



EASO
Practical guide
on the implementation
of the Dublin III Regulation:
Personal interview
and evidence assessment

EASO Practical Guide Series

October 2019

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List of abbreviations

APD	Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
CEAS	Common European Asylum System
Charter	Charter of fundamental rights of the European Union (2000/C 364/01)
CJEU	Court of Justice of the EU
Dublin III Regulation	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)
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
Eurodac	Eurodac database
Eurodac II 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
Implementing Regulation	Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing 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, as amended by Commission Implementing Regulation (EU) 118/2014 of 30 January 2014
Member States	European Union Member States plus Norway, Switzerland, Iceland and Liechtenstein applying the Dublin III Regulation
RCD	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)
SIS II	Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System
UNHCR	United Nations High Commissioner for Refugees
VIS Regulation	Regulation (EC) No. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas
VIS	Visa Information System

Introduction

Why was this practical guide created? The *EASO Practical Guide on the implementation of the Dublin III Regulation: Personal interview and evidence assessment* is a practical tool to support Dublin practitioners across all European Union (EU) Member States plus Norway, Switzerland, Iceland and Liechtenstein applying the Dublin III Regulation (Member States) in their daily work. This is a soft convergence tool, which reflects the common standards.

The purpose of this practical guide is twofold. The guide assists the reader in conducting the Dublin personal interview with an applicant for international protection, as well as supporting the user to conduct an objective and impartial individual assessment of the evidence by applying the legal criteria and common standards equally. This is done in order to determine which Member State is responsible for examining the application for international protection lodged in one of the Member States by a third-country national or a stateless person.

The key legal instruments for this guide are [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 States 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) (Dublin III Regulation) and the [Commission Regulation \(EC\) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation \(EC\) No 343/2003](#) establishing 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 (Dublin II Regulation), as amended by [Commission Implementing Regulation \(EU\) 118/2014](#) of 30 January 2014 (Implementing Regulation). This guide aims to translate the legal requirements with regard to the personal interview and the evidence assessment into concise guidance for practitioners.

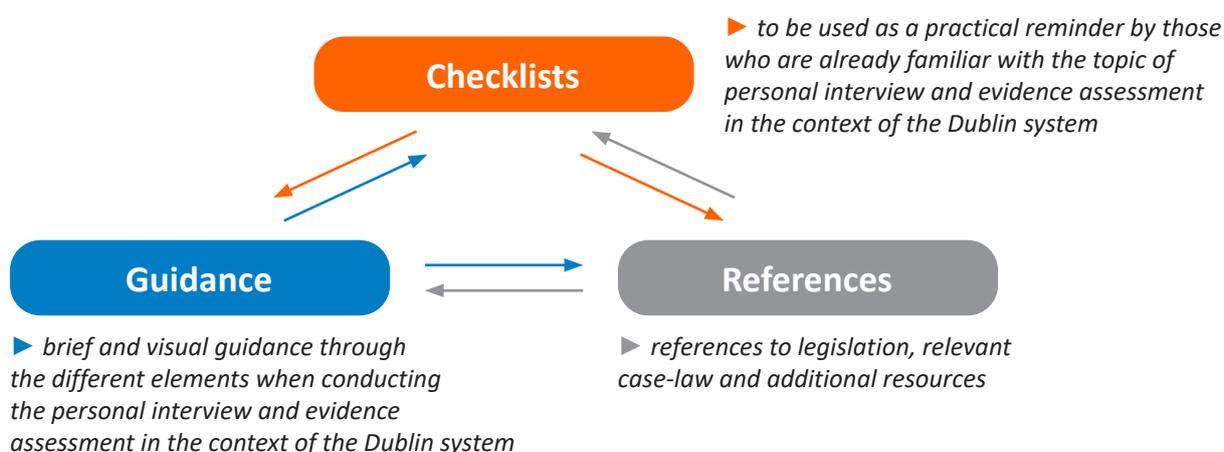
What is the scope of this practical guide? This guide focuses on the information that should be provided to the applicant concerning the application of the Dublin III Regulation, as well as on the personal interview with the applicant conducted as part of the Dublin procedure, and the evidence assessment carried out by the practitioner in order to determine the responsible Member State.

The content of this guide is based on and refers to the provisions of the Dublin III Regulation. While drafting the guide, negotiations were ongoing on the Proposal for a regulation of the European Parliament and of the Council 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). At the time of reading, the user should use and be informed by this guide in relation to the corresponding provisions of the respective legal instrument in force.

Who should use this practical guide? This guide is primarily intended for staff working in Dublin Units, registration officers, case officers and border guards, who conduct interviews with applicants and carry out the assessment to determine the responsible Member State on behalf of the national competent authorities. Additionally, it could represent a useful tool for other actors involved in the Dublin procedure such as police officers, the judiciary, legal representatives, social workers, as well as anyone interested in these aspects of the implementation of the Dublin III Regulation.

This practical guide aims at catering for the needs of practitioners with various degrees of experience: from the beginner case officers to those with years of experience. The layers of this guide (guidance, checklists and references) and content could be used differently, depending on the needs of the user.

How to use this practical guide? The practical guide is structured in three layers, which could be used independently, or in an interlinked manner.



In addition to providing structured guidance, this practical guide can be used as a support to conduct self-evaluation and/or to carry out quality assessment.

This practical guide contains suggested good practices in yellow boxes and reference to case-law in blue boxes. At the beginning of each section there is a reference to the relevant legal provisions in red tables. This reference, however, is not intended to limit the scope of the following paragraph to those articles mentioned; instead it is designed to constitute a reference to the legal provision which might be of relevance to the case at hand. Reference is made to existing EASO tools or relevant EASO training modules in grey boxes.

How was this practical guide developed? The guide was created by a working group of experts from Member States, facilitated by the European Asylum Support Office (EASO) and with the valuable input from the European Commission and the United Nations High Commission for Refugees (UNHCR). Before its finalisation, the guide was consulted with all Member States.

How does this practical guide relate to other EASO support tools? EASO's mission is to support Member States through, inter alia, common training and common quality. As with all EASO support tools, the *Practical Guide on the implementation of the Dublin III Regulation: Personal interview and evidence assessment* is based on the common standards of the Common European Asylum System (CEAS). It is understood that not all participating Member States are bound by the obligations of the CEAS. Those countries to whom the obligations do not apply should consider the references to the specific CEAS directives below only where it is applicable. This guide is built within the framework of the CEAS as other practical guides, and should be seen as a complement to other available EASO tools. Its consistency with those tools has been a primary consideration, especially in relation to the closely related EASO training curriculum modules on the Dublin III Regulation. The EASO practical guides on [Personal Interview](#) and [Evidence Assessment](#) also constituted valuable sources of information in the development of this tool.

This is a practical guide developed by using the EASO Quality Matrix methodology and it should be used in conjunction with the other available practical tools: <https://www.easo.europa.eu/practical-tools>.

CHECKLISTS

- ▶ *to be used as a practical reminder by those who are already familiar with the topic of personal interview and evidence assessment in the context of the Dublin system*

Legal framework of the Dublin system

- Apply the legal provisions according to the material facts
- Remember the territorial scope of the Dublin III Regulation
- Remember that beneficiaries of international protection do not fall under the scope of the Dublin III Regulation

1. Application of the Dublin III Regulation

- The application for international protection is first lodged
- The hierarchy of criteria is respected
- Specific considerations regarding dependency are taken into account

2. Provision of information

- The appropriate content of the information is provided:
 - objectives of the Dublin III Regulation;
 - consequences of making another application in a different Member State;
 - hierarchy of criteria of responsibility;
 - personal interview;
 - the possibility of submitting information regarding the responsibility determination procedure;
 - possibility to challenge a transfer decision;
 - Member States may exchange the data of the applicants;
 - the applicants have the right to access data related to them;
- The information is provided
 - in writing;
 - 'in a language that the applicant understands or is reasonably supposed to understand';
 - if necessary, the information is provided orally;
 - the information is provided through the common leaflets contained in Annex X and XI Implementing Regulation;
 - the leaflets are complemented with information specific to the Member State;

3. Dublin personal interview: objectives, requirements and interview techniques

- Requirements of the interview are met:
 - it takes place in a timely manner;
 - it is conducted before any decision to transfer the applicant is taken;
 - it is conducted in a language that the applicant understands or is reasonably supposed to understand;
 - it takes place under conditions that ensure confidentiality;
 - it is conducted by a qualified person.

Methodology

- Preparation
- Case familiarisation
- Practical arrangements
- Appropriate case officer and interpreter

Opening the interview

- Welcome/introduction
- Verify the understanding between the interpreter and the applicant
- Inform the applicant of the purpose and content of the interview
- Inform the applicant about the duty to cooperate

3. Dublin personal interview: objectives, requirements and interview techniques

Conducting the interview

- Attitude
 - Neutrality
 - Non-judgmental attitude
 - Avoid misunderstanding due to culture-bound assumptions, values or expectations
- Manage the interview situation
 - Establish and maintain an atmosphere of trust
 - Focus on the applicant
 - Manage the dialogue
 - Manage the interpreter
 - Encourage the applicant by being an active listener
- Interview techniques and types of questions
 - Keep questions simple
 - Use open questions
 - Use closed questions appropriately
 - Use clarifying and reflective questions
 - Ask correct questions in a correct and fair way
 - Ask questions according to the capability and educational level of the applicant
 - Opportunity to clarify inconsistencies

During the interview

- provide information on the application of the Dublin III Regulation orally;
- applicants can seek clarifications on any aspects of the operation of the Dublin III Regulation that they do not understand;

Closing the interview

- Ensure that the relevant facts have been covered during the interview
- The applicant is asked if there is any additional information they would like to provide
- The applicant is informed about the possibility to provide further supporting documents
- The applicant is informed about the next steps of the process
- The applicant is informed about the time limits set out in the Dublin III Regulation
- The applicant is informed about the written summary and how to access it.

4. Evidence assessment

- There are Dublin indications in the case
 - Proof is available
 - Circumstantial evidence is available
- Dublin indications are insufficient

Criteria related to family unity

- Definitions
 - Family member
 - Relative
 - Minor
 - Unaccompanied minor
 - Relation of dependency
 - Family in broader sense
- Unaccompanied minors (Article 8)
- Family member who is beneficiary of international protection (Article 9)
- Family member who is applicant for international protection (Article 10)
- Rules for simultaneous applications (Article 11)
- Dependent persons (Article 16)
- Discretionary clauses (Article 17)
 - Article 17(1), the sovereignty clause
 - Article 17(2), the discretionary clause

- | |
|---|
| <input type="checkbox"/> Means of proof and circumstantial evidence <ul style="list-style-type: none"> <input type="checkbox"/> Unaccompanied child and family members <input type="checkbox"/> Dependent (adult) child, sibling, parent |
| <input type="checkbox"/> Means of proof in case of Articles 8, 9, 10 <ul style="list-style-type: none"> <input type="checkbox"/> Written confirmation of the information by the Member State <input type="checkbox"/> Extracts from registers <input type="checkbox"/> Residence permits/temporary residence authorisations issued to the family member <input type="checkbox"/> Evidence that the persons are related <input type="checkbox"/> DNA or blood test <input type="checkbox"/> Consent of the persons concerned |
| <input type="checkbox"/> Circumstantial evidence in case of Articles 8, 9, 10 <ul style="list-style-type: none"> <input type="checkbox"/> Verifiable information from the applicant <input type="checkbox"/> Statements by the family members concerned <input type="checkbox"/> Reports/confirmation of the information by an international organisation, such as UNHCR |

Criteria related to residence, entry and stay

- | |
|---|
| <input type="checkbox"/> Definitions <ul style="list-style-type: none"> <input type="checkbox"/> Residence document <ul style="list-style-type: none"> <input type="checkbox"/> Valid residence document <input type="checkbox"/> Multiple residence documents <input type="checkbox"/> Expired residence documents <input type="checkbox"/> Visa <ul style="list-style-type: none"> <input type="checkbox"/> Valid visa <input type="checkbox"/> Multiple visa <input type="checkbox"/> Expired visa <input type="checkbox"/> Irregular entry <input type="checkbox"/> Continuous stay in a Member State for at least five months <input type="checkbox"/> Visa waived entry <input type="checkbox"/> Application in an international transit area of an airport |
| <input type="checkbox"/> Means of proof in cases of valid or expired residence document or visa <ul style="list-style-type: none"> <input type="checkbox"/> Residence document <input type="checkbox"/> Visa <input type="checkbox"/> VIS hit <input type="checkbox"/> Extracts from registers of aliens or similar registers <input type="checkbox"/> Reports/confirmation of the information by the Member State which issued the residence document or visa |
| <input type="checkbox"/> Circumstantial evidence in case of valid or expired residence document or visa <ul style="list-style-type: none"> <input type="checkbox"/> Detailed, verifiable statements of the applicant <input type="checkbox"/> Reports/confirmation of the information by the Member State which did not issue the residence document <input type="checkbox"/> Reports/confirmation of the information by an international organisation, such as UNHCR <input type="checkbox"/> Reports/confirmation of the information by family members, travelling companions |
| <input type="checkbox"/> Means of proof in case of visa waived and irregular entry <ul style="list-style-type: none"> <input type="checkbox"/> Entry stamp in a passport <input type="checkbox"/> Exit stamp <input type="checkbox"/> Tickets conclusively establishing entry at an external frontier <input type="checkbox"/> Positive match by Eurodac <input type="checkbox"/> Fingerprints |
| <input type="checkbox"/> Means of proof in case of residence for at least five months <ul style="list-style-type: none"> <input type="checkbox"/> Residence authorisations <input type="checkbox"/> Requests to leave the territory or expulsion order issued on dates at least five months apart or that have not been enforced <input type="checkbox"/> Extracts from the records of hospitals, prisons, detention centres |

Criteria related to residence, entry and stay

- Circumstantial evidence in case of visa waived entry, irregular entry, residence in a Member State for at least 5 months
 - Detailed, verifiable statements of the applicant
 - Reports/confirmation of the information by another Member State or third country
 - Reports/confirmation of the information by an international organisation, such as UNHCR
 - Reports/confirmation of the information by family members, travelling companions
 - Fingerprints
 - Tickets, hotel bills, entry cards, etc.

Previous application for international protection

- An asylum claim was lodged previously with another Member State
- The Dublin III Regulation is applicable
- Obligation to take back an applicant to examine the application for international protection
- Obligation to take back the applicant to conduct the Dublin procedure
- Means of proof in cases of take back procedure
 - Positive match by Eurodac
 - Form submitted by the applicant (application form)
 - Official report drawn up by the authorities
 - Fingerprints taken in connection with an application
 - Extracts from register of aliens or similar registers
 - Written report by the authorities attesting that an application has been made
- Circumstantial evidence in case of take back procedure
 - Detailed and verifiable information provided by the applicant
 - Reports/confirmation of the information by an international organisation, such as UNHCR
 - Reports/confirmation of the information by family members, travelling companions

Cessation of responsibilities – departure from the territory and expulsions

- Cessation of responsibility
- Means of proof in case of cessation of responsibility
 - Exit stamp
 - Extracts from third country registers
 - Tickets conclusively establishing departure from or entry at external frontier
 - Report/confirmation by the Member State from which the applicant left the territory of the Member States
 - Written proof from the authorities that the alien has actually been expelled
 - Confirmation of the information regarding expulsion by the third country
 - Stamp from a third country bordering on a Member State
 - Fingerprints
- Circumstantial evidence in case of cessation of responsibility
 - Detailed and verifiable information provided by the applicant
 - Reports/confirmation of the information by an international organisation, such as UNHCR
 - Reports/confirmation of the information by family members, travelling companions
 - Reports/confirmation of the information by another Member State
 - Exit stamp
 - Fingerprints
 - Tickets, hotel bills, entry cards, etc.
 - Other evidence

Specific considerations regarding Dublin transfers

- Assessing the evidence

Legal framework of the Dublin system [\[back to checklist\]](#)

The Dublin system is the cornerstone of the CEAS and aims at effectively determining the Member State responsible for examining an application for international protection.

The Dublin system consists of three regulations:

Dublin III Regulation

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)

Dublin Implementing Regulation

Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing 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, as amended by **Commission Implementing Regulation (EU) 118/2014** of 30 January 2014

Eurodac II 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)

With regards to the implementation of the Dublin III Regulation, both the Visa Information System (VIS) as well as the Schengen Information System (SIS II) are relevant.

Regulation (EC) No 767/2008 of the European Parliament and the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) sets out the rules in Article 2(b) on how to:

...improv[e] the implementation of the common visa policy ... and consultation between central visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order ... to prevent the bypassing of the criteria for the determination of the Member State responsible for examining the application.

The VIS applies to all Schengen States (Denmark has decided to implement it). However, it is important to note that not all Member States applying the Dublin III Regulation are bound by the VIS Regulation.

The SIS II is defined in the following legal instruments: Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System and Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU.

The SIS II is an information system for security and border management in Europe. Each Member State has a national Supplementary Information Request at the National Entries (SIRENE) Bureau which serves as a single point of contact for the information exchange. The system helps the authorities in Europe to safeguard internal security in the absence of internal border checks.

SIS II operates in 26 Member States (with the exception of Ireland and Cyprus) and 4 Associated countries. Some Member States have special arrangements: Bulgaria, Romania and Croatia are not yet part of the Schengen area, but both Romania and Bulgaria use SIS, while Croatia has restricted usage. The United Kingdom is not part of the Schengen area but operates SIS II.

In addition, when applying the Dublin procedure, the case officers should bear in mind the provisions laid down in Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (APD) if it is applicable. The provisions of the APD 'apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under [Dublin] Regulation' as stated in recital 12 Dublin III Regulation and recital 54 APD.

Case-law

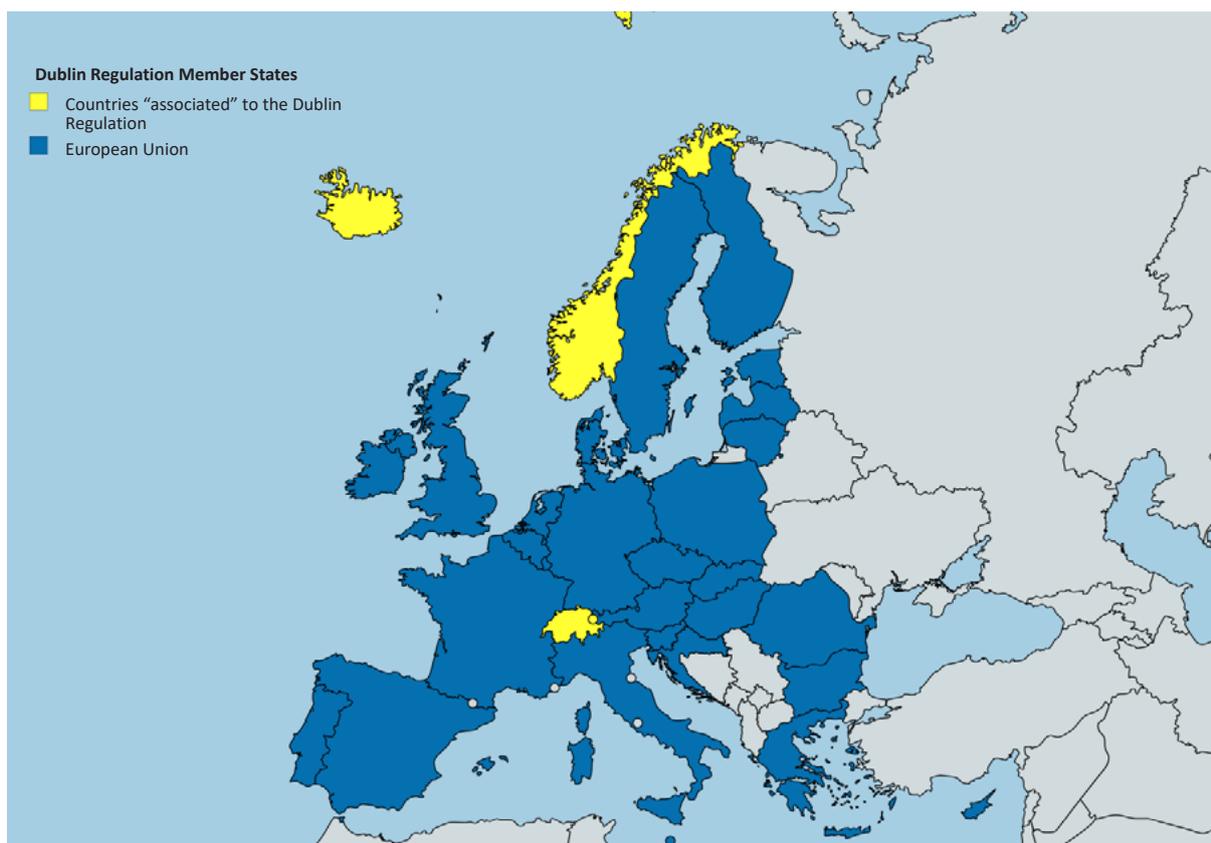
'The Dublin system ... seeks, as is apparent from recitals 4 and 5 thereof, to make it possible, in particular, to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of processing applications for international protection expeditiously'.

CJEU judgement of 16 February 2017, *C.K. and others v Supreme Court of Republic Slovenia*, C-578/16 PPU, para. 57

Territorial scope of the Dublin III Regulation

Developed from the 1990 Dublin Convention, the Dublin system was incorporated into European Union law through the Dublin II Regulation and Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention. In 2001, Norway and Iceland joined as associated countries. Denmark decided to opt in by an agreement of 2006, and confirmed the implementation of the Dublin III Regulation by a parliament decision of December 2013. Switzerland and Liechtenstein joined as associated countries in 2008 and 2011 respectively.

The Regulation therefore applies to 32 Member States:



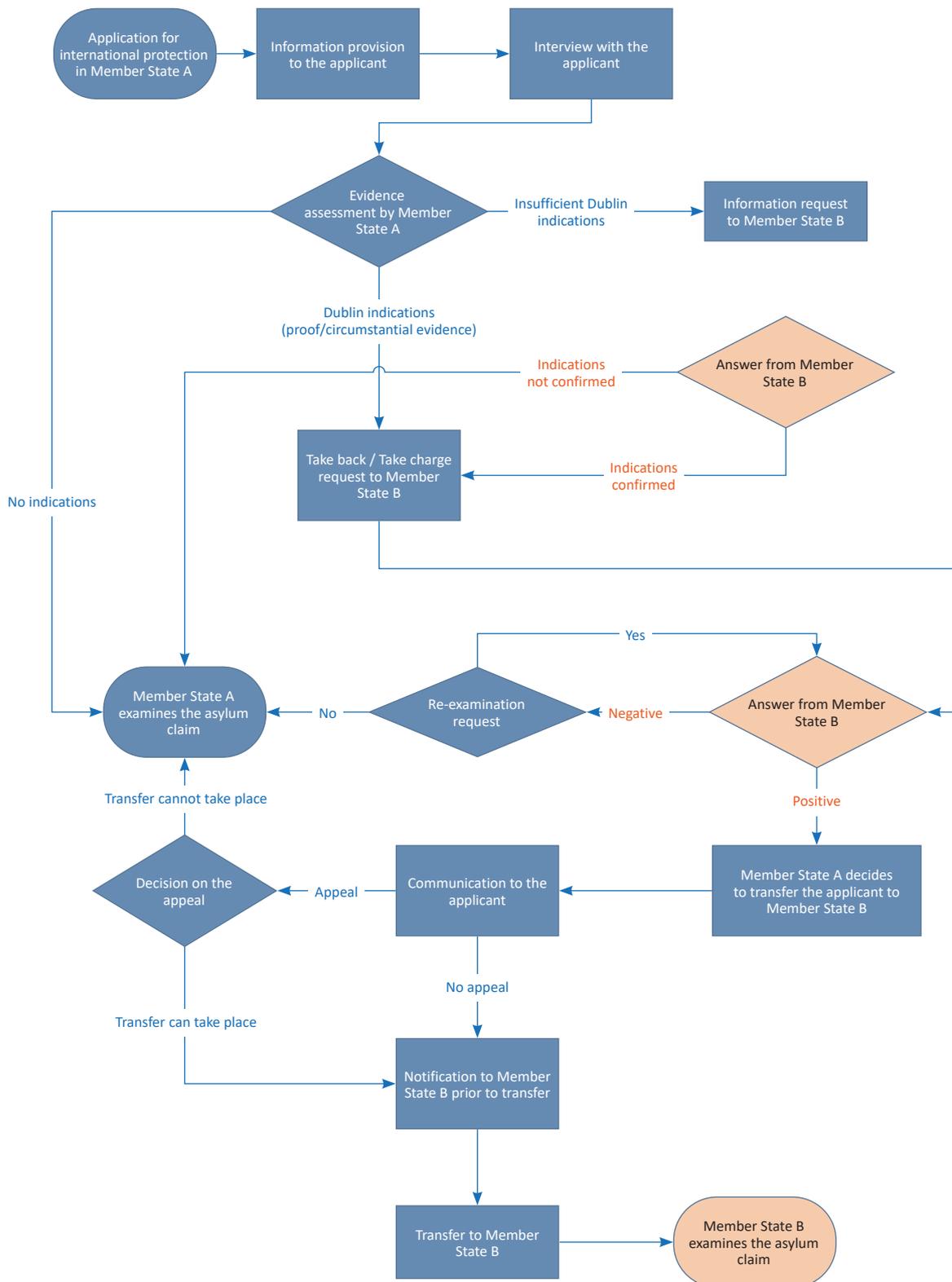
Personal scope of the Dublin III Regulation

The Dublin III Regulation applies to third country nationals (defined in Article 2(a) Dublin III Regulation) or stateless persons who applied for international protection in one of the Member States. The scope of the Dublin III Regulation encompasses applicants for international protection. Beneficiaries of international protection do not fall under the scope of the Dublin III Regulation. The term 'applicant' is defined in Article 2(c) Dublin III Regulation.

Chapter V Dublin III Regulation, and in particular, Article 18(1)(b) refers to applicants whose application is under examination, Article 18(1)(c) refers to a third country national or stateless person who has 'withdrawn the application under examination and made an application in another Member State', or 'who is on the territory of another Member State without a residence document'. Article 18(1)(d) refers to 'a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document'.

Regarding the applicants rejected with a first or final decision by another Member State who did not lodge a new application in the Member State where they are present, Article 24 Dublin III Regulation enables the Member States to decide to apply either the Dublin III Regulation or [Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals](#) (Return Directive).

Starting with an application for international protection in Member State A, the Dublin procedure with Member State B can be schematically described as follows:



GUIDANCE

- ▶ *brief and visual guidance through the different elements when conducting the personal interview and evidence assessment in the context of the Dublin system*

1. Application of the Dublin III Regulation [\[back to checklist\]](#)

In order to determine the Member State responsible for examining an application for international protection lodged by a third-country national or a stateless person, Article 7(1) Dublin III Regulation obliges Member States to apply the criteria set out in Chapter III ('hierarchy of criteria') **where an application is first lodged**.

Dublin III Regulation

Chapter III

There are two sets of criteria:

- 1) criteria designed to protect family unity (Articles 8-11, 16-17); and
- 2) criteria relating to the responsibility of 'the Member State which played the greatest part in the applicant's entry into or residence on the territories of the Member States'⁽¹⁾ (Articles 12 to 15).

The 'hierarchy of criteria' for determining the Member State responsible set out in Chapter III Dublin III Regulation means that the criteria are to be applied in the order set out below:

Family unity	{	<ul style="list-style-type: none"> • Unaccompanied minor (Article 8) • Family members who are beneficiaries of international protection (Article 9) • Family members who are applicants for international protection (Article 10) • Family procedure (Article 11)
Greatest part in entry or residence	{	<ul style="list-style-type: none"> • Issue of residence document or visa (Article 12) • Irregular entry or stay (Article 13) • Visa waived entry (Article 14) • Application in an international transit area of an airport (Article 15)

The Member State responsible 'shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State' (Article 7(2) Dublin III Regulation). This Member State has to consider all available evidence related to family members, relatives or other family relations of the applicant (Article 7(2) and 7(3) Dublin III Regulation).

Member States apply the Dublin III Regulation in conformity with European and international human rights obligations, including the 1951 Refugee Convention and in particular the Charter of Fundamental Rights of the European Union (the Charter), the European Convention on Human Rights (ECHR) and the relevant case-law of the Court of Justice of the European Union (CJEU), as well as that of the European Court of Human Rights (ECtHR).

In order to effectively implement the Dublin III Regulation, Member States shall establish robust cooperation within the framework of the Regulation and apply the principle of mutual trust among them with respect to asylum policy.

The aim of the Dublin system is to guarantee that for each asylum claim lodged in any of the Member States there will only ever be one responsible Member State:

- If none of the criteria listed in Chapter III applies, the **first Member State** 'in which the application for international protection was lodged shall be responsible for examining it' (Article 3(2) first subparagraph).
- If a transfer cannot be carried out due to 'systemic flaws in the asylum procedure and in the reception conditions for applicants' in the responsible Member State (Article 3(2) second subparagraph) or because the authorities in the transferring Member State can reasonably foresee that the transfer would lead to a real risk of violation of Article 4 Charter, the determination of responsibility will exclude the Member State where the risk is likely to occur.

⁽¹⁾ [Proposal for a Regulation of the European Parliament and of the Council 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) {SEC(2008) 2962} {SEC(2008) 2963} /* COM/2008/0820 final - COD 2008/0243 */



Specific considerations: dependent person and discretionary clauses

Dublin III Regulation	Implementing Regulation
Articles 16 and 17	Article 11

In addition to the criteria above, the Dublin III Regulation may establish responsibility on the basis of dependent person and discretionary clauses.

Article 16 contains a possibility to bring together an applicant who is dependent on the assistance of their child, sibling or parent legally resident in one of the Member States with said person. It also contains the possibility to bring together the applicant's child, sibling or parent legally resident in one of the Member States where said person is dependent on the assistance of the applicant, on account of pregnancy, new born child, serious illness, severe disability or old age.

Case-law

In its judgment of 6 November 2012 in case *K v Bundesasylamt*, C-245/11, the CJEU clarified the following:

'A dependency link is decisive for the determination of responsibility if no exceptional circumstances hinder its application. Article 16 therefore constitutes an additional "quasi criterion".'

Article 17 Dublin III Regulation sets out discretionary clauses. The '**sovereignty clause**' (Article 17(1)) allows Member States to take responsibility for an application lodged with it even if it is not the responsible Member State according to the criteria. The '**humanitarian clause**' (Article 17(2)) may be applied upon request of a Member State 'in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations'.

2. Provision of information [\[back to checklist\]](#)

Dublin III Regulation

Article 4

The applicant's right to information as set out in Article 4 Dublin III Regulation is a central prerequisite to guarantee procedural fairness. According to Article 4(1) Dublin III Regulation, as soon as an application for international protection is lodged in a Member State, the competent authorities shall inform the applicant on the application of the Regulation and in particular:

- the **objectives** of the Dublin III Regulation and the **consequences** of making another application in a different Member State as well as the consequences of moving from one Member State to another during the Dublin procedure or during the examination of the application for international protection;
- the **hierarchy of criteria** of responsibility including the possibility that an application for international protection lodged in one Member State can result in that Member State becoming responsible even if such responsibility is not based on those criteria;
- the **personal interview** and the possibility of **submitting information** regarding the responsibility determination procedure including information about the presence of family members, relatives or any other family relations in the Member States;
- the possibility to **challenge a transfer decision** and, where applicable, apply for suspension of the transfer, as well as the time limits for the legal remedies;
- the possibility that the Member State in which the applicant currently finds themselves may **exchange their data** with other Member States in order to determine responsibility;
- their **right to access data** relating to them and to correct any inaccurate information or delete the data if it was unlawfully processed, as well as the procedures for exercising these rights.

In accordance with Article 4(2), the information shall be provided:

- in writing;
- 'in a language that the applicant understands or is reasonably supposed to understand';
- where necessary (in cases of persons with special procedural needs), for the proper understanding, the information shall also be supplied orally;
- this information shall be provided through the common leaflets contained in Annex X and XI Implementing Regulation as provided in Article 4(3) Dublin III Regulation, and
- complemented with information specific to the Member State.

3. Dublin personal interview: objectives, requirements and interview techniques [\[back to checklist\]](#)

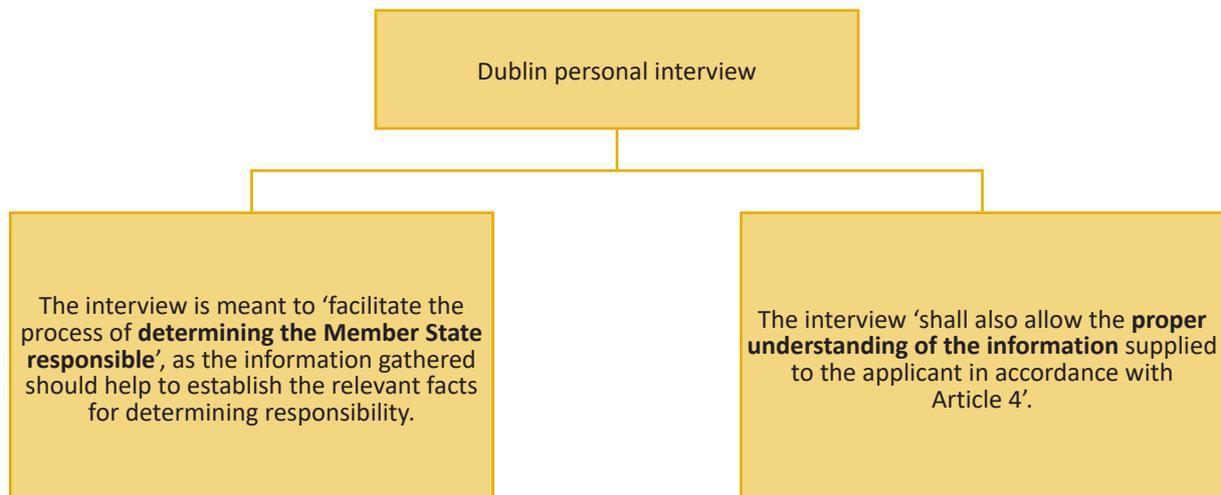
Dublin III Regulation	APD
Article 5	Article 14

Objective of the Dublin personal interview

The Dublin III Regulation contains an obligation for the determining Member State to conduct a personal interview with the applicant (Dublin personal interview).

The main focus of the interview is to gather all facts that are relevant for the determination of the Member State responsible. Consequently, the Dublin personal interview is different in scope and focus from the personal interview on the substance of the application for international protection under Article 14 APD.

The objective of the Dublin personal interview is twofold:



In this context, the Dublin personal interview has the potential to serve multiple purposes:

- it allows authorities to provide information on the application of the Dublin III Regulation orally;
- it enables applicants to seek clarifications on any aspects of the operation of the Dublin III Regulation that they do not understand;
- it enables applicants to provide the information necessary for a correct determination of responsibility, including the presence of family members in another Member State;
- it enables the applicant to make their views known effectively;
- it permits authorities to directly clarify aspects of the information provided by the applicant in an efficient manner.

The Member State conducting the determination procedure may also decide to send an information request under the terms of Article 34 Dublin III Regulation (see Annex V of the Implementing Regulation) in order to gather any additional relevant information.

This section covers general considerations related to the Dublin personal interview. The specific topics that need to be addressed during the interview will be discussed extensively under the section [Evidence assessment](#).

Conducting the Dublin personal interview is **mandatory** with a few exceptions.

The Dublin personal interview may be omitted if:

- the applicant has absconded; or

- ‘after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).’ (Article 5(2))

Requirements of the personal interview

There are a number of requirements that have to be met when conducting the personal interview.

The interview should:

- ‘take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible [...]’ (Article 5(3))
- ‘be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview’ (Article 5(4))
- ‘take place under conditions which ensure appropriate confidentiality’ (Article 5(5))
- ‘be conducted by a qualified person under national law’ (Article 5(5))

The Member State conducting the Dublin personal interview ‘shall make a written summary thereof’ containing ‘at least the main information supplied by the applicant at the interview’. Moreover, the Member State shall ‘ensure that the applicant and/or legal advisor or other counsellor who is representing the applicant have timely access to the summary’ (Article 5(6)).

Timing of the interview

The main purpose of the Dublin interview is to facilitate the process of determining the Member State responsible. In order to avoid prolongation of the determination process or even erroneous determination of responsibility, it is advisable to conduct the interview shortly after the application for international protection was lodged in accordance with Article 20(2) Dublin III Regulation. The most appropriate time to conduct the interview is before the request to take charge or take back the applicant is sent to the other Member State. This would also secure a proper understanding by the applicant of the setup and the rules of the Dublin system in line with Article 4 Dublin III Regulation.

However, the Dublin III Regulation does not stipulate exactly when the interview should take place, only that the **interview must be held in a timely manner and before the transfer decision is taken**. Consequently, the interview has to be scheduled at the latest after the requested Member State has accepted to take charge or take back the applicant.

Depending on the setup of the national asylum system, the Dublin personal interview may be integrated into the registration interview, provided that the requirements for the personal interview are met. However, as relevant information for responsibility is, in practice, gathered via the Eurodac database, it should be ensured that the case officer who conducts the interview knows the result of the comparison of fingerprints with the existing Eurodac data. If this is not the case, a second Dublin personal interview should be conducted if the Central system transmits a hit pursuant to Article 9(5), 15(2) or 17(5) Eurodac II Regulation, in order to ask further questions from the applicant in connection with the information based on which another Member State is deemed to be responsible, as there might be individual circumstances which can influence the determination procedure.

Methodology

Preparation

Preparation is the key to an effective interview. The better prepared the case officer, the more relevant the questions asked thus the more efficient the interview. Failure to prepare often results in irrelevant questions and may lead to the need for further information gathering and potentially an additional interview.

An effective interview that collects relevant evidence about the key aspects of responsibility determination is essential for the determination of the responsible Member State.

Case familiarisation

The basic point of case familiarisation is to collect important information and documents before the interview takes place.

If the national procedure allows for this prior to the interview:

- Check available databases (Eurodac, VIS, national system)

Information held on available databases or systems is relevant to the assessment of the responsibility of another Member State. This information could include: information on family members, visa, residence permit, entry, Eurodac hit, previous procedures.

- Check additional information relevant for the determination of the responsible Member State (registration forms, other documents, documents submitted by the applicant, etc.)

In particular, additional information or documents pertaining to the applicant's identity, nationality, family situation, personal circumstances and travel route may be already available.

Practical arrangements

In order for the interview to go ahead smoothly at the appointed time, the case officer must ensure that all preliminary arrangements have been put in place in order to create a safe and friendly environment. Such an interview environment will help to obtain the necessary information for determining responsibility.

Depending on national legislation and practices, the case officer should make the necessary arrangements with the applicant's legal representative or other persons who might be admitted to the interview such as a UNHCR representative or person providing legal or other counsel, emotional or medical support. This may be particularly relevant if the applicant has special procedural needs.

Appropriate case officer and interpreter

According to Article 5 Dublin III Regulation, 'the personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law'.

The person conducting the interview should be competent to take into account all relevant personal and general circumstances surrounding the application. If requested by the applicant, and wherever possible, it is advisable that the person conducting the interview and the interpreter are of the same sex as the applicant.

Conducting the interview

The way the case officer conducts the interview has a significant impact on the overall quality and quantity of the information they gather. Considerations include the attitude of the case officer as well as their verbal and non-verbal communication.

EASO training modules on interview techniques and the Dublin III Regulation

National administrations may wish to consider whether staff conducting Dublin personal interviews, including border guards and registration officers follow the EASO training modules on Interview Techniques and on the Dublin III Regulation. The aim of the interview techniques module is to assist case officers to acquire the knowledge, skills and attitudes that will enable them to conduct personal interviews in a professional manner. The EASO training module on the Dublin III Regulation provides participants with knowledge and skills of fundamental issues concerning the application of the Dublin III Regulation and the way it operates. Trainees are also provided with the opportunity to familiarise themselves with the Eurodac database and the electronic network 'DubliNet'. Besides acquiring knowledge of the purpose and content of the Regulation, participants learn how to apply specific aspects of it, such as family reunification or guarantees for unaccompanied minors.

Attitude

Neutrality. The case officer needs to be neutral. The case officer should try to be as objective and clear as possible. They should not be influenced by other cases or their own personal beliefs or opinions.

Non-judgemental attitude. The case officer should use an appropriate tone during the interview, display a non-judgemental attitude and remain unbiased and inquisitive in their approach and reactions to the applicant's statements, including when there are, for example, indications of inconsistencies, forged documents or excludable acts.

Avoid misunderstanding due to culture-bound assumption, values or expectations. Even if the case officer has a good knowledge about the applicant's culture and traditions, it does not mean that the case officer and the applicant automatically understand each other. Self-awareness and self-reflection are significant factors contributing to an open atmosphere and to capture relevant facts from the applicant's point of view.

Managing the interview situation

Establish and maintain an atmosphere of trust. Article 5(5) Dublin III Regulation stresses the importance of confidentiality and trust in all interviews including Dublin personal interviews. This requirement needs to be adhered to.

In the Dublin personal interview, the case officer gathers accurate and reliable information about the applicant's travel routes, applications for international protection lodged in any other Member State and personal/family situation. The way in which the case officer handles the interpersonal communication in the interview may greatly influence both the quality and the quantity of the information obtained. The case officer has the responsibility to create an atmosphere of trust and confidence. Having a professional attitude is essential and showing empathy can help achieve this. Developing a good communication atmosphere, in which all the persons involved feel safe and interact in a positive manner, helps the applicant to reduce feelings of stress, anxiety or distrust, and encourages the applicant to provide information. Subtly mirroring the applicant's body language, posture and pace (tempo) could aid in fostering an atmosphere of trust.

Focus on the applicant. The interview should be regarded as a dialogue in which the applicant should do most of the talking. The case officer's verbal and non-verbal communication should make clear to the applicant that they are in focus. The case officer should also adjust their manner of communication according to the needs of the applicant. In practice this means using appropriate language, giving information in a way that the applicant is able to understand, picking up signs from non-verbal communication and taking any intercultural issues into account.

Manage the dialogue. The case officer is responsible for obtaining the essential information during the interview and assist the applicant in bringing forward all relevant elements for the responsibility determination procedure. The case officer could follow an interview plan (based on a logical chronological or thematic structure), but it is also important to remain flexible.

Manage the interpreter. The interpreter plays an important role in conducting the interview. The language skills of the interpreter and the handling of sensitive situations are two essential elements. The interpreter translates directly what is said. However, it is important that the case officer addresses the applicant directly (in the first person) and not through the interpreter using third-person phrasing regarding the applicant. The interpreter should not express opinion or offer advice to the case officer or to the applicant. The interpreter should have no connection to the applicant.

The case officer should confirm that the selected interpreter has the requisite skills and knowledge and is able to provide an accurate and impartial interpretation of the applicant's account in accordance with national procedures. The case officer should ensure that the interpreter acts neutrally and impartially. In case the case officer has any concerns about the ability of the interpreter, this should be addressed in accordance with national procedures.

Encourage the applicant by being an active listener. The case officer should listen to the applicant and direct their attention verbally and non-verbally in order to improve communication skills and to help avoid misunderstanding. As this is not the interview in order to examine the applicant's qualification for international protection but to apply the Dublin III Regulation, the case officer should remain focused on the salient topics. The case officer should demonstrate that they are actively listening to the applicant throughout the interview; try to take a more active role if the applicant has difficulty speaking freely; introduce a topic each time a new one is raised; give the applicant enough time to concentrate and reflect. If the applicant goes off point the case officer should try to bring the narrative back on track in a sensitive manner.

Interviewing techniques and types of questions

The case officer should use all the indicative interview techniques when conducting a Dublin interview and adjusting them to the specific aim. The main difference between a personal interview according to Article 14 APD and a Dublin personal interview is that the latter – given its more limited purpose - does not necessarily profit from a phase of free narrative. However, all the topics that are discussed during the interview should be introduced in a clear way to the applicant.

Interviewing techniques should be applied as follows:

Keep the questions short, simple and easy to understand

The level of language used and the way the case officer asks questions can lead to major misunderstandings and erroneous conclusions. The questions asked during the interview should be as simple as possible. Asking multiple questions at the same time should be avoided.

Use open questions

It is important that the applicant gives as much information as possible about an event or situation to the best of their knowledge if it is relevant for the determination of responsibility.

Use closed questions appropriately

The case officer should mainly rely on open questions and closed questions should be used to receive specific information. Since the Dublin interview is conducted in order to obtain specific information, the use of closed questions is also very important. However, the case officer should still be cautious not to give the impression to the applicant that they are only expected to answer to a series of closed questions, resembling a specific type of police interrogation. Open questions will help the applicant to understand that the interview is a place to express their own views.

Use clarifying and reflective questions

These questions are important when the case officer needs to elicit a verifiable description of the event from the applicant.

Ask questions in a correct and fair way.

Questions should be asked in a fair and non-suggestive way.

Ask questions bearing in mind the capability and educational level of the applicant.

The case officer should always first check the level of education or the capacity of the applicant to grasp certain notions in order to prevent a breakdown in communication due to the use of language which is either too basic or too difficult and complex.

Give an opportunity to clarify inconsistencies and contradictions

The case officer should give the applicant the opportunity to clarify potential discrepancies, contradictions and inconsistencies.

Opening the interview

Welcome/introduction

It is essential that the case officer greets the applicant professionally, introduces all persons taking part in the interview and explains their roles. Moreover, by explaining the role of each person present and each step and action in the process, the case officer could reduce any feelings of tension and anxiety.

Verifying understanding between the applicant and the interpreter

The case officer should ask the applicant if they understand the interpreter, and vice versa.

Informing the applicant of the purpose and content of the interview as well as about the Dublin procedure

It is important that the applicant understands the Dublin procedure as well as the next steps. Therefore, providing information is important. The case officer should explain the relevant information taking into account the level of understanding of the applicant. It is essential to give the relevant information at the opening of the interview. The timely provision of relevant information gives the applicant an overview of the procedure.

It is particularly important to inform the applicant about:

- the duration of the interview and possible outcomes.
- confidentiality.
- the purpose of the interview.
 - a. Provision of information on the Dublin III Regulation.
 - b. Determination of responsibility.
- The written summary.
- The further steps within the procedure.
- Any other clarifications the applicant asks for regarding the Dublin procedure. In this context, it is important for Member States to tackle inaccurate or misleading information circulated amongst refugee communities including through the use of cultural mediators.

It is important that the case officer ensures that the applicant had understood the [information provided](#), and gives additional information if necessary.

Duty to cooperate

The applicant is under obligation to cooperate with the authorities to establish their identity, age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection (Article 13 APD or other relevant national legislation). The applicant should be further informed

about other obligations that may be imposed insofar as such obligations are necessary for the processing of the application in line with the national legislation (e.g. the obligation to report, handing over documents, etc.).

The case officer should explain why providing all relevant and correct information is beneficial in order to reach an appropriate decision. It is also important to signal that it is only if the applicant knowingly provides false information that it may have negative consequences.

The case officer should also instruct the applicant that where they do not know the answer to a question they should say so and not try to provide an answer by guessing.

Content of the interview

In order to conduct an effective Dublin personal interview, the case officer should address all issues relevant to the implementation of the criteria of Dublin III Regulation. Interview techniques cannot be considered in isolation without an understanding of what should be covered during the interview. The purpose of this section of the *EASO Practical guide on the implementation of the Dublin III Regulation* is to enable the case officer to gather accurate and reliable information about the potential implementation of Dublin III Regulation in the applicant's individual case.

Two main categories of topics should be addressed:

- Firstly, all the topics that are related to personal situation of the applicant and family ties.
- Secondly, all the topics that are related to the applicant's travel route.

Since the applicants' statements are in many cases the only or the main evidence, a more detailed overview on how to cover these two topics during the interview can be found in the relevant part of chapter on [Evidence Assessment](#) below. These overviews present what issues may need to be explored during the interview, depending on the particular circumstances of the application, in order to gather the information necessary for determining the responsibility.

- Issues that should be explored during the interview regarding family unity (go to [Areas to explore during the interview: family links](#))
- Issues that should be explored during the interview regarding residence, visa, irregular entry and stay, earlier asylum applications and cessation of responsibilities (see [Areas to explore during the interview: entry, stay & previous application](#))

Closing the interview

The closing phase is mostly about making sure that all the information relevant to the case has been properly explored and that the applicant has received all the necessary information on the next steps before they leave the interview.

Ensure that the relevant facts have been covered during the interview

The case officer shall ensure that the applicant has been given an adequate opportunity to present all the relevant elements.

Ask the applicant if there is any additional information they would like to provide

Asking the applicant if they have something to add gives them a sense that the case officer is treating them fairly and that they are listening. Even if the case officer is of the opinion that all relevant information has been gathered they should remain open and flexible with regard to additional input.

Inform about the possibility to provide further supporting documents

The case officer shall inform the applicant about the opportunity to present all further information relevant to correctly determine the Member State responsible before a decision is taken to transfer them to the responsible

Member State. Time limits for the submission of the documents or evidence should be communicated to the applicant.

Inform the applicant about the next steps of the process

In most cases it will not be possible to give an exact date for issuing a decision, but the case officer shall at least give an indicative timeframe within which this will happen. The applicant should be informed about how they will receive the information concerning the outcome of the process.

Inform the applicant about time limits set out in the Dublin III Regulation

Not knowing when the decision will be issued can cause stress for the applicant. In order to avoid such a situation, it might be useful to explain in general the deadlines mentioned in the regulation. Depending on the case, this could include: the latest point at which a take back/take charge request has to be made to the other Member State, and within which time-limit the requested Member State must answer the request, as well as the time limit for carrying out the transfer. In any case, they should be informed of the time-limit for lodging an appeal against the transfer decision once it is notified to them.

Inform the applicant about the written summary and how to access it

According to Article 5(6) Dublin III Regulation, the Member State conducting a personal interview shall make a written summary, which shall contain at least the main information supplied by the applicant during the interview. Summarising the core information provided by the applicant is an effective way to verify that the case officer has covered, in the written report or the standard form, all the topics needed to make the assessment. If the applicant has any concerns related to what has been said, they shall be given an opportunity to make comments, to correct or provide clarifications.

Depending on the national system, the case officer may also be the right person to ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant has timely access to the summary, as provided in Article 5(6).



Specific considerations regarding persons with special needs

Prior to determining responsibility based on the hierarchy of criteria in Chapter III as well as other provisions of the Dublin III Regulation (including humanitarian considerations, the cessation of responsibility and the transfer of responsibility due to expired time limits) the case officer should check whether specific considerations influencing the determination of responsibility apply.

Special procedural needs according to Article 24 APD may influence the setup of the personal interview. For children, the Dublin III Regulation provides specific guarantees in Article 6. For unaccompanied children, Article 8 Dublin III Regulation provides a specific criterion establishing the rules for the determination of responsibility for these cases.

Importance of identifying special needs

A vulnerable applicant is an applicant whose ability to understand and effectively present their case or fully participate in the process is limited due to their individual circumstances. The experiences of the applicant either in their home country, during the journey or in the country of asylum can have a strong influence on the vulnerability. For example, the language barrier or the feeling of social exclusion they experience can lead them into a situation of increased vulnerability.

In accordance with Article 22 RCD, Member States shall assess whether the applicant is a person with special reception needs. This obligation is also applicable for persons in Dublin procedures. According to Article 24 APD, Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees they are provided with adequate support in order to exercise their rights and comply with their obligations throughout the duration of the procedure.

It is worth noting that identifying a vulnerable applicant is relevant not only because of the initiation of proper referral mechanisms or conducting the interview in an appropriate manner, but the vulnerability may also have a direct impact on the responsibility determination process in the context of Article 16 and 17 Dublin III Regulation as well as with regard to a potential violation of Article 4 Charter. This is discussed further under the section [Evidence Assessment](#).

The identification of vulnerabilities is also relevant for the purposes of the exchange of health-related information during the Dublin transfer, as described in Article 32 Dublin III Regulation.

Case-law: Health conditions and the implementation of Dublin transfers

The CJEU ruled that even if there are no serious grounds for believing that there are systemic failures in the asylum procedure and the conditions for the reception of applicants for asylum, a transfer in itself could entail a real risk of inhuman or degrading treatment within the meaning of Article 4 Charter of fundamental rights of the European Union. This could notably be the case in circumstances where the transfer of an asylum seeker, with a particularly serious mental or physical condition, would result in a real and proven risk to the applicant's health significantly and permanently deteriorating.

The authorities of a Member State must take into account objective factors, such as medical certificates, which are capable of demonstrating the particular seriousness of a person's illness and the significant and irremediable consequences that a transfer may entail for that person. It would then be for those authorities to eliminate any serious doubt as to the impact of the transfer on the health status of the person concerned, by ensuring that the asylum seeker is accompanied during the actual transfer by the appropriate medical staff who have the necessary equipment, resources and medicines, to prevent any aggravation of his health or any act of violence towards himself or third parties. Member States must also ensure that the asylum seeker receives care upon arrival in the responsible Member State.

If necessary, a Member State should suspend the execution of a transfer for as long as the applicant's health condition does not render him capable of such a transfer. The requesting Member State may also choose to examine the application for international protection itself by making use of the 'discretionary clause' under Article 17(1) Dublin III. If the state of health of the asylum seeker does not allow the requesting Member State to transfer the applicant within a six-month period, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State in accordance with Article 29(2) Dublin III Regulation.

(CJEU judgement of 16 February 2017, *C.K. and Others v Supreme Court of Republic Slovenia*, C-578/16 PPU)

The most common categories of vulnerable persons are:



For identifying persons with special needs consult the [EASO IPSN tool](#). The primary objective of the IPSN tool is to facilitate the timely identification of persons with special procedural and/or reception needs. It may be used at any stage of the asylum procedure and at any stage of the reception process. This is a practical support tool for officials involved in the asylum procedure and reception and does not presuppose expert knowledge in medicine, psychology or other subjects outside the asylum procedure. The tool serves to assist case officials with putting in place the necessary procedural guarantees.



Specific considerations: best interests of the child

Dublin III Regulation	Implementing Regulation
recital 13, Articles 6, 8	Article 12

Interviewing children

Interviewing children requires a specific skill set and techniques. This specific situation is explained in more detail in the [EASO Practical Guide on the best interests of the child in asylum procedures](#), published in 2019.

EASO training module on interviewing children

Specific skills and knowledge are required when interviewing children, since a child's perception of the environment and their memory and sense of time are considerably different from that of an adult. It is therefore crucial that case officers are fully aware of these differences when conducting a personal interview with a child. EASO has developed a training module on Interviewing Children. The objective of this module is to provide the participants with knowledge and skills in children's developmental stages and in how to assess the information given by a child, as well as specific techniques for interviewing children.

Procedural guarantees - Assessing the best interests of the child

It is emphasised throughout the Dublin III Regulation that the best interest of the child is a primary consideration in all procedures relating to minors when applying the regulation. Article 6(1) Dublin III Regulation especially highlights this. The consideration of principle of the best interests of the child in Article 6 Dublin III Regulation also includes the minors' right to information and the right to be heard. Article 6(3) Dublin III Regulation as well as Article 12 Implementing Regulation set out the factors that need 'in particular' to be taken into account:

- (a) family reunification possibilities;
- (b) the minor's wellbeing and social development;
- (c) safety and security considerations, in particular where there is a risk of having been a victim of, or of or potentially becoming a victim of human trafficking;
- (d) the views of the minor, in accordance with their age and maturity.

These factors may be decisive for the responsibility determination especially with a view to a potential violation of Article 4 Charter or Article 3 ECHR on the prohibition of torture or inhuman or degrading treatment. In the ECtHR judgment of 4 November 2014, *Tarakhel v Switzerland*⁽²⁾ concerning an Afghan family with four minor children, the ECtHR stated that a transfer from Switzerland to Italy would not be lawful under Article 3 ECHR if the applicants were 'to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together'. In light of the *Tarakhel* case, it is clear that the best interests of the child needs to be considered for accompanied children as well as unaccompanied children. This is currently clearly reflected in Article 6(1) Dublin III Regulation.

⁽²⁾ Judgment of the ECtHR of 4 November 2014, *Tarakhel v Switzerland*, no 29217/12.

Moreover, Article 6 Dublin III Regulation provides for several additional guarantees and actions to be taken for unaccompanied minors. These guarantees are set out in paragraphs (2) and (4) Article 6 which provide that:

- Member States need to ensure that a representative represents and/or assists an unaccompanied minor in all procedures provided for in the Dublin III Regulation. The representative must have qualifications and expertise to ensure that the best interests of the minor is duly taken into consideration.
- The representative 'shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors'.
- The Member State with which the application is lodged, 'shall as soon as possible take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child'.
- It is required that all staff of the competent authorities dealing with requests concerning unaccompanied minors should have received and will continue to receive appropriate training concerning the specific needs of minors.

The requirement for close cooperation between the Member States in the best interests assessment means that both the requesting and the requested Member State need to cooperate to effectively assess the best interests of the child, bringing together the knowledge at their disposal and, when necessary, also exchange relevant information concerning the best interest assessment.

Article 12 Implementing Regulation provides in paragraph 3 that the representative shall be involved in the identification of family members to the greatest extent possible. Paragraph 4 specifies the exchange of information between Member States for establishing the Member State responsible for examining the application of an unaccompanied minor. In particular, when the Member State is in possession of information that makes it possible to start identifying and/or locating a member of the family, a sibling or a relative, that Member State shall consult other Member States, as appropriate, and exchange information, in order to:

- identify family members, siblings or relatives of the unaccompanied minor present on the territory of the Member States;
- establish the existence of proven family links;
- assess the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State.

Member State national practices and procedures in assessing the child's best interests may vary significantly and it is not the purpose of this practical guide to tackle all aspects of best interest assessment in depth. It can be highlighted nonetheless that:

- The best interest assessment must be done individually in each case taking into account the specific circumstances of the child concerned. The specific circumstances may include factors such as the child's cultural background and experiences, age and maturity, gender and gender identity, level of education, and any possible vulnerability including (mental) health issues and trauma.
- The best interest assessment is a general assessment of all relevant elements of the child's best interests.
- In practice, when assessing the best interests of the child in the context of applying the Dublin III Regulation, it is especially important to gather information on the child's specific circumstances, take into consideration the child's potential family reunification possibilities (family or relatives in the Member States' area), let the child present their own views to the authorities as well as to ensure the child's safety and protection against all forms of violence and that their health and basic care are ensured. Guidance on age assessment can be found in the [EASO Practical Guide on Age Assessment](#).
- In addition, it is important that Member States seek and take into account the views of the child's representative in line with involving the representative in the responsibility determination process to the greatest extent possible. Also the opinion of other relevant national actors in childcare or child protection can be sought and taken into account in the best interests assessment when appropriate.

The *EASO Practical guide on the best interests of the child in asylum procedures* helps to identify and highlight the key milestones and flashpoints for the implementation of the best interests of the child. This is done in order to support the Member States in applying the best interests' principle and enhancing the guarantees within asylum procedures for children.

Determining the responsible Member State in case of unaccompanied children: Article 8 Dublin III Regulation

Article 8 sets out three basic principles for the responsibility determination for unaccompanied children.

- The principle of the **child's best interest being a primary consideration** is emphasised in the wording of all paragraphs of the article. The application of one of these article paragraphs is exercised upon the conditions that it is in the child's best interests.
- The principle of **reuniting a minor child with their family, sibling or relative** legally present in the Member State area is outlined as a primary criterion determining responsibility.
- The principle that in situations where the minor child has no family or relatives present in the Member States, it is of primary importance to **guarantee the child has quick access to a procedure for granting international protection and as a rule, the child should not be transferred**. Therefore, when there is no family or relatives in the Member States, the responsible Member State is normally the one where the child is present and has applied for international protection. This follows from CJEU judgment of 6 June 2013 in case *MA and others v Secretary of State for the Home Department*⁽³⁾ which, **provided it is in the best interests of the minor**, sets out that:

... where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible'.

Consequently, the best interests of the child still needs to be assessed. This assessment is a condition under Article 8(4): if it is not in the best interests of the minor to stay in the Member State where they are present, the Member State where it is in the best interests of the minor to return to should be the responsible Member State.

⁽³⁾ Judgment of the CJEU of 6 June 2013, *MA and others v Secretary of State for the Home Department*, C-648/11.

4. Evidence assessment [\[back to checklist\]](#)

Dublin III Regulation	Implementing Regulation
Article 20(1), Article 22(2) to (5)	Annex II

Introduction

Once all relevant information is compiled, the process of evidence assessment begins in order to determine responsibility. The Dublin personal interview is an important source of information hence the reason it is closely linked to evidence assessment. The very purpose of the Dublin personal interview is to gather accurate and reliable information about the potential implementation of the Dublin III Regulation in the applicant's individual case. The relevant issues to be covered in the interview mainly relate to the criteria for determining the responsible Member State (Chapter III Dublin III Regulation), the provisions related to dependent persons and discretionary clauses (Chapter IV Dublin III Regulation), the travel route, previous application(s), as well as to the cessation of responsibility (Chapter V Dublin III Regulation) as set out below. The case officer should address all issues relevant to the assessment of the criteria of the Dublin III Regulation.

The information gathered during the interview and from databases (e.g. personal documents, Eurodac, VIS), and any information provided by the applicant or other relevant sources (e.g. family members, NGOs, etc.) need to be assessed.

The importance of evidence assessment

The European Commission described the importance of evidence assessment in its 2001 proposal for the Dublin II Regulation as follows:

'The mechanism for determining which Member State is responsible will not function unless the Member States set up a system of fair co-operation with a view to collecting the necessary evidence, processing applications within the agreed time limits and organising transfers in the best conditions.' (COM(2001) 447)

The use of evidence is vital to the Dublin procedure upon establishing the Member State responsible for the application for international protection.

A case officer may be asked to assess evidence at any point during the entire procedure but in particular, in two situations:

- Before sending a request to another Member State to take charge or take back an applicant for international protection (as set out for cases of submitting a take charge request (Article 21(3)) and a take back request (Article 23(3) and 24(5) Dublin III Regulation); and
- Before replying to such a request (replying to take charge request (Article 22(2) - (5) and replying to take back request (Article 25(1) of the Dublin III Regulation).

The way evidence assessment is carried out differs depending on the relevant criteria for taking back or taking charge being used.

Dublin indications

The Dublin procedure shall start pursuant to Article 20(1) Dublin III Regulation 'as soon as an application for international protection is first lodged with a Member State'. When submitting a request for taking back or taking charge, Member States have to use the standard forms provided by the Implementing Regulation, and they have to include proof or circumstantial evidence in the request. The two lists '**proof**' and '**circumstantial evidence**' are defined by Article 22(3) Dublin III Regulation. The Commission is asked by this provision to 'establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence'. Annex II

Implementing Regulation contains these two lists which both state per relevant Article the means of proof that may be used.

Annex II of the Implementing Regulation:



Means of proof

Proof refers to probative evidence ‘which determines responsibility pursuant to this Regulation as long as it is not refuted by proof to the contrary’ (Article 22(3)(a)(i)).

➡ **Proof indicates that another Member State is responsible.**

Article 22(4) states in this regard: ‘The requirement of proof should not exceed what is necessary for the proper application of this Regulation.’

Circumstantial evidence

Circumstantial evidence ‘refers to indicative elements, which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them’. Their evidentiary value shall be assessed on a case-by-case basis.

➡ **Circumstantial evidence may lead to the assessment that another Member State is responsible.**

Article 22(5) contains a provision for the use of circumstantial evidence: ‘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 responsibility.**’

Insufficient Dublin indications

Often there is no proof for the responsibility of a given Member State, which then makes the assessment of any existing circumstantial evidence necessary to effectively determine the Member State responsible. When there is no proof like Eurodac or VIS data regarding the applicant, in most cases, the asylum seeker is the main source of information to determine the responsible Member State.

Information requests

Dublin III Regulation	Implementing Regulation
Article 34	Annex V

Very often, the Dublin indications in a case are insufficient. If the proof or circumstantial evidence is not sufficient to determine the responsibility or even to ascertain whether or not the Dublin III Regulation is to be applied, the Member State carrying out the Dublin procedure might ask another Member State for further information relevant to the determination of responsibility pursuant to Article 34 Dublin III Regulation using the standard form of Annex V in the Implementing Regulation. More specific requests can be sent, especially if the requested information concerns family ties and questions of dependency. For this purpose, Member States are provided with the standard forms in Annex VII and VIII Implementing Regulation. The information provided by the responding Member State is proof, and therefore constitutes evidentiary value.

Carrying out evidence assessment

Principles of assessing proof in the Dublin procedure

The Dublin procedure is an objective process to determine the responsible Member State. The evidence assessment in Dublin procedure is very different from evidence assessment in the substantial asylum procedure. However, the standard of proof required does not necessarily change.

Also, if potential violation of Article 4 Charter is to be assessed, the standards for the evidence assessment are more similar to the examination of a barrier to removal in a substantive asylum procedure.

The process of determining responsibility is a joint procedure between the two Member States involved. Cooperation between Member States is important in conducting evidence assessment in order to rapidly determine the responsible Member State, by respecting the time limits set out in the regulation.

Using proof to assess responsibility

Once the relevant information has been collected during the registration phase, in the personal interview with the applicant and/or through exchange of information with other Member States, the case officer will proceed with the evidence assessment in order to determine the Member State responsible for examining the application for international protection. Evidence assessment is carried out on a case-by-case basis by the case officer who has to take into account the nature and weight of every piece of proof and/or circumstantial evidence.

As described previously, when sending a take charge or take back request, the requesting Member State has to provide proof and/or circumstantial evidence. It has to take into account the evidence produced by the applicant.

The requesting Member State is obliged to hand over a copy of all available proof and circumstantial evidence showing that the requested Member State is responsible. The content of the request shall enable the requested Member State to assess its responsibility. In case of take charge request, this requirement is set out in Article 21 (3) Dublin III Regulation and Article 1 Implementing Regulation. In case of take back request, this requirement is set out in Article 23(3) and 24(3) and in Article 2 Implementing Regulation.

In case the requested Member State's responsibility has ceased in accordance with Article 19(2) and (3) or 20(5), it needs to establish that it is no longer responsible.

Since one of the main objectives of the Dublin III Regulation is to guarantee effective access to one asylum application procedure, Member States should endeavour to rapidly determine the one Member State responsible, based on the available proof.

Good practice on cooperation between Member States

The presence of liaison officers in other Member States is regarded a good practice. Liaison officers could assist in enhancing common understanding and speeding up procedures, particularly for specific cases in need of special attention, such as those regarding children, or at times of particular pressure on a Member State.

General remarks on assessing documents

Documents constitute an important part of the evidence. In some cases, the applicant has documents with them. The process of evaluating the relevance of documents for the assessment of responsibility requires mutual trust and cooperation between the Member States.

When conducting the assessment, the case officer may look at the:

► **Nature of the document(s)**

- This refers to the form of a document: original, or copy, or an extract.

▶ **Genuineness of the document(s)**

- The assessment of whether a document is genuine or counterfeit is crucial to the determination of responsibility of a Member State. An authenticity report regarding documents is not a prerequisite in the Implementing Regulation. For a variety of documents those checks may not be feasible (e.g. birth certificate, marriage certificates).

▶ **Validity of the document(s)**

- Expired documents are also relevant for determination of a responsible Member State (e.g. residence document up to two years after its expiration at the time of the application, visa up to six months after its expiration)

▶ **Origin**

- Authority issuing a document.

▶ **Person concerned**

- Whether the document belongs to the applicant.

Criteria related to family unity [\[back to checklist\]](#)

Dublin III Regulation	Implementing Regulation
Article 2(g) to (j), Articles 8 to 11, Articles 16 to 17	Articles 11- 12

Relevant definitions and considerations

According to recital 14, 15, 16, 17 as well as Chapter III and IV Dublin III Regulation, family unity is a primary consideration that the case officer has to take into account. Moreover, the case officer should also be aware that the various provisions in Chapter III are to be applied in a hierarchical order.



Specific considerations regarding family members, relatives

The case officers should have in mind the difference between family members and relatives and any other family relation when applying the different provisions regarding family unity under the Dublin III Regulation. It might be necessary to explain the differences to the applicant during the Dublin personal interview.

► *Family members*

Pursuant to Article 2(g) Dublin III Regulation, family members present on the territory of the Member States 'insofar as the family already existed in the country of origin', constitute the following:

- the spouse of the applicant or the unmarried partner in a stable relationship;
- biological or adopted minor children of couples of the kind referred to in the first bullet point, or of the applicant, on the condition that the children are unmarried;
- mother, father or another adult responsible for an unmarried minor.

► *Relative*

Defined in Article 2(h) Dublin III Regulation where the applicant is an unaccompanied child as the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law.

► *Minor*

Defined in Article 2(i), and it means a third-country national or a stateless person below the age of 18 years.

► *Unaccompanied minor*

Defined by Article 2(j) Dublin III Regulation as 'a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States'.

In the context of Articles 16 and 17(2), wider family relations are also relevant for the determination of responsibility.

- Relation of dependency
In particular, Article 16 of the Dublin III Regulation refers to (adult) child, sibling, parent when there is a relation of dependency.
- Family in a broader sense
Article 17(2) refers to any other family relation in a broader sense.

Unaccompanied minors (Article 8)

Article 8 concerns unaccompanied minors and states that the Member State responsible should be the one where the minor has a family member or a sibling who is legally present. Where the minor has a relative, it should be established that this relative can take care of them. The capacity of taking care of the child should be established based on an individual examination. If the applicant is a married minor whose spouse is not legally

present on the territory of the Member State, the Member State responsible shall be the Member State where the father, mother or adult responsible for the minor, whether by law or by practice, or sibling, is legally present. However, the case officer must determine that it is in the best interests of the child to be reunited with the family member, sibling or relative.

Family member who is beneficiary of international protection (Article 9)

Article 9 states that the Member State responsible should be the one where the applicant has a family member who has been allowed to reside in the country as a beneficiary of international protection. It should be noted that in this case it is not required that the family was previously formed in the country of origin. However, it has to have been formed before the applicant lodged his first application (Article 7(2)).

Both the applicant and the family member should have expressed their consent in writing.

Family member who is applicant for international protection (Article 10)

Article 10 states that the Member State responsible should be the one where the applicant has a family member who is an applicant for international protection.

Both the applicant and the family member should have expressed their consent in writing.

Rules for simultaneous applications (Article 11)

Article 11 provides for rules in cases where several family members ‘and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together’, and the application of the Dublin procedure would result in the separation of the family members. In these cases, the responsible Member State should be the one that is responsible for taking charge of the largest number of family members. Failing this, the Member State responsible is the Member State for which the criteria indicates that it is responsible for examining the application of the oldest of them.

Dependent persons (Article 16)

Article 16 provides that ‘on account of pregnancy, a new born child, serious illness, severe disability or old age, an applicant is dependent of the assistance of his or her child, sibling or parent legally resident in one of the Member State or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent provided that’:

- the family ties existed in the country of origin;
- the child, sibling or parent is able to take care of the dependent person;
- they expressed their consent in writing.

When sending a take charge request, the case officer has to elaborate the following points:

- reasons for dependency;
- nature of the relationship between the dependent persons;
- the capacity of the person to take care of the dependent person.

Discretionary clauses (Article 17)

Under Article 17 Dublin III Regulation (the ‘discretionary clauses’) family members can also be kept or brought together, where family relations fall outside the scope of the family criteria leading to family separation. This, however, is up to the full discretion of the Member State(s) involved.

Under the discretionary clauses, the situation is to some extent more complicated regarding the evidence assessment. Their application might also be subject to additional national guidance. The use of the discretionary clauses may, in particular, be envisaged if different Member States are responsible under the criteria of the Dublin III Regulation.

Case-law: the use of the discretionary clauses

The CJEU has repeatedly ruled on how Article 17(1) Dublin III Regulation should be interpreted. Two cases before the CJEU illustrate the possible realm within which the possibility of applying Article 17 Dublin III Regulation may arise.

In the first case cited here, the CJEU determined that Member States cannot be obliged to apply Article 17 Dublin III Regulation, see Judgment of the CJEU of 16 February 2017, *C.K. and Others v Republika Slovenija*, C-578/16, par. 97.

In this specific case, it was claimed before the Slovenian Constitutional Court that the transfer of applicant 'C.K.' from Slovenia to Croatia would adversely affect her state of health and that she therefore should not be transferred. This claim was supported by several medical opinions. According to the Slovenian Constitutional Court, Member States are required to apply the discretionary clause of in Article 17(1) Dublin III Regulation in case the transfer of an applicant to another Member State would result in an infringement of Article 33(1) of the Geneva Convention, Article 3 of the ECHR and the relevant case-law of the European Court of Human Rights.

The CJEU ruled that the interpretation of Article 17(1) Dublin III Regulation is primarily a task that belongs to the CJEU itself. It furthermore ruled that Member States can not be required, at least not in the case as presented above, to apply Article 17(1) Dublin III Regulation.

In the second case cited here, the Court determined that the application of Article 17 Dublin III Regulation is not subject to any particular condition and that no remedy has to be available against the decision not to apply said Article, see Judgment of the CJEU of 23 January 2019, *M.A. and Others v The International Protection Appeals Tribunal and Others*, C-661/17, par. 71 and 79.

In this specific case, two applicants brought medical problems affecting one of them, and an ongoing medical assessment of their child, to the attention of the Refugee Applications Commissioner in Ireland. Said Commissioner nevertheless recommended their transfer from Ireland to the United Kingdom on the basis of the Dublin III Regulation, simultaneously finding that there was no reason to apply Article 17 Dublin III Regulation. This decision was challenged, citing, inter alia, Article 17 Dublin III Regulation, stating that a transfer to the United Kingdom would result in a issue with the protection of the fundamental rights of the applicants since the United Kingdom proposed its withdrawal from the European Union. Since the Court upheld the challenged decision, the case was brought before the Irish High Court. The Irish High Court subsequently asked the CJEU whether the refusal to apply Article 17 Dublin III Regulation, such as the Commissioner did, could be challenged.

The CJEU ruled that Article 17(1) Dublin III Regulation can not be subject to any particular condition, including the intention of a Member State to withdraw from the European Union. The CJEU moreover ruled that Article 17(1) Dublin III Regulation does not require a remedy to be available against the decision not to use the discretionary clause of Article 17(1) Dublin III Regulation, and that this decision may be challenged with the appeal against a transfer decision.

Article 17(1), the sovereignty clause

Article 17(1) (the 'sovereignty clause') states that the Member State in which an application for international protection is lodged and that is carrying out the process of determining the Member State responsible, may decide to examine an application for international protection itself even when it is not responsible under the Regulation.

This Article can be triggered at any time by the Member State if an application for international protection was lodged with it. The Member State in question has to indicate it in Eurodac by adding the date when the decision to examine the application was taken.

Article 17(2), the humanitarian clause

According to Article 17(2), the Member State in which the application for international protection was lodged, or the Member State responsible, 'may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16'. The persons involved must express their consent in writing.

The acceptance of a request under Article 17(2) remains at the discretion of the requested Member State. If the requested Member State decides to examine the application for international protection, it has to give acceptance in writing to the requesting Member State.

In order to process this type of case, the case officer may include, inter alia, elements with regard to:

- reasons for reunification;
- medical documents, medical reports or psychological assessments;
- reports from NGOs detailing the family links with the person in the another Member State, including documents confirming these relations;
- Nature of the relationship (how were they separated, whether they kept in contact, were these persons living together) with particular consideration given to familial or cultural aspects.

Both the applicant and the family member or the person concerned staying in the other Member State have to express their consent in writing.

Means of proof and circumstantial evidence

Dublin III Regulation	Implementing Regulation
Articles 8 to 10	Annex II

Unaccompanied child and family members (Articles 8 to 10)

In cases of Articles 8 - 10, the following elements have to be established:

- the family link;
- the legal status of the family member(s), sibling(s) or the relative(s);
- the capacity of the relative or adult responsible for the child to take care of the child;
- in case of Article 9 and 10, the consent to be reunited expressed by both the applicant and the family member.

Dependent (adult) child, sibling, parent (Article 16)

In order to assess the dependency between the applicant and their adult child, parent or sibling, where either the applicant or the family relation is pregnant or recently gave birth, is elderly, seriously ill or has a severe disability, the following elements need to be established:

- the resident status of the family relation;
- the family link;
- the vulnerability (pregnancy, new born child, old age, serious illness or severe disability);
- the capacity of the person concerned to take care of the dependent person.

Given the fact that the applicant and the family relation are separated, the applicant/family relation does not have to be de facto dependent on each other at the moment of the assessment. What needs to be assessed is whether the person is a dependent person on the account of being pregnant, having a new born child, old age, serious illness or severe disability on the one hand, and whether the applicant or family relation has the capacity to take care of the dependent person on the other hand. The fact that the applicant/family relation has already taken care of the family relation in the past can be an indication that the capacity is present. Flexibility shall be shown when Article 16 is applied.

Evidentiary requirements for establishing family links should be reasonable to ensure that Articles 8, 9, 10 and the dependency clause (Article 16) guarantee family unity in practice. All available information and evidence, including the applicants' statements, should be given due consideration to ensure a correct determination of responsibility.

Annex II of the Implementing Regulation contains the following list of means of proof and circumstantial evidence in case of family Articles 8-10.

Means of proof in case of Articles 8, 9, 10

Presence of a family member of an applicant who is an unaccompanied minor (Article 8)	Legal residence in a Member State of a family member who is a beneficiary of international protection (Article 9)	Presence of a family member who is an applicant and whose application has not yet been the subject of a first decision regarding the substance (Article 10)
Written confirmation of the information by the other Member State	Written confirmation of the information by the other Member State	Written confirmation of the information by the other Member State
Extracts from registers	Extracts from registers	Temporary residence authorisations issued to the family member while the application is being examined
Residence permits issued to the family member	Residence permits issued to the family member who is a beneficiary of international protection	Extracts from registers
Evidence that the persons are related, if available	Evidence that the persons are related, if available	Evidence that the persons are related, if available
DNA or blood test (only if failing the above and if necessary)	Consent of the persons concerned	DNA or blood test (only if failing the above and if necessary)
		Consent of the persons concerned

Written confirmation of the information by the other Member State

Any written confirmation regarding the presence of the family member, sibling or relative of the unaccompanied child or family member of an applicant, whether provided through the standard forms for exchange of information of the Implementing Regulation, or by other means are probative means of evidence supporting the take charge request on the relevant legal grounds.

Extracts from registers

The legal residence (in case of Article 9) and the presence of the family member (in case of Articles 8 and 10) can also be supported by extracts from registers confirming the status of the residence of the family member.

Residence permits/temporary residence authorisations issued to the family member

The presence of the family member can also be supported by the residence permit or authorisation issued to the family member concerned.

Evidence that the persons are related

Any evidence supporting the relation of the persons concerned should be sent to the requested Member State if such evidence is available, for example, marriage or birth certificate, or any kind of documentary evidence proving the kinship.

DNA or blood test

The use of DNA and or blood test to support the existence of family links should be exceptional. The wording of the Implementing Regulation makes it clear that DNA or blood tests are only to be used when other evidence is not available.

Consent of the persons concerned

In order that the reunification takes place with the agreement of the persons concerned, the applicant and the family member should express their consent in writing. This should be attached to the request.

Circumstantial evidence in case of Articles 8, 9, 10

Presence of a family member of an applicant who is an unaccompanied minor (Article 8)	Legal residence in a Member State of a family member who is a beneficiary of international protection (Article 9)	Presence of a family member who is an applicant and whose application has not yet been the subject of a first decision regarding the substance (Article 10)
Verifiable information from the applicant	Verifiable information from the applicant	Verifiable information from the applicant
Reports/confirmation of the information by an international organisation, such as UNHCR	Reports/confirmation of the information by an international organisation, such as UNHCR	Verifiable information from the applicant
Statements by the family member concerned	Reports/confirmation of the information by an international organisation, such as UNHCR	Reports/confirmation of the information by an international organisation, such as UNHCR

Verifiable information from the applicant

The information provided by the applicant concerning, such as, the presence of a family member in a Member State, is a circumstantial evidence. The more detailed the information the better supported the request. The information provided by the applicant can also constitute a basis to request information from the other Member State and ask for confirmation. In some instances, the applicants may not be able to provide documentary evidence to prove the family link with the family members or relatives. Detailed information about the other family member(s), where they live, circumstances of separation, details about marriage, etc., all consist of information that can be verified by the other Member State by checking the registration or the interview of the family member(s) in its territory. (For topics to be elaborated during the interview for the sake of collecting relevant information, see the [Areas to explore during the interview: family links](#))

Statements by the family members concerned

Coherent, verifiable and sufficiently detailed statements provided by the family member can also support requests made on the grounds of family relations.

Reports/confirmation of the information by an international organisation, such as UNHCR

The Member States can use the information provided by international organisations to support their requests. Reports or confirmation of the information by an international organisation can further support the request. The requested Member State shall take these documents into account and conduct the relevant verification/research.

Criteria related to residence, entry and stay [\[back to checklist\]](#)

Dublin III Regulation	Implementing Regulation
Articles 12 to 14	Annex II

Relevant definitions and considerations

Following the criteria related to children and family relations, the next set of criteria of the determination of responsibility is related to entry and stay, taking into account how the person concerned entered or stayed in the territory of the Member States, the legal basis of that entry or stay, the period of time that elapsed since entry, as well as the place of application for international protection.

The Dublin III Regulation first sets out procedural rules for entry and stay when it is based on a visa or residence document issued by a Member State (Article 12). For Schengen States, requests based on an issued visa represent a significant share of Dublin cases.

The main source of information about an issued visa is from the VIS database. VIS connects embassies and consulates in non-EU countries and all external border-crossing points of Schengen States. The system performs biometric matching, primarily of fingerprints, for identification and verification purposes. Not all Member States applying the Dublin III Regulation are bound by the VIS Regulation.

In case the VIS system is not accessible or the indicators related to visa or residence permit are not (fully) confirmed, Member States can send information requests in accordance with Article 34 Dublin III Regulation to facilitate the responsibility determination procedure.

Residence document

Valid residence document (Article 12(1))

‘Where the applicant is in **possession of a valid residence document**, the Member State which issued the document shall be responsible for examining the application for international protection.’

In most cases, the first sign of an applicant being granted a residence document in a Member State is their statement and/or the presence of a document itself. In cases where the applicant has the document with them, the authenticity and validity of the residence document in question needs to be checked in detail.

Multiple residence documents (Article 12(3))

Article 12(3) sets out rules on the responsibility in case the applicant is in possession of several valid residence documents issued by several Member States.

Article 12(3)(a) specifies that the Member State issuing the residence document with the longest period of residency or with the longest expiry date shall be responsible.

Expired residence documents (Article 12(4))

Article 12(4) shall be applied in cases where the applicant is in possession of one or more expired residence documents, taking into account how long ago the residency document expired. In case the residence document expired more than two years previously, the Member State where the application was lodged shall be responsible.

Visa (Article 12(2), (3), (4))

Valid visa (Article 12(2))

Article 12(2) provides that *‘Where the applicant is in **possession of a valid visa**, the Member State which issued the visa shall be responsible for examining the application for international protection.’*

In case the visa was issued on behalf of another Member State, the represented Member State shall be responsible for examining the application for international protection.

Multiple visa (Article 12(3))

Article 12(3) sets out rules on the responsibility in cases where the applicant is in possession of several visas issued by different Member States, taking into account the period of validity of the document.

Article 12(3)(b) renders the responsibility to the Member State issuing the visa with the latest expiry date in case of the various visas of the same kind.

Article 12(3)(c) sets out that in cases where the visas are of different types, ‘the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date’ should assume the responsibility.

Expired visa (Article 12(4))

Article 12(4) shall be applied in cases where the applicant is in possession of one or more expired visas, taking into account how long ago the visa expired, and which visa enabled the applicant to actually enter the territory of the Member State. In cases where the visa expired more than six months previously, the Member State where the application was lodged shall be responsible.

Irregular entry (Article 13(1))

*‘Where the applicant has **irregularly crossed border** into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection.’*

The responsibility based on irregular entry ceases 12 months after the irregular entry took place if no application for international protection was lodged in any Member State during this period.

Continuous stay in a Member State for at least five months (Article 13(2))

‘When a Member State cannot or can no longer be held responsible’ in accordance with the irregular entry criteria and ‘where it is established by proof or circumstantial evidence ..., that the applicant [...] has been **living for a continuous period of at least five months** in a Member State before lodging the application for international protection, that Member State shall be responsible for examining the application for international protection’.

This article is applicable even in cases where the circumstances of entry cannot be established.

If evidence suggests that the applicant has been living for at least five months in several Member States, the responsible Member State is the one where the applicant stayed most recently.

Visa waived (legal) entry (Article 14)

Schengen States have a common visa policy to facilitate the entry of legal visitors into the EU by respecting internal security. The EU has a list of countries whose citizens should be in possession of a visa when crossing the external borders and a list of countries whose citizens are exempt from that requirement⁽⁴⁾. Visa free access may also be a result of bilateral negotiations, especially between border countries.

⁽⁴⁾ At the time of writing, this list is set out in [Regulation \(EU\) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing external borders and those whose nationals are exempt from that requirement, OJ L 303/39](#). Given that this list is updated often, the reader should consult the currently applicable Regulation.

Article 14(1) stipulates that '[i]f a third-country national or a stateless person enters into the territory of a Member state in which the **need for him/her to have a visa is waived**, that Member State shall be responsible for examining his/her application for international protection.'

Article 14(2) sets out rules for a situation where the applicant could have legally entered several Member States because the requirement to have a visa is waived in these Member States. In case the 'third-country national or the stateless person lodges his or her application for international protection in another Member State in which the need for him or her to have a visa for entry into the territory is also waived', that other Member State shall be responsible for examining the application for international protection.

Application in an international transit area of an airport (Article 15)

An application for international protection can also be lodged in an international transit area of an airport. 'Where the application for international protection is made in the **international transit area of an airport** of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.'

Means of proof in cases of a valid or expired residence document or visa (Article 12)

Valid residence documents (Article 12(1) and (3)) or residence documents which expired less than 2 years previously [and date of entry into force]	Valid visas (Article 12(2) and (3)) and visas which expired less than 6 months previously [and date of entry into force]
Residence document issued	VIS hit
Extracts from register of aliens or similar registers	Visa issued
Reports/confirmation from the Member State that issued the residence document	Extracts from register of aliens or similar registers
	Reports/confirmation from the Member State that issued the visa or residence document

Residence document

Article 2(l) of the Dublin III Regulation defines the scope of residence document:

... any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit.

The residence document is a probative means of evidence to support a take charge request related to entry with this issued document.

Visa

Article 2(m) defines the scope and types of visa. A visa is 'the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States.' Long-stay visa enables the holder for a stay of more than three months in the Member State which issued it or on whose behalf the visa was issued. Short stay visa enables the holder to stay on the territory of one or all the Member States for a duration of not more than 90 days 'in any six-month period beginning on the date of first entry on the territory of the Member States'. The airport transit visa enables the person to transit through the international transit areas of one or more airports of the Member States.

VIS hit

The positive match (hit) transmitted by the VIS in accordance with Article 21 Regulation (EC) No 767/2008 (VIS Regulation) proves that the person was issued a visa by another Member State. The VIS hit is a probative means of evidence, which should be attached to the take charge request.

Extracts from register of aliens or similar registers

Any official documents, such as extracts from registers, files, revealing information about irregular or legal entry, or stay in another Member State, or official documents that support the statements of the applicant should be used to support the take charge request.

Reports/confirmation of the information by the Member State which issued the residence document or visa

Confirmation from the Member State which issued the visa or residence document is probative means of evidence. In cases where the Member State does not have access to VIS, an information request can be sent to the other Member State to confirm the issuance of the document. In case the other Member State confirms that it issued a visa/residence document, this confirmation can be used as proof to support the take charge request.

Circumstantial evidence in case of valid or expired residence document or visa (Article 12)

Valid residence documents (Article 12(1) and (3)) or residence documents which expired less than 2 years previously [and date of entry into force]	Valid visas (Article 12(2) and (3)) and visas which expired less than 6 months previously [and date of entry into force] (Article 12(4))
Detailed and verifiable statements by the applicant	Detailed and verifiable statements by the applicant
Reports/confirmation of the information by an international organisation, such as UNHCR;	Reports/confirmation of the information by an international organisation, such as UNHCR;
Reports/confirmation of the information by the Member State which did not issue the residence permit;	Reports/confirmation of the information by the Member State which did not issue the residence permit
Reports/confirmation of the information by family members, travelling companions	Reports/confirmation of the information by family members, travelling companions

Detailed, verifiable statements of the applicant

In some instances, the applicants may not be able to provide documentary evidence to prove the entry or residence in another Member State. Detailed and verifiable statements concerning the circumstances of entry or residence that can be verified by the other Member State by checking the registration could serve as circumstantial evidence. For topics to be elaborated during the interview for the sake of collecting relevant information concerning travel route, see [Areas to explore during the interview: entry, stay & previous application](#).

Reports/confirmation of the information by the Member State which did not issue the residence permit

In case the requested Member State confirms that it did not issue the visa or residence permit, this information is a circumstantial evidence. Depending on the content of the information, there might be indications of the responsibility of another Member State.

Reports/confirmation of the information by an international organisation, such as UNHCR

The Member States can use the information provided by international organisations to support their take charge or take back requests. Reports or confirmation of the information by an international organisation can further support the request. The requested Member State shall take these documents into account and conduct the relevant verification/research.

Reports/confirmation of the information by family members, travelling companions

Coherent, verifiable and sufficiently detailed statements regarding the applicant's travel route can also support requests, and can support the applicant's statements.

Means of proof in case of visa waived (Article 14) and irregular entry (Article 13(1))

Illegal entry at an external frontier (Article 13(1))	Legal entry into the territory at an external frontier (Article 14)
Entry stamp or similar endorsement in a passport	Entry stamp or similar endorsement in a passport
Exit stamp from a country bordering on a Member State, bearing in mind the route taken by the applicant and the date the frontier was crossed	Exit stamp from a country bordering on a Member State, bearing in mind the route taken by the applicant and the date the frontier was crossed
Tickets conclusively establishing entry at an external frontier	Tickets conclusively establishing entry at an external frontier
Fingerprints, in cases where the authorities decided to take fingerprints when the alien crossed the external frontier	Fingerprints, in cases where the authorities decided to take fingerprints when the alien crossed the external frontier
Positive match by Eurodac from a comparison of the fingerprints of the applicant with fingerprints taken pursuant to Article 14 Eurodac II Regulation (Eurodac category 2 hit)	
Entry stamp in a forged or falsified passport	

Entry stamp in a passport

The entry stamp or similar endorsement in a passport is a probative means of evidence for legal or illegal entry. If the passport was falsified or forged, and it contains an entry stamp, it substantiates the illegal entry.

Exit stamp

An exit stamp in a passport is probative evidence in multiple cases. When examining the criteria related to entry or stay in another Member State, the case officer should check if there are exit stamps in the passport. If the stamp was made by a country bordering a Member State, the case officer should examine the date when the frontier was crossed, and should bear in mind the route the applicant had taken. If the entry at an external frontier was made after the date of the exit stamp in a passport and the entry was not authorised, the exit stamp is proof of irregular entry.

Tickets conclusively establishing entry at an external frontier

If provided during the personal interview or at another stage of the asylum procedure, tickets (airplane, train, bus, etc.) conclusively establishing the entry at an external frontier is evidence and should be considered by a case officer when assessing responsibility.

Positive match by Eurodac

Undisputable evidence concerning the application of the Dublin III Regulation provisions is the result of a hit in the Eurodac base. When a case officer receives the information of a hit as a result of a data comparison in the Eurodac database, it is clear that the person has had a potentially relevant contact with another Member State authority in the past. When there is a positive match by Eurodac with category 2 'irregular crossing of an external border' or 'illegal entry' from a Member State at the external frontier, it is a proof that the person was outside the territory of the Member State which they have entered illegally. The date of taking the fingerprints, which is available in the Eurodac data, shows the moment of entry into the territory of the European Union. Fingerprints can also serve as probative means of evidence to support that the applicant had left the territory of the Member States.

Fingerprints

Depending on the circumstances in which they were taken, fingerprints can be proof or circumstantial evidence. If the fingerprints are taken in relation to crossing the external frontier, or related to an application for international protection, the fingerprints are probative evidence. Fingerprints attached to the request will help the requested Member State to search in the national database in order to identify the person concerned.

Means of proof in case of residence for at least five months – Article 13(2)



Residence authorisations

Residence authorisations that are issued to the person concerned while their application for a residence permit is being examined proves that the person stayed in a Member State for a certain period of time. If this period was at least five months, this document should be attached to the take charge request to be sent to the Member State that issued said residence authorisation.

Requests to leave the territory or expulsion order issued on dates at least five months apart or that have not been enforced

An expulsion order without a trace of leaving the territory of the Member States, or several expulsion orders or requests to leave the territory of the country can indicate that the person did not leave the territory and has been staying in a given Member State for a period of three months. The period of stay should be checked.

Extracts from the records of hospitals, prisons, detention centres

If the applicant is able to present any or several of these documents, indicating a continuous period of stay for at least five months in a Member State, a take charge request on the basis of Article 13(2) can be initiated.

Circumstantial evidence in case of visa waived entry (Article 14), irregular entry (Article 13(1)), stay in a Member State for at least five months (Article 13(2))

Legal entry into the territory at an external frontier (Article 14)	Illegal entry into the territory at an external frontier (Article 13(1))	Residence in a Member State for at least five months (Article 13(2))
Detailed and verifiable statements of the applicant	Detailed and verifiable statements of the applicant	Detailed and verifiable statements of the applicant
Reports/confirmation of the information by an international organisation, such as UNHCR	Reports/confirmation of the information by an international organisation, such as UNHCR	Reports/confirmation of the information by an international organisation, such as UNHCR, or by NGOs
Reports/confirmation of the information by another Member State or third country	Reports/confirmation of the information by another Member State or third country	Reports/confirmation of the information by another Member State or third country
Reports/confirmation of the information by family members, travelling companions	Reports/confirmation of the information by family members, travelling companions	Reports/confirmation of the information by family members, travelling companions
Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier	Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier	Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier
Tickets, hotel receipts, entry cards for public or private institutions in the Member States, appointment cards for doctors, dentists; information showing that the applicant has used the services of a travel agency or other circumstantial evidence of the same kind	Tickets, hotel receipts, entry cards for public or private institutions in the Member States, appointment cards for doctors, dentists; information showing that the applicant has used the services of a travel agency or other circumstantial evidence of the same kind	Tickets, hotel receipts, entry cards for public or private institutions in the Member States, appointment cards for doctors, dentists; information showing that the applicant has used the services of a travel agency or other circumstantial evidence of the same kind
	Information showing that the person used the services of a courier	Information showing that the person used the services of a courier

Detailed, verifiable statements of the applicant

In some instances, the applicants may not be able to provide documentary evidence to prove the entry or residence in another Member State. Detailed and verifiable statements concerning the circumstances of entry or residence that can be verified by the other Member State by checking the registration could serve as circumstantial evidence. For topics to be elaborated during the interview for the sake of collecting relevant information concerning travel route, see [Areas to explore during the interview: entry, stay & previous application](#).

Reports/confirmation of the information by another Member State or third country

Entry at an external frontier (either visa waived or illegal) can also be supported by confirmation of the information or report from another Member State or a third country.

Reports/confirmation of the information by an international organisation, such as UNHCR, or by a non-governmental organisation, such as an organisation providing accommodation for those in need

The Member States can use the information provided by international organisations, or non-governmental organisations. These reports or confirmation of the information by can further support the request. The requested Member State shall take these documents into account and conduct the relevant verification/research.

Reports/confirmation of the information by family members, travelling companions

Coherent, verifiable and sufficiently detailed statements regarding the applicant's travel route can also support requests, especially in cases where there is no other evidence available. This might be particularly relevant when a larger group of applicants travel together and lodge their applications on the same day.

Fingerprints

Depending on the circumstances in which they were taken, fingerprints can be proof or circumstantial evidence. If the fingerprints are taken in relation to crossing the external frontier, or related to an application for international protection, the fingerprints are probative evidence. Fingerprints attached to the request will help the requested Member State to search in the national database in order to identify the person concerned.

Tickets, hotel bills, entry cards, etc.

Tickets, hotel bills, entry cards for public or private institutions in the Member States, appointment cards for doctors, dentists, information that shows the applicant has used the services of a travel agency or other circumstantial evidence of the same kind, and information showing that the person used the services of a courier:

If the applicant states that they entered the country coming from a third country, or has been staying in another Member State for a period of more than five months, the stay in another Member State or the stay outside the territory of the Member States can be supported by the abovementioned documents, which are elements of circumstantial evidence. If the applicant is in possession of any of the abovementioned, these tickets, cards, etc. can support the statements of the applicant concerning the stay in another Member State or in a third country and might constitute evidence to support the take charge or take back request.

Previous application for international protection [\[back to checklist\]](#)

Dublin III Regulation	Implementing Regulation
Articles 18 (1) (b), (c), (d) and 20(5)	Annex II

An asylum claim was lodged previously with another Member State

Article 3(1) Dublin III Regulation defines that '[t]he application [for international protection] shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.' In cases where no Member State can be designated as responsible on the basis of Chapter III, 'the first Member State in which the application for international protection was lodged shall be responsible for examining it', unless the transfer cannot take place due to systemic flaws in the asylum procedure and in the reception conditions in that Member State (Article 3(2) Dublin III Regulation).

In cases where the applicant has previously lodged an asylum claim with another Member State, and the criteria set out in Chapter III is not applicable, a take back procedure will be initiated.

Assessing the applicability of the Dublin III Regulation

Consequently, the case officer has to examine whether the other Member State is still obliged to take back the person concerned by assessing the available evidence and ensure that the responsibility of the Member State has not ceased. The case officer has to make sure that the application of the criteria was in line with the provisions set out in the Dublin III Regulation.

In cases where an application for international protection has been previously lodged in another Member State it is also necessary to check whether the person is falling under the scope of the Dublin III Regulation. As mentioned in the section on [Personal scope](#), the Dublin III Regulation is not applicable if the person has already been granted international protection by another Member State.

Eurodac II Regulation
Article 18(1)

Article 18(1) Eurodac II Regulation sets out the obligation of marking the data in the Central System when an applicant is granted international protection.

'For the purposes laid down in Article 1(1), the Member State of origin which granted international protection to an applicant for international protection whose data were previously recorded in the Central System pursuant to Article 11 shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by the Agency. That mark shall be stored in the Central System in accordance with Article 12 for the purpose of transmission under Article 9(5). The Central System shall inform all Member States of origin of the marking of data by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 9(1) or 14(1). Those Member States of origin shall also mark the corresponding data sets.'

Article 18(1) Eurodac II Regulation

In case the Eurodac search results in a hit which is marked, the Member State conducting the search will see that the person is already a beneficiary of international protection. Therefore, the Dublin procedure is not applicable in these cases.

In cases where the Eurodac hit is not marked but there are indications that the person might have been granted international protection, an information request pursuant to Article 34 Dublin III Regulation can be sent to verify the status of the person.

Obligation to take back an applicant to examine the application for international protection

Dublin III Regulation

Article 18 (1) (b) to (d)

Article 18 of the Dublin III Regulation specifies the obligations of the Member State responsible. The Member State where an application for international protection was lodged previously shall be obliged to take back the applicant if:

- The application of the person concerned is under examination and the person concerned has made an application in another Member State or they are on the territory of another Member State without a residence document. (Article 18(1)b))
- The applicant has withdrawn the application in the other Member State and made a new application in another Member State or they are staying on the territory of the other Member State without a residence document. (Article 18(1)c))
- The application of the person concerned was rejected and they have made a new application in another Member State or is staying on the territory of the Member State without a residence document. (Article 18(1)d))

Article 18(2) specifies that the Member State responsible under Article 18(1) a) or b), shall examine or complete the examination of the asylum claim. The Member State responsible under Article 18(1) c) should give the applicant the opportunity to either request the continuation of the examination of their asylum application, or the opportunity to lodge a new application in the responsible Member State. Furthermore, 'in the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU'.

Obligation to take back the applicant to conduct the Dublin procedure

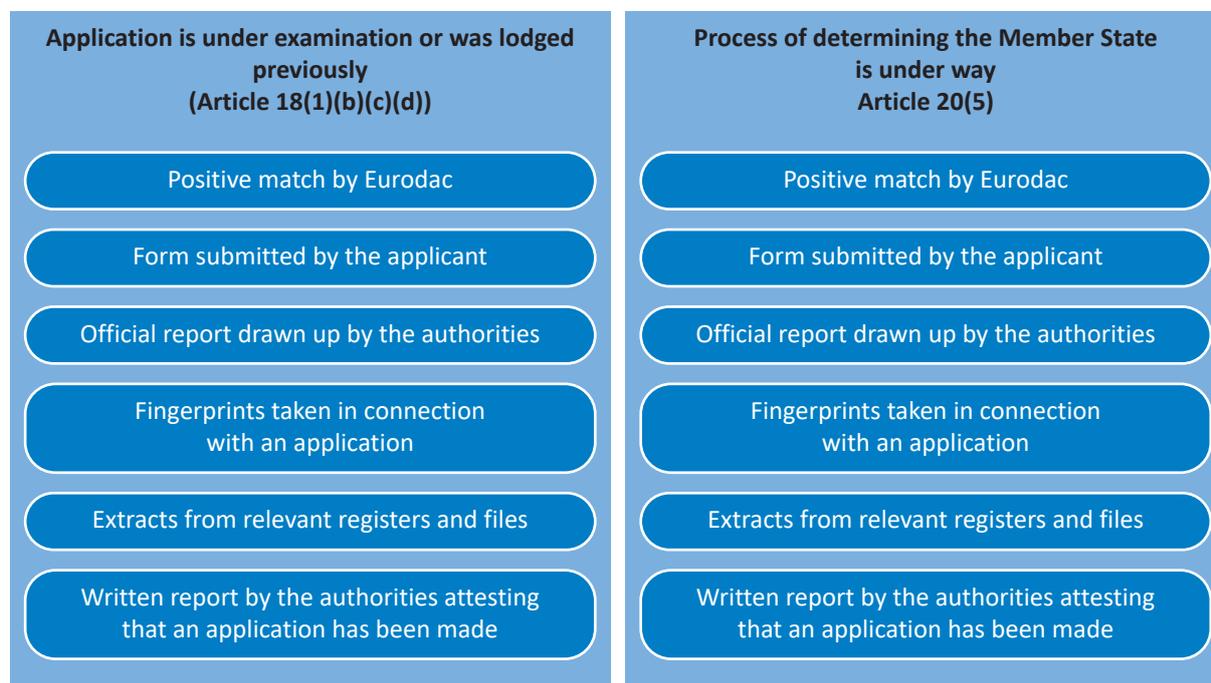
Dublin III Regulation

Article 20(5)

In general, the aim of the take back procedure is to determine the Member State responsible and to transfer the applicant to that Member State so that the asylum application could be examined. However, the take back procedure is also applicable in cases where the applicant is 'present in another Member State without a residence document or who their lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible'. (Article 20(5)). In these specific cases, the applicant should be taken back by the Member State where the applicant first lodged and withdrew the application in order for that Member State to complete the process of determining the Member State responsible.

Means of proof in case of take back procedure:

Process of determining the Member State responsible is under way in the Member State where the application was lodged (Article 20(5)) and application is under examination or was lodged previously (Article 18(1)(b)(c)(d))



Positive match by Eurodac

Undisputable evidence concerning the application of the Dublin III Regulation provisions is the result of a hit in the Eurodac base. When a case officer receives the information of a hit as a result of a data comparison in the Eurodac database, it is clear that the person has had a relevant contact with another Member State authority in the past. The match may show previous asylum application (category 1) in another Member State. The case officer has to take into account all elements of a Eurodac search result. If there is a hit showing a previous application for international protection in another Member State, the Eurodac search result shall be attached to the take back request (Article 18(1) b)-d) or 20(5)).

Form submitted by the applicant (application form)

During the interview an applicant can submit a copy of an application form lodged in another Member State. Such a copy can be used as proof that the person has previously applied for international protection and a case officer shall send a request for taking back.

Official report drawn up by the authorities

In cases when there is an official report drawn up by the authorities of another Member State such as a registration form, a decision, etc., a case officer has evidence of the lodging of a previous application for international protection.

Fingerprints taken in connection with an application

In case when there is no Eurodac hit, but the case officer has reasons to believe that a person has previously applied for international protection in another Member State, the fingerprints, taken in connection with the application, can be attached to the take back request. If the situation is unclear, a request for information under Article 34 Dublin III Regulation may be sent before such a request. When the authorities of the requested Member State have the fingerprints of the person at their disposal, they are able to make the necessary checks and, depending on the results, apply the provisions of the Dublin III Regulation.

Extracts from register of aliens or similar registers

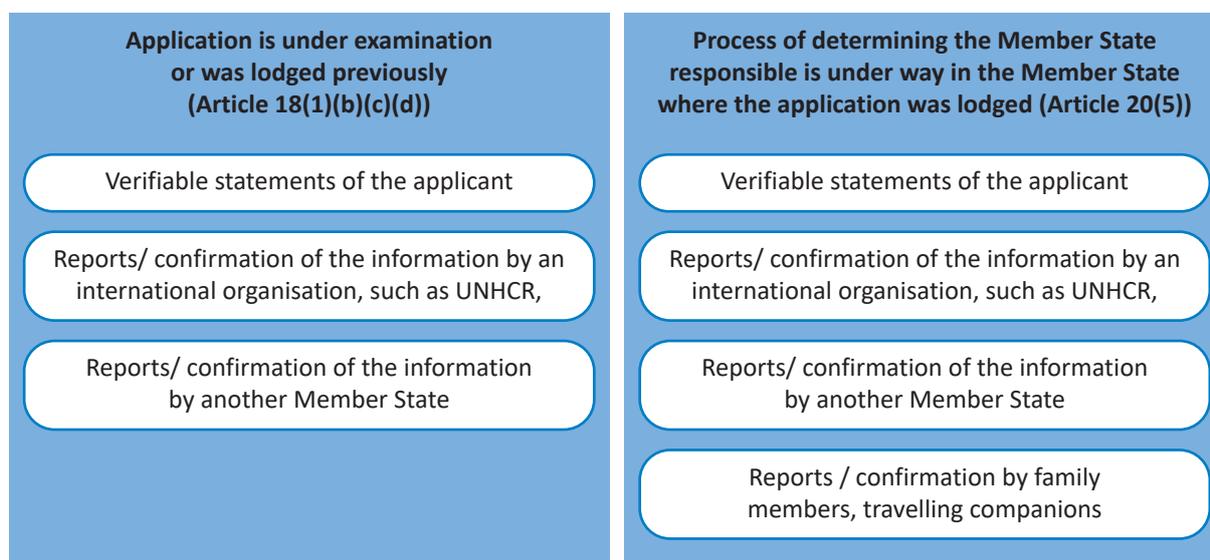
Any official documents revealing information about previous applications can also be used as proof that the person has either an on-going or finalised asylum procedure in another Member State. In such cases a take back request can be sent on this basis.

Written report by the authorities attesting that an application has been made

In cases where a case officer has doubts whether the applicant has previously applied for international protection in another Member State, based on the statements of the applicant during the personal interview, a request based on Article 34 can be sent asking for information concerning the person: whether they have applied for protection, whether they have a final decision on the application, etc. An answer by the requested authorities confirming the previous asylum application can be used as proof on which basis a request for taking back should be sent.

Circumstantial evidence in case of take back procedure

Process of determining the Member State responsible is under way in the Member State where the application was lodged (Article 20(5)) and application is under examination or was lodged previously (Article 18(1)(b)(c)(d)).



Detailed and verifiable information provided by the applicant

During the personal interview the applicant can provide information about their previous asylum claim. For topics to be elaborated during the interview for the sake of collecting relevant information concerning travel route, previous asylum procedure, etc. see [Areas to explore during the interview: entry, stay & previous application](#).

Reports/confirmation of the information by an international organisation, such as UNHCR

The Member States can use the information provided by international organisations. Reports or confirmation of the information by an international organisation can further support the request. The requested Member State should take these documents into account and conduct the relevant verification/research.

Reports/confirmation of the information by family members, travelling companions

Coherent, verifiable and sufficiently detailed statements regarding the applicant's travel route can also support requests, and can support the applicant's statements.

Cessation of responsibilities – departure from the territory and expulsions [\[back to checklist\]](#)

Dublin III Regulation

Article 2(l), Article 19 (1) to (3) and Article 20(5)

Cessation of responsibilities (Article 19(1), (2), (3))

Article 19 Dublin III Regulation states that the responsibility may cease under certain conditions. Either the requested Member State or the applicant may – according to the CJEU judgment of 7 June 2016, *George Karim v Migrationsverket* (Sweden)⁽⁵⁾ – invoke this clause and bring forward proof or circumstantial evidence in this regard. In this case, the requested Member State is asked to establish that the conditions for cessation apply or responsibility has been transferred to another Member State. The requesting Member State needs to fully assess the relevant information.

Article 19(1) specifies that in case a Member State issues a residence document to the applicant, ‘the obligations specified in Article 18(1) shall be transferred to that Member State’ that issued the residence document.

Article 19(2), also known as the ‘**three-months rule**’, stipulates that:

... [t]he obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1) (c) or (d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

Article 19(3), also known as the ‘**return rule**’, provides that:

... [t]he obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

Article 20 (5) also sets rules for cessation of responsibilities. As specified under [Obligation to take back the applicant to conduct the Dublin procedure](#), in particular cases, the Member State is obliged to take back an applicant for the sake of completing the procedure of determining the responsible Member State. In case the Member State requested to take back the applicant can establish the cessation of responsibility in accordance with Article 19(1) or 19(2), the obligation to take the applicant back shall cease.

Annex II of the Implementing Regulation contains the following list of means of proof and circumstantial evidence regarding cessation of responsibilities under Articles 19 (2) and (3) or Article 20 (5).

⁽⁵⁾ Judgment of the CJEU of 7 June 2016, *George Karim v Migrationsverket*, C-155/15.

Means of proof for cessation of responsibility – Article 19(2), 19(3) and Article 20(5)

Departure from the territory of the Member States (Article 19(2))	Departure from the territory of the Member States (Articles 20(5) and 19(2))	Expulsion from the territory of the Member States (Article 19(3))
Exit stamp	Exit stamp	Written proof from the authorities that the alien has actually been expelled
Extracts from third country registers (substantiating residence)	Extracts from third country registers (substantiating residence)	Exit stamp
Tickets conclusively establishing departure from or entry at external frontier	Exit stamp from a third country bordering on a Member State, bearing in mind the route taken by the applicant and the date on which the frontier was crossed	Confirmation of the information regarding expulsion by the third country
Report / confirmation from which the applicant left the territory of the Member States	Fingerprints, in cases where the authorities decided to take fingerprints when the alien crossed the external frontier	
Stamp from a third country bordering on a Member State, bearing in mind the route taken by the applicant and the date on which the frontier was crossed	Written proof from the authorities that the alien has actually been expelled	
Fingerprints, in cases where the authorities decided to take fingerprints when the alien crossed the external frontier		

Exit stamp

An exit stamp in a passport is probative evidence in multiple cases. When examining the criteria related to entry or stay in another Member State, the case officer should check if there are exit stamps in the passport.

Extracts from third country registers

Any official documents, such as extracts from third country registers, files, revealing information about stay in a third country, or official documents that support the related statements of the applicant can be used as evidence to support cessation of responsibility.

Tickets conclusively establishing departure from or entry at an external frontier

Tickets (airplane, train, bus, etc.) conclusively establishing departure from a Member State or third country, or entry at an external frontier constitute evidence and should be considered by a case officer when assessing responsibility.

Reports/confirmation by the Member State from which the applicant left the territory of the Member States

Confirmation from the Member State from which the applicant left the territory of the Member States is probative means of evidence. If such confirmation is already available or becomes available following a consultation with the other Member State, it can prove the cessation of responsibility.

Written proof from the authorities that the alien has actually been expelled

Confirmation from the Member State which successfully expelled the person concerned is probative means of evidence. If such confirmation is already available or becomes available following a consultation with the other Member State, such proof can support the cessation of responsibility.

Confirmation of the information regarding expulsion by the third country

Confirmation from the third country to which the person concerned was expelled or returned constitutes probative means of evidence. If the confirmation is already available or becomes available during the Dublin procedure, such proof can support the cessation of responsibility.

(Exit) stamp from a third country bordering on a Member State, bearing in mind the route taken by the applicant and the date on which the frontier was crossed

A stamp in a passport is probative evidence in multiple cases. If the stamp was made by a country bordering a Member State, the case officer should examine the date when the frontier was crossed, and should bear in mind the route the applicant had taken. If the entry at an external frontier was made after the date of the exit stamp in a passport and the entry was not authorised, the exit stamp is proof of irregular entry.

Fingerprints

Depending on the circumstances in which they were taken, fingerprints can be proof or circumstantial evidence. If the fingerprints are taken in relation to crossing the external frontier, or related to an application for international protection, the fingerprints constitute probative evidence. Fingerprints attached to the request will help the requested Member State to search in the national database in order to identify the person concerned.

Circumstantial evidence regarding cessation of responsibility – Article 19(2), 19(3) and 20(5)

Departure from the territory of the Member States (Article 19(2))	Departure from the territory of the Member States (Articles 20(5) and 19(2))	Expulsion from the territory of the Member States (Article 19(3))
Detailed and verifiable statements by the applicant	Detailed and verifiable statements by the applicant	Verifiable statements by the applicant
Reports/confirmation of the information by an international organisation, such as UNHCR	Reports/confirmation of the information by an international organisation, such as UNHCR	Reports/confirmation of the information by an international organisation, such as UNHCR
Reports/confirmation of the information by family members, travelling companions	Reports/confirmation of the information by family members, travelling companions	Reports/confirmation of the information by family members, travelling companions
Reports/confirmation of the information by another Member State;	Reports/confirmation of the information by another Member State;	Exit stamp where the applicant concerned has left the territory of the Member States for a period of at least 3 months
Exit stamp where the applicant concerned has left the territory of the Member States for a period of at least 3 months	Exit stamp where the applicant concerned has left the territory of the Member States for a period of at least 3 months	Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier
Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier	Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier	Tickets; hotel receipts; entry cards for public or private institutions in the Member States; appointment cards for doctors, dentists, etc.; information showing that the applicant has used the services of a courier or travel agency; other circumstantial evidence of the same kind.
Tickets; hotel receipts; entry cards for public or private institutions in the Member States; appointment cards for doctors, dentists, etc.; information showing that the applicant has used the services of a courier or travel agency; other circumstantial evidence of the same kind.	Tickets; hotel receipts; entry cards for public or private institutions in the Member States; appointment cards for doctors, dentists, etc.; information showing that the applicant has used the services of a courier or travel agency; other circumstantial evidence of the same kind.	

Detailed and verifiable information provided by the applicant

Detailed and verifiable statements concerning the circumstances of entry, residence outside the territory of the Member States that can be verified could serve as circumstantial evidence. During the personal interview the applicant can provide information about their stay in a third country, a previous asylum claim, stay in a third country etc. For topics to be elaborated during the interview for the sake of collecting relevant information concerning travel route, previous asylum application and information relevant to the potential cessation of responsibility see [Areas to explore during the interview: entry, stay & previous application](#).

Reports/confirmation of the information by an international organisation, such as UNHCR

The Member States can use the information provided by international organisations to support their requests. Reports or confirmation of the information by an international organisation can further support the request. The requested Member State shall take these documents into account and conduct the relevant verification/research.

Reports/confirmation of the information by family members, travelling companions

Coherent, verifiable and sufficiently detailed statements regarding the applicant's travel route can also support requests, and can support the applicant's statements.

Reports/confirmation of the information by another Member State

If another Member State (no the one from which the applicant left the territory) can provide a report or can confirm the information regarding the person's departure from the territory of the Member States, this information can be regarded as circumstantial evidence.

Exit stamp

When examining the criteria related to entry or stay in another Member State, the case officer should check if there are exit stamps in the passport. If the stamp was made by a country bordering a Member State, the case officer should examine the date when the frontier was crossed, and should bear in mind the route the applicant had taken. The case officer also have to examine the period the applicant spent outside the territory of the Member States.

Fingerprints

Depending on the circumstances in which they were taken, fingerprints can be proof or circumstantial evidence. If the fingerprints are taken in relation to crossing the external frontier, or related to an application for international protection, the fingerprints are probative evidence. Fingerprints attached to the request will help the requested Member State to search in the national database in order to identify the person concerned.

Tickets, hotel bills, entry cards, etc.

Tickets, hotel bills, entry cards for public or private institutions in the Member States, appointment cards for doctors, dentists; information showing that the applicant has used the services of a travel agency or other circumstantial evidence of the same kind, and information showing that the person used the services of a courier:

If the applicant states that they entered the country coming from a third country, or has been staying in another Member State for a period of more than five months, the stay in another Member State or the stay outside the territory of the Member States can be supported by the abovementioned documents, which are elements of circumstantial evidence. If the applicant is in possession of any of the abovementioned, these tickets, cards, etc. can support the statements of the applicant concerning the stay in another Member State or in a third country and might constitute evidence to support the take charge or take back request.

Other evidence

In order to assess the case, the case officer can consider other evidence to verify the duration of stay of a person in a third country: tickets, hotel bills, entry cards for public or private institutions, appointment cards for doctors, dentists, information that the applicant has used the services of a travel agency or of a courier. This types of evidence can be used if they correspond to the statements of the applicant and the information provided during the personal interview concerning their travel routes, whereabouts, etc.

Specific considerations regarding Dublin transfers [\[back to checklist\]](#)

Dublin III Regulation

Articles 3(2) second subparagraph, Article 17 (1)

The requesting Member State has to verify that the transfer to the requested Member State can take place.

According to Article 3(2) second subparagraph Dublin III Regulation, the transfer cannot take place if ‘there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.’ In its judgement of 16 February 2017 in case *C.K. and others v Supreme Court of Republic Slovenia*⁽⁶⁾ (hereinafter *C.K. and others*), the CJEU clarified that the impossibility of transfers does not only apply to cases of ‘**systemic flaws**’ but also if the transfer itself would result in a proven risk of the transferred person suffering inhuman or degrading treatment, within the meaning of Article 4 Charter. Moreover, before the transfer takes place, the Member State can always make use of the discretionary clause if it is found that there are reasons for not transferring an applicant to another Member State. For instance, family ties found in the present Member State, health issues, etc. that do not amount to a risk of a violation of Article 4 Charter. The application of the ‘**sovereignty clause**’ in such cases may also be subject to national guidance.

Assessing the evidence

As the CJEU stated in *C.K. and others*, in case of real and foreseeable risk of treatment contrary to Article 4 Charter or Article 3 ECHR, the Member State authorities should not proceed with the transfer.

In *C.K. and others*, the CJEU considered the special health situation, which has a link to Article 4 Charter if 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’ (para. 74).

The respective evidentiary standards and the potential effects of the principle of mutual trust have not yet been fully clarified by the CJEU. In the *C.K. and others* judgment, the CJEU clarified that mutual trust may not alter the absolute nature of the protection granted by Article 3 ECHR or Article 4 Charter. However, it should be noted that both the CJEU and the ECtHR place the bar quite high when assessing concretely what are ‘**the systemic deficiencies**’ or ‘**real and foreseeable risk**’ of treatment contrary to Article 4 Charter and 3 ECHR. It results from the judgement of the CJEU in case *N.S.*, that the mutual trust should not be compromised through systematic examination in every Dublin procedure whether the responsible Member State respects all of its obligations under the CEAS. It also results from the jurisprudence of ECtHR that in order for a real risk of inhuman or degrading treatment to exist, there must be very serious situations in the responsible Member State (see in particular ECtHR, judgement of 21 January 2011 *M.S.S. v Belgium and Greece*⁽⁷⁾, paragraphs 252, 263 and 249).

In this context, the following judgements are of particular importance: the joined CJEU judgment of 21 December 2011 in joined cases *N.S. and others* and *M.E. and Others*⁽⁸⁾; the CJEU judgment of 19 March 2019, *Abubacarr Jawo v Bundesrepublik Deutschland*⁽⁹⁾; the ECtHR judgment of 21 January 2011, *M.S.S. v Belgium and Greece*⁽¹⁰⁾; the ECtHR judgment of 4 November 2014, *Tarakhel v Switzerland*⁽¹¹⁾.

⁽⁶⁾ Judgement of CJEU of 16 February 2017, *C.K. and others v Supreme Court of Republic Slovenia*, C-578/16 PPU.

⁽⁷⁾ Judgement of the ECtHR, 21 January 2011, *M.S.S. v Belgium and Greece*, no 30696/09, points 252, 263 and 249.

⁽⁸⁾ Judgment of the CJEU of 21 December 2011, *N.S. and others v Secretary of State for the Home Department and M.E. and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*, joined Cases C-411/10 and C-493/10.

⁽⁹⁾ Judgment of the CJEU of 19 March 2019 in, *Abubacarr Jawo v Bundesrepublik Deutschland*, case C-163/17.

⁽¹⁰⁾ Judgment of the ECtHR on 21 January 2011, *M.S.S. v Belgium and Greece*, no 30696/09.

⁽¹¹⁾ Judgment of the ECtHR of 4 November 2014, *Tarakhel v Switzerland*, no 29217/12.

Consequently, there may be a violation of Article 4 Charter (or Article 3 ECHR respectively) in particular if there is no access to the asylum procedure in the Member State responsible or if the (individual) reception conditions are amounting to such a violation, including the risk of being arbitrarily detained upon arrival, or if the applicant would be exposed to a substantial risk of suffering inhuman or degrading treatment within the meaning of Article 4 Charter.

Especially in cases concerning families or vulnerable persons, it might be necessary to obtain specific individual assurances from the authorities of the requested Member State if there are indications that a transfer to that Member State without such guarantees could entail in a risk of violation of Article 4 Charter. The case officer might need to assess the legal and factual situation in the Member State to which the applicant is transferred individually. In such a situation, the mere absence of such assurances could render the Dublin transfer decision unlawful and could be invoked by the applicant on appeals. In the individual assessment, these assurances need to be distinguished from transfer modalities and the respective obligation to exchange data prior to the transfer pursuant to Articles 31 and 32 Dublin III Regulation as well as from other human rights violations during the transfer process.

Annex I – Areas to explore during the interview: family links

Issues to be explored during the interview regarding family unity

The points listed here are not suggestive of how the case officer should ask or formulate questions but rather a reminder of what issues may need to be explored, depending on the particular circumstances of the application, in order to gather the information necessary for determining the responsibility.

Exploring and establishing family links

- The presence of family member(s) or relative(s) in another Member State(s).
- The personal data of the family member(s)/relative(s).
- Other data of the family member(s)/relative(s) regarding the current accommodation (e.g. contact details).
- How the applicant and the family member(s)/relative(s) are related.
- Where the case involves a spouse, details about how this relationship formed (when, where, how).
- In case of relative(s), dependency should be explored (see below).
- The status the family member(s)/relative(s) have in the other Member State.
- The circumstances under which they have been separated.
- Information about the contact between the applicant and the other member(s), especially since they were separated.
- Any supporting document related to the family link.
- Written consent of the persons concerned.

Dependency

The issues mentioned above under family links have to be explored wherever applicable. It also has to be assessed if there is any kind of dependency between the applicant and any relative(s) residing in another Member State.

In case there is dependency, gather information on:

- Who exactly is/are the dependent person(s).
- The cause of dependency.
- The kind of dependency.
- The way that the person(s) is/are dependent.
- Who was taking care of the applicant/dependent person in the country of origin/former habitual residence.
- Who was taking care of the applicant/dependent person during the journey and in the country of refuge.
- What difficulties the dependent person(s) face in their daily life. Whether the applicant is able to take care of the relative and how.
- Where the applicant is the dependent person, whether the other person is able to take care of the applicant and how.
- Any supporting document, related to the situation of dependency e.g. medical reports, documents, psychological or social reports.
- Written consent of the persons concerned.

Unaccompanied child

- Any supporting document about the family links.
- Any supporting document related to the applicant's minority age, especially if the applicant is close to the age of 18 (e.g. ID document or birth certificate)
- Information regarding the nature of the relationship between the minor and the relative while in the country of origin (whether aunt, uncle, grandmother, grandfather)
- Capacity of the relative to take care of the child.
- The well-being and social development of the child.
- Safety and security considerations, in particular where there is a possibility that the child has been or could potentially become a victim of human trafficking.
- Views of the child, taking account of their age and maturity, and cultural background.

Discretionary clauses: sovereignty clause

- Objections from the applicant to being transferred to a country that is potentially the responsible Member State. The objections could be related to personal grounds (family reasons, health reasons) and/or to the general situation in the responsible Member State.
- Presence in the Member State of family members that are (not) applicants for international protection.
- Reasons for these objections.

Discretionary clauses: humanitarian clause

- The presence in another Member State of another family relation other than that previously explored
- The personal data of this/these person(s).
- Other data of that person(s) that are related to the current place of stay (e.g. address).
- The exact kind of relation/contact between the applicant and this/these person(s) in the country of origin.
- The status this/these person(s) have in the other Member State.
- The circumstances under which they have been separated.
- Information about the relation/contact between the applicant and this/these persons, since they were separated.
- Reasons why they want to be reunited.
- Any supporting document.
- Any supporting document e.g. medical documents, photos, tickets of any visit of the other person in order to meet the applicant
- Written consent of both parties

Annex II – Areas to explore during the interview: entry, stay & previous application

Issues to be explored during the interview regarding residence, visa, irregular entry and stay, earlier asylum applications, cessation of responsibilities.

The points listed here are not suggestive of how the case officer should ask or formulate questions but rather a reminder of what issues may need to be explored, depending on the particular circumstances of the application, in order to gather information necessary for determining the responsibility.

In case formal evidence supporting the statements of the applicant is absent, the requesting Member State should make all reasonable efforts to obtain complete statements concerning the travel route by asking detailed questions during the interview.

It is very important to be aware of the applicant's entire travel route at the end of the interview.

Travel route

Concerning the travel route the case officer shall gather information related to:

- Any relevant document that the applicant might have related to their travel and depending on the way in which they travelled (e.g. passport, aeroplane, bus or train tickets, boarding passes).
- When and where the journey started.
- The countries that the applicant travelled through on their journey.
- The means in which the applicant travelled and the documents used for travelling. It includes the circumstances of the departure, transits and arrival and also the vehicles of transport used by the applicant.
- The way they crossed the border.
- If they had any documents for crossing the borders.
- The dates of travelling. It is often difficult for the applicants to provide the exact dates; however, the time framework is an important piece of information.
- Other people that the applicant might have travelled with.

Application for international protection in another Member State

- Length of stay in each place/country.
- Status the applicant had in this/these countries.
- If the person applied for international protection in another Member State.
- If the person applied for international protection, when and where did he apply?
- Exact description of the procedure.
- The result of this application.
- Any documentation relating to the application

Residence document issued to the applicant

- If a residence permit was issued to the applicant.
- Which Member State(s) issued the residence document.
- When was the residence document issued
- The period of validity of the residence document
- The type of residence permit.
- The time between the expiration date of the residence document and the application for international protection.
- On which ground the residence permit was issued.

Visa issued to the applicant

- If a visa was issued to the applicant.
- Which Member State issued the visa.
- If the visa was issued by a Member State on behalf of another Member State.
- When was the visa issued
- The period of validity of the visa
- The type of visa issued.
- If the person used it to enter/stay in the territory of the Member States.
- The time elapsed between the expiration date of the visa and the application for international protection.
- If any other type of visa was issued to the applicant.

Cessation of responsibility of a Member State

- If the person left the territory of the Member States
- The period of being outside of the territory of the Member States
- date of leaving and entering the territory of the Member States
- Destination (country of origin or another country),
- Means of travelling,
- Length of stay in the third country,
- Why did the applicant leave the territory of the Member States
- If the applicant has any supporting documents.
- Circumstances of travelling, if they travelled on their own or it was arranged by another Member State.

Annex III – Summary tables on the list of means of proof and circumstantial evidence – Family unity

Proofs	Unaccompanied minor Article 8	Family members who are beneficiaries of international protection Article 9	Family members who are applicants for international protection Article 10
Written confirmation of the information by the other MS	✓	✓	✓
Extract from the registers	✓	✓	✓
Residence permits issued to the family member	✓	✓	
Temporary residence authorisation issued to the family member			✓
Evidence that the persons are related (if available)	✓	✓	✓
Failing this, and if necessary, a DNA or blood test	✓		✓
Consent of the persons concerned		✓	✓

Circumstantial evidence	Unaccompanied minor Article 8	Family members who are beneficiaries of international protection Article 9	Family members who are applicants for international protection Article 10
Verifiable information from the applicant	✓	✓	✓
Statements by the family members concerned	✓		
Report/confirmation of the information by an international organisation, such as UNHCR	✓	✓	✓

Annex IV – Summary tables on the list of means of proof and circumstantial evidence – Residence, visa, irregular entry and stay for at least 5 months/legal entry

Proofs	Valid or expired residence documents Article 12(1)(3)(4)	Valid or expired visa Article 12(2)(3)(4)	Illegal entry Article 13(1)	Residence in a Member State for at least 5 months Article 13(2)	Legal entry into the territory at an external frontier Article 14
Residence document (valid or expired, as appropriate)	✓				
Visa (valid or expired) issued		✓			
Extract from the register of aliens or similar registers	✓	✓			
Reports/confirmation of the information by the MS which issued the residence document	✓				
Reports/confirmation of the information by the MS which issued the visa		✓			
Positive match (hit) transmitted by the VIS		✓			
Entry stamp (or similar endorsement) in a passport or in a forged/falsified passport			✓		✓
Exit stamp from a country bordering on a MS/or exit stamp by the MS			✓		✓
Tickets conclusively establishing entry at an external frontier			✓		✓
Residence authorisation issued while the application for a residence permit is being examined				✓	
Requests to leave the territory or expulsion order issued on dates at least five months apart or that have not been enforced				✓	
Extract from the records of hospitals, prisons, detention centres				✓	
Positive match on Eurodac (category 2) or fingerprints taken in connection with irregular entry			✓		

Circumstantial evidence	Valid or expired residence documents Article 12(1)(3)(4)	Valid or expired visa Article 12(2)(3)(4)	Illegal entry Article 13(1)	Residence in a Member State for at least 5 months Article 13(2)	Legal entry into the territory at an external frontier Article 14
Detailed and verifiable statements by the applicant	✓	✓	✓	✓	✓
Report/confirmation of the information by an international organisation, such as UNHCR	✓	✓	✓	✓	✓
Report/confirmation of the information by MS which did not issue the residence permit or visa	✓	✓			
Report/confirmation of the information by family members, travelling companions, etc.	✓	✓	✓	✓	✓
Report/confirmation of the information by another MS or third country			✓		✓
Reports/confirmation of the information by a non-governmental organisation, such as an organisation providing accommodation for those in need				✓	
Fingerprints, except if taken when crossing the external frontier			✓	✓	✓
Tickets, hotel bills, entry cards, appointment cards, information showing use of services or other circumstantial evidence of the same kind, etc.			✓	✓	✓

Annex V – Summary tables on the list of means of proof and circumstantial evidence – Previous applications for international protection, departure from the territory and expulsions

Proofs	Departure from the territory of the MS Article 19 (2), 20(5)	Expulsion from the territory of MS Article 19 (3)	Previous asylum applications Article 18(1)(b)(c)(d); 20(5)
Exit stamp	✓	✓	
Extract from third country registers substantiating residence	✓		
Tickets conclusively establishing departure from or entry at an external frontier	✓		
Report/confirmation by the Member State from which the applicant left the territory of the Member States	✓		
Exit stamp from a third country bordering on a MS	✓		
Entry stamp (or similar endorsement) in a passport	✓		
Positive match by Eurodac (category 1) or fingerprints taken in connection with an application for international protection			✓
Fingerprints taken in connection with an application			✓
Form submitted by the applicant			✓
Official report drawn up by the authorities			✓
Extract from relevant registers and files			✓
Written report by the authorities attesting that an application has been made			✓
Written proof from the authorities that the alien has actually been expelled	✓	✓	
Confirmation of the information regarding expulsion by the third country		✓	

Circumstantial evidence	Departure from the territory of the MS Article 19 (2), 20(5)	Expulsion from the territory of MS Article 19 (3)	Previous asylum application Article 18(1)(b)(c)(d); 20(5)
Detailed and verifiable statements by the applicant	✓	✓	✓
Report/confirmation of the information by an international organisation such as UNHCR	✓	✓	✓
Report/confirmation of the information by another Member State	✓		✓
Report/confirmation of the information by family members, travelling companions	✓	✓	✓
Exit stamp where the applicant has left the territory of the Member States for at least 3 months	✓	✓	
Fingerprints, except if taken when crossing the external frontier	✓	✓	
Tickets, hotel bills, entry cards, appointment cards, information showing the using of services or other circumstantial evidence of the same kind, etc.	✓	✓	

REFERENCES

- ▶ *references to legislation, relevant case-law and additional resources*

Legal references and relevant case-law

This overview of legal references and jurisprudence is not intended to be an exhaustive reference tool. It only aims at providing practical direction to the case officer by referring to some of the most relevant provisions and jurisprudence. Rulings regarding the application of the Dublin II Regulation that are already codified in the Dublin III Regulation are not part of this overview.

The references below are organised by topic. Where possible, the case-law and additional legal instruments are hyperlinked for ease of reference.

Legal framework and scope of the Dublin system

Legal references	Jurisprudence
Dublin III Regulation Implementing Regulation Eurodac II Regulation	<p>On rapid determination of responsibility/effective access to the procedures for granting international protection:</p> <ul style="list-style-type: none"> • CJEU, judgment of 16 February 2017, C.K. and Others v Supreme Court of Republic Slovenia, C-578/16 PPU <p>Effective access to the procedures for granting international protection (no explicit decision for in-merit examination of application needed):</p> <ul style="list-style-type: none"> • CJEU, judgment of 4 October 2018, Bahtiyar Fathi v Predsedatel na Darzhavna agentsia za bezhantsite, C-56/17 <p>On the scope of Dublin III Regulation: take back procedure is not applicable to beneficiaries of international protection:</p> <ul style="list-style-type: none"> • CJEU, order of the Court of 5 April 2017, Daher Muse Ahmed v Bundesrepublik Deutschland, C-36/17 <p>The fact that a Member State notified its intention to withdraw itself from the European Union does not oblige the determining Member State to itself examine the application for international protection:</p> <ul style="list-style-type: none"> • CJEU, judgment of 23 January 2019, M.A. and Others v The International Protection Appeals Tribunal and Others, C-661/17
	National jurisprudence

Criteria for determining the Member State responsible

Legal references	Jurisprudence
<p>Article 8-17</p> <p>Dublin III Regulation</p>	<p>The applicant may plead the incorrect application of criteria in Chapter III Dublin III Regulation:</p> <ul style="list-style-type: none"> • CJEU, judgment of 7 June 2016, <i>Mehrdad Ghezalbash v Staatssecretaris van Veiligheid en Justitie</i>, C-63/15 <p>The applicant may also plead an infringement of the rule in Article 19(2) Dublin III Regulation:</p> <ul style="list-style-type: none"> • CJEU, judgment of 7 June 2016, <i>George Karim v Migrationsverket</i>, C-155/15 <p>On the meaning of the phrasing ‘lodging an application’ as in 2(b) Dublin III Regulation and the start of the periods as in Article 21(1) and 23(1) Dublin III Regulation:</p> <ul style="list-style-type: none"> • CJEU, judgment of 26 July 2017, <i>Tsegezab Mengesteab v Bundesrepublik Deutschland</i>, C-670/16
	National jurisprudence

Provision of information

Legal references	Jurisprudence
<p>Article 4</p> <p>Dublin III Regulation</p>	<p>On failing to provide applicants with sufficient information amounting to a breach of Article 3 ECHR:</p> <ul style="list-style-type: none"> • ECtHR, judgment of 14 March 2017, <i>Ilias and Ahmed v Hungary</i>, no 47287/15 <p>Member States have to have a reliable means of communicating with applicants:</p> <ul style="list-style-type: none"> • ECtHR, judgment of 21 January 2011, <i>M.S.S. v Belgium and Greece</i>, no 30696/09
	National jurisprudence

Personal interview

Legal references	Jurisprudence
<p>Articles 4 and 5</p> <p>Dublin III Regulation</p> <p>Article 14 APD</p>	<p>On the obligation of personal interview before a transfer decision, and opportunity for the applicant to present any further information relevant for the correct determination:</p> <ul style="list-style-type: none"> • CJEU, judgment of 7 June 2016, <i>Mehrdad Ghezalbash v Staatssecretaris van Veiligheids Justitie</i>, C-63/15
	National jurisprudence

Specific considerations regarding persons with special needs – children

Legal references	Jurisprudence
<p>Article 24 APD</p> <p>Article 21, 22 RCD</p> <p>Articles 8, 16, 17 Dublin III Regulation</p>	<p>On considerations before transfer –inhuman or degrading treatment, transfer of a seriously ill asylum seeker to the Member State responsible for examining the application:</p> <ul style="list-style-type: none"> • CJEU, judgment of 16 February 2017, <i>C.K. and Others v Supreme Court of Republic Slovenia</i>, C-578/16 PPU <p>Member States cannot simply deny a right of residence to a third-country national who is the parent of an EU-citizen without making a full assessment of the infringement on the substance of the rights pertaining to the child’s status as a Union citizen:</p> <ul style="list-style-type: none"> • CJEU, judgment of 10 May 2017, <i>Chavez-Vilchez and Others v Raad van bestuur van de Sociale verzekeringsbank and Others</i>, C-133/15 <p>Best interests of the child and discretionary clause:</p> <ul style="list-style-type: none"> • CJEU, judgment of 23 January 2019, <i>M.A. and Others v The International Protection Appeals Tribunal and Others</i>, C-661/17
	National jurisprudence

Evidence assessment – possibility of providing proof and making sure that responsibility is assessed correctly

Legal references	Jurisprudence
<p>Articles 19(2), 20(2), 21(1), 22(2), (3), (4), (5), 27(1), 34</p> <p>Dublin III Regulation</p> <p>Annex II, Annex V Implementing Regulation</p>	<p>On the scope of the appeal against a transfer decision: the asylum seeker is entitled to plead the incorrect application of the criteria for determining responsibility laid down in Chapter III Dublin III Regulation:</p> <ul style="list-style-type: none"> • CJEU, judgment of 7 June 2016, <i>Mehrdad Ghezalbash v Staatssecretaris van Veiligheid en Justitie</i>, C-63/15 <p>On cessation of responsibility: the asylum seeker is entitled to plead an infringement of the rule set out in Article 19(2) Dublin III Regulation according to which the obligation of the respective Member State to them back ceases if they have been outside the territory of the Member State for a period of at least three months:</p> <ul style="list-style-type: none"> • CJEU, judgment of 7 June 2016, <i>George Karim v Migrationsverket</i>, C-155/15 <p>On lodging an application, start of the determination process, and expiry of the take charge request period:</p> <ul style="list-style-type: none"> • CJEU, judgment of 26 July 2017, <i>Tsegezab Mengesteab v Bundesrepublik Deutschland</i>, C-670/16
	National jurisprudence

Evidence assessment: criteria and other provisions relating to family unity

Legal references	Jurisprudence
<p>Articles 8, 9, 10, 11, 16, 17</p> <p>Dublin III Regulation</p>	<p>The application of the discretionary clause of Article 17(1) Dublin III Regulation is unconditional. The authority applying Article 17(1) Dublin III Regulation does not have to be the authority responsible for determining the Member State responsible. No remedy has to be available against the decision not to apply Article 17(1) Dublin III Regulation:</p> <ul style="list-style-type: none"> • CJEU, judgment of 23 January 2019, <i>M.A. and Others v The International Protection Appeals Tribunal and Others</i>, C-661/17 <p>As a general rule, Article 9 Dublin III Regulation is not applicable in a take back situation; however, in a situation as in Article 20(5) Dublin III Regulation and provided that the person concerned proves right away that according to Article 9 Dublin III Regulation, the Member State they are currently in should be responsible, then Article 9 Dublin III Regulation may be invoked:</p> <ul style="list-style-type: none"> • CJEU, judgment of 2 April 2019, <i>Staatssecretaris van Veiligheid en Justitie v H. and R.</i>, joined cases C-582/17 and C-583/17
	National jurisprudence

Length of the procedure

Legal references	Jurisprudence
<p>Articles 12, 13,14, 15,</p> <p>19 (1),(2),(3), 20(5)</p> <p>Dublin III Regulation</p>	<p>On length of procedure: Member State in which the individual is present must exercise its right to examine the application, since it must not use a procedure for determining the responsible Member State that takes an unreasonable length of time:</p> <ul style="list-style-type: none"> • CJEU, judgment of 21 December 2011, <i>N.S. and others v Secretary of State for the Home Department</i>, joined cases C-411/10 and C-493/10 <p>On re-examination requests and time limit for replying, expiry of time limit and effect:</p> <ul style="list-style-type: none"> • CJEU, judgment of 13 November 2018, <i>X and X v Staatssecretaris van Veiligheid en Justitie</i>, joined cases C-47/17 and C-48/17 <p>On start of the determination process and lodging an application and time limits for making a request:</p> <ul style="list-style-type: none"> • CJEU, judgment of 26 July 2017, <i>Tsegezab Mengesteab v Bundesrepublik Deutschland</i>, C-670/16 <p>A transfer decision is only adopted and notified after the acceptance of a transfer request:</p> <ul style="list-style-type: none"> • CJEU, judgment of 31 May 2018, <i>Adil Hassan v Préfet du Pas-de-Calais</i>, C-647/16 <p>Extended transfer time limit for absconded applicants is evoked by informing the Member State responsible before the expiry of the original time limit:</p> <ul style="list-style-type: none"> • CJEU, judgment of 19 March 2019, <i>Abubacarr Jawo v Bundesrepublik Deutschland</i>, C-163/17
	National jurisprudence

Evidence assessment: Criteria relating to residence, entry, and stay

Legal references	Jurisprudence
<p>Articles 12, 13,14, 15,</p> <p>19 (1),(2),(3), 20(5)</p> <p>Dublin III Regulation</p>	<p>On entry authorised by way of derogation on humanitarian grounds, definition of a ‘visa’; definition of ‘irregular border crossing’; issuing of a visa and irregular crossing of an external border; the date of lodging of a request determines the applicability of Article 13(1) Dublin III Regulation, an appeal against a transfer decision has no effect on this period:</p> <ul style="list-style-type: none"> • CJEU, judgment of 26 July 2017, <i>Kadija Jafari and Zainab Jafari v Bundesamt fur Fremdenwesen und Asyl</i>, C-646/16 • CJEU, judgment of 26 July 2017, <i>A.S. v Republic of Slovenia</i>, C- 490/16
	National jurisprudence

Evidence assessment: Earlier asylum applications

Legal references	Jurisprudence
<p>Articles 18 (1) (b),(c),(d)</p> <p>Dublin III Regulation</p>	<p>Regardless of an appeal pending in the requested Member State, a request must always be made in time; an appeal lodged on an earlier date can exist (and continue) with a simultaneous appeal against a transfer decision of later date; the requested Member State need not be informed of previous (pending) appeals; the surrendering of an applicant under a European arrest warrant stands separate from the application of the Dublin III Regulation:</p> <ul style="list-style-type: none"> • CJEU, judgment of 5 July 2018, <i>X v Staatssecretaris van Veiligheid en Justitie</i>, C-213/17 <p>Article 18(2) Dublin III Regulation does not require that the procedure for examining that applicant’s application is resumed at the stage at which it was discontinued after that applicant was transferred:</p> <ul style="list-style-type: none"> • CJEU, judgment of 17 March 2016, <i>Shiraz Baig Mirza v Bevándorlási és Állampolgársági Hivatal</i>, C-695/15 <p>A new transfer request must be made when an applicant returns to the Member State that previously transferred them, special conditions apply:</p> <ul style="list-style-type: none"> • CJEU, judgment of 25 January 2018, <i>Bundesrepublik Deutschland v Aziz Hasan</i>, C-360/16 <p>On application for international protection made by a third-country national benefiting from the status conferred by subsidiary protection and the applicability of the take back procedure</p> <ul style="list-style-type: none"> • CJEU, order of 5 April 2017, <i>Daher Muse Ahmed v Bundesrepublik Deutschland</i>, C-36/17 • CJEU, judgment of 25 January 2018, <i>Federal Republic of Germany v Aziz Hasan</i>, C-360/16
	National jurisprudence

Dublin transfer

Legal references	Jurisprudence
<p>Articles 3(2)(2), 17(1)</p> <p>Dublin III Regulation</p>	<p>The expiry of the time limits for the transfer of the person concerned suffices for an automatic transfer of responsibility, the person concerned may invoke such argument in court:</p> <ul style="list-style-type: none"> • CJEU, judgment of 25 October 2017, <i>Majid Shiri v Bundesamt für Fremdenwesen und Asyl</i>, C-201/16 <p>Meaning of the concept ‘absconding’; the extended transfer time limit for absconded applicants is evoked by informing the Member State responsible before the expiry of the original time limit; Article 4 Charter may be applicable for the transfer of applicants as in Article 29 Dublin III Regulation in case of a substantial risk of the person concerned suffering inhuman or degrading treatment after receiving international protection in the responsible Member State.</p> <ul style="list-style-type: none"> • CJEU, judgment of 19 March 2019, <i>Abubacarr Jawo v Bundesrepublik Deutschland</i>, C-163/17 <p>On violation of Article 4 Charter and Article 3 of ECHR and inhuman and degrading treatment</p> <ul style="list-style-type: none"> • CJEU, judgment of 16 February 2017, <i>C.K. and Others v Supreme Court of Republic Slovenia</i>, C-578/16 PPU
	<p>National jurisprudence</p>

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