



European
Commission

Children of Beneficiaries of International Protection [2020.60]

Answered by **AT, BE, BG, HR, CY, CZ, EE, DE, FR, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, SK, SI, ES, SE, and NO**
Launched on 31 August 2020 by **BAMF DE**.

KEY POINTS TO NOTE

The Asylum Procedure Directive (abbr. APD; DIRECTIVE 2013/32/EU) stipulates in art. 33 par. 2 (a) that Member States may consider an asylum application as inadmissible if another Member State has granted international protection.

BACKGROUND

According to recent jurisprudence in Germany, art. 33 par. 2 (a) APD does not apply to children who are born in Germany and whose family members are beneficiaries of international protection in another Member State. This situation happens when the child is born after the family members left the Member State that granted them protection and illegally moved to another Member State. Therefore, the child is not beneficiary of international protection as no protection was granted by the first Member State.

MAIN FINDINGS

Q1. Do you apply art. 33 par. 2 (a) APD for the child in these cases?

BG, HR, EE, DE, FR, LV, LT, LU, MT, PL, SK, SI and **SE** do not apply Art. 33 par. 2 (a) APD to children who are born on their territory and whose family members are beneficiaries of international protection in another (Member) State ().

In **DE** and **LU** it was only in light of recent jurisprudence that the children's application is no longer considered as inadmissible acc. to art. 33 par. 2 (a) APD. This was the case in **DE** after a ruling of the German Federal Administrative Court and in **LU** through a decision of the administrative tribunal.

BE, CY, IT, NL, PT, ES apply Art. 33 par. 2 (a) APD concerning applications of children of beneficiaries of international protection granted by another Member State. In **BE**, taking into account both, art. 11 par. 3 APD and Art. 23 QD, and in the absence of observations against such a decision, a single inadmissibility decision, covering both the parents and the accompanied minor, will generally be taken. **IT** considers an asylum application inadmissible if the applicant has been recognised as a refugee/beneficiary of subsidiary protection by another State, which is a signatory to the Geneva Convention, and he/she can still benefit of this protection. With regard to accompanied children, the general rule is that the minor has to follow their parents also if they are affected by an "expulsion" order.

The implied situation in the question is not applicable in **CZ, HU, IE** and **NO**. **IE** and **NO** do not participate in the APD and therefore are not bound by it.

Q2. If you answer no to question 1, do you consider the child's application a Dublin-case and do you consider Art. 20 par. 3 of the Dublin-III-Regulation applicable?

BG, HR, EE, DE, LV, LU and **PT** consider art. 20 par. 3 of the Dublin-III-Regulation to be applicable to the case in question. For **HR, LV, LU** and **PT**, the responsibility for the child's application cannot be separated from the responsibility for the parents' application, also taking into account the best interest of the child and not risking separating them from their parents. For **DE**, the responsibility for the child's application and the responsibility for the parents' application are not two different issues. In accordance with Art. 24 par. 2 QD, the Member State that granted protection for the parents has to issue a residence permit to the child and by doing so should assume responsibility for the child's application.

CZ, FR, IE, LT, MT, PL, SK, SI and **SE** do not consider the child's application a case in which art. 20 par. 3 of

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.



the Dublin-III-Regulation is applicable. **MT** would however not exclude a case by case evaluation, which among other things takes the procedure adopted by the Member State responsible for the parents into account. This results in outcomes where the child is transferred with the parents in accordance with the Return Directive as well as cases where the Dublin-III-Regulation has to be applied instead. **SE** ceased application of art. 33 par. 2 (a) due to a judgement from the Migration Court of Appeal (MIG 2014:26). The court has stated that Art. 20 (3) is only applicable if the parent of the child is an asylum seeker which is not the case if the parents have been granted refugee status by another MS. Nonetheless, if there is a written consent from the parent/s of the child, art. 9 Dublin-III-Regulation can be applied. **LT, SK** and **SI** consider such case to fall under art. 9 of the Dublin-III-Regulation since this Article refers to family members who have been allowed to reside as beneficiaries of international protection. **HU** has not yet encountered such a case.

Although the APD is not applicable for **NO**, there is a similar national procedure for such cases. The application for the family as a whole is considered inadmissible and it is assumed that the child will be granted international protection upon return to the Member State responsible for the parents. Should the returning Member State refuse the transfer, only then will Dublin procedures take place.

Q3. If you answer no to question 2, do you consider the child's application inadmissible on other grounds?

At the moment, no Member State established any other grounds to deem inadmissible an application of a child born in their territory and whose parents were granted international protection by another Member State.

Q4. If you answer no to question 3, do you consider the child's application admissible and conduct a normal asylum procedure (examination on the merits) for the child?

CZ, EE, EI, LU, PL, SK, SI and **SE** would consider such an application as admissible, although **EE** regards these type of situations as unlikely to occur. **FR** points out that the child's application will only be considered admissible if their parents have not applied for asylum and are not subject to Dublin procedures.

In **LU**, if the Dublin transfer timeline expires, and there are no other grounds to consider the application admissible, a normal asylum procedure is to take place.

SK, SI and **SE** would examine the application on the merits if the procedure under art. 9 of the Dublin-III-Regulation would not succeed, i.e. there is no consent by the child's parents.

EMN NCPs participating: Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Norway (23 in total). EMN NCP Austria has provided a response to the requesting EMN NCP, but has requested that it is not disseminated further.

Disclaimer: The responses of the Member States regarding this ad-hoc query have been provided primarily for the purpose of information exchange among the EMN National Contact Points (NCPs) in the framework of the EMN. The contributing EMN NCPs have provided information that is to the best of their knowledge up-to-date, objective and reliable. However, the information provided in the present summary is produced under the exclusive responsibility of the EMN Germany and does not necessarily represent the official policy of an EMN NCPs' Member State. The responses are interpreted by EMN Germany to write this summary.

* * * *

