take back the person concerned. On the other hand, that objective of the Dublin III Regulation would not be respected if Article 5(2) of the Implementing Regulation were to be interpreted as meaning that the time limit of two weeks were purely indicative. Therefore, where the two-week time limit has expired, the additional re-examination procedure has definitely come to an end, regardless of whether the requested Member State has replied to the request or not. Unless the requesting Member State has time left within the original time limit set out in Articles 21(1) and 23(2) to send another take charge or take back request, that Member State must be responsible for examining the application.

Finally, the Court noted that the requesting Member State is entitled to send to the requested Member State a re-examination request within the period prescribed by the second sentence of Article 5(2) of the Implementing Regulation, of three weeks following receipt of the negative reply from the requested Member State, even if the termination of that additional re-examination procedure, on the expiry of the period of two weeks laid down in the third sentence of Article 5(2) of the Implementing Regulation, were to come about after the expiry of the time limits laid down, respectively, in Article 22(1) and (6) of the Dublin III Regulation or in Article 25(1) of the Implementing Regulation.

## *Brussels II bis Regulation*

**C-262/21 PPU, *A v B* (2 August 2021) – first and second questions**

The question for the Court was whether the fact that an applicant and her accompanying child comply with a transfer decision pursuant to the Dublin III Regulation without the consent of the child's other parent, then remains in the second Member State after the decision to transfer has been annulled without the authorities of the first Member State deciding to take back the persons transferred or authorise their residence, can be considered as wrongful removal or retention within the meaning of the Brussels II bis Regulation. The Court replied to this question in the negative.

The Court noted that complying with a transfer decision taken pursuant to the Dublin III Regulation cannot be considered as wrongful conduct. Compliance with a transfer decision that was binding on the parent and child in question, in so far as, at the time of transfer, it was enforceable, having not, at that time, been either suspended or annulled, must be considered to be merely a legal consequence of that decision which cannot be blamed on the parent in question.

Further, it cannot be considered that retention in the Member State responsible constitutes wrongful conduct even after the annulment of the decision to transfer, where no decision to take back the parent and the child in question has been made by the authorities of the Member State which carried out the transfer, in application of Article 29(3) of the Dublin III Regulation after the date of transfer and where they are not authorised to reside in that Member State. In such a situation, the child's retention appears to be the mere consequence of the child's administrative status, as determined by enforceable decisions taken by the Member State where the child was habitually resident. The Court noted that an interpretation to the contrary, that the mother of the child should refrain from complying with a transfer decision taken under the Dublin III Regulation on the ground that her conduct could be considered as wrongful under the Brussels II bis Regulation would undermine the principle of legal certainty and the attainment of the objectives pursued by the Dublin III Regulation.

## *Relationship with other acts*

**C-56/17, *Fathi* (4 October 2018) – third question**

*The third question for the Court concerned the right to an effective remedy and an interpretation of Article 46 of the Asylum Procedures Directive. The Court found that, in an action brought by an applicant for international protection against a decision dismissing his application for international protection as being unfounded, the court or tribunal with jurisdiction of a Member State is not required to examine of its own motion whether the criteria and mechanisms for determining the Member State responsible for*

*examining that application, as provided for by the Dublin III Regulation, were correctly applied.*

**Joined cases C-297/17, C-318/17, C-319/17 and C-438/17, *Ibrahim* (19 March 2019) – second question in C-297/17, C-318/17 and C-319/17**

The question for the Court was whether a Member State has to apply first the take charge or take back procedure pursuant to the Dublin Regulation before being able to reject an application as being inadmissible pursuant to Article 33 of the Asylum Procedures Directive. The Court replied to this question in the negative.

The Court noted that it is clear from the wording of Article 33(1), namely "in addition to cases" in which an application is not examined in accordance with [the Dublin III Regulation]", and from the objective of procedural economy pursued by that provision, that, in the situations listed in Article 33(2) of that directive, that provision permits the Member States to reject an application for international protection as being inadmissible without those States being obliged to have recourse, as the first resort, to the take charge or take back procedures provided for by the Dublin III Regulation.