



Ad-Hoc Query on the Dublin procedure with regard to foreigners, recognized as refugees under the mandate of the United Nations High Commissioner for Refugees

Requested by BG EMN NCP on 31 March 2009

Compilation produced on 26th May 2009

Compilation for EMN NCPs and Commission only

Responses from Austria, Bulgaria, Czech Republic, Finland, Germany, Greece, Hungary, Spain, Latvia, Malta, Netherlands, Poland, Slovenia, Slovak Republic, Sweden, United Kingdom (16 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

The following Ad-Hoc Query was requested by the Dublin II and EURODAC Unit of the State Agency for Refugees:

2. Responses

EMN Ad-Hoc Query: Conditions for granting residence permits to major investors – third country nationals

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		Wider Dissemination ?¹	Question 1: Do you consider that the Dublin procedure is to be applied with regard to a foreigner, recognized as refugee under the mandate of the United Nations High Commissioner for Refugees, when the foreigner has entered your country to be granted refugee status?
	Austria	No	No precedent is available in the Austrian case-law which would allow an exact answer to this query. In the case-law of the Independent Federal Asylum Senate there has been only one related decision: a recognized refugee has applied for asylum in Austria. The applicant has been previously recognized as a refugee by a third country and claimed to be persecuted in this third country. In this case the Dublin procedure was applied and the applicant was transferred to France, where he first entered the European Union. Unfortunately, in the decision no information is available whether UNHCR was responsible for the first asylum procedure. (UBAS, 01.07.1999, 208.341/0-XII/36/99)
	Bulgaria	Yes	Yes, we consider that the Dublin procedure is to be applied with regard to a foreigner, recognized as refugee under the mandate of the United Nations High Commissioner for Refugees.
	Czech Republic	Yes	No, the Dublin procedure cannot be applied to a refugee under the mandate of the UNHCR.
	Finland	Yes	We apply the Dublin procedure with regard to a third country national, recognized as a refugee under the Mandate of the UNHCR. For example a foreigner, who has been granted refugee status by UNHCR in Turkey and who crosses the border of the first Member State illegally or applies there for asylum before coming to Finland as an asylum seeker, may be returned to the first Member State according to the Dublin II Regulation. Our administrative court is of the opinion that the refugee status granted by UNHCR does not have a binding influence on Member States, which have the right to examine and decide the qualifications for granting refugee status independently according to their national asylum procedure. If the foreigner is a recognized refugee within the EU, we do not apply the Dublin procedure. In such cases we may return the applicant to the safe country of asylum (to the Member State that has granted the refugee status) according to the Finnish Aliens Act.
	Germany	No	No. The Dublin Convention clearly talks about "Member States". UNHCR is not enlisted in the enumeration of the signing countries (see Dublin Convention I, annex I). Therefore, from the German point of view, the Dublin procedure is not applicable with regard to foreigners recognized as refugee under the mandate of the UNHCR.
	Greece	Yes	The scope of the Dublin Regulation is to determine the responsible m/s for the examination of an asylum application which was submitted by a third country national. Any recognition as refugee under the mandate of the United Nations High Commissioner for Refugees is to be considered in the framework of the examination of the asylum case under the national asylum procedures and the content of the applicant's file.
	Hungary	Yes	Yes, as all third-country national asylum seeker falls under the scope of the Dublin regulation, in our opinion the Dublin procedure shall be applied if a third-country national recognized as a refugee by the UNHCR applies for international protection in Hungary.
	Latvia	Yes	So far we haven't had such cases in practice for that reason our reply is theoretically based. According to our understanding cases of persons recognized as refugees under UNHCR mandate should be examined in the framework of MS national asylum procedures.
	Malta	Yes	Yes, Malta considers that the Dublin Procedure is applicable with regard to a foreigner, recognized as refugee under the mandate of the United Nations High Commissioner for Refugees.

¹ A clear "YES", your response may be circulated further (i.e. to national network members) or "NO" should be added here. In case of "NO", then the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further."

EMN Ad-Hoc Query: Conditions for granting residence permits to major investors – third country nationals

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			Nations High Commissioner for Refugees. The circumstances surrounding the application would merit consideration by the MS Dublin authorities whether he arrives from an EU member state or not.
	Netherlands	Yes	Yes, we consider the Dublin procedure is to be applied with regard to the foreigner recognized as refugee under the mandate of the United Nations High Commissioner for Refugees. Though if one of the EU countries has granted a refugee status, the Dublin procedure is not to be applied.
	Poland	Yes	Yes, we consider that the Dublin procedure is to be applied with regard to a foreigner, recognized as refugee under the mandate of the United Nations High Commissioner for Refugees.
	Slovenia	Yes	No, we consider that the Dublin procedure is not to be applied with regard to a foreigner, recognized as refugee under the mandate of the United Nations High Commissioner for Refugees.
	Slovak Republic	Yes	Yes, we consider that the Dublin procedure is to be applied with regard to a foreigner, recognized as refugee under the mandate of the United Nations High Commissioner for Refugees, when the foreigner has entered country to be granted refugee status.
	Spain	Yes	Dublin Procedure is applied with regard to a foreigner, recognized as refugee under the mandate of the UNHCR
	Sweden		Persons who come to Sweden as part of the refugee quota are not automatically granted refugee status. They can receive either refugee status or that of a person in need of protection in Sweden ("subsidiary protection"). Article 7 of the Dublin II Regulation does formally only cover persons with refugee status. Persons granted subsidiary protection in Sweden may however be considered for reasons of family reunification by applying article 3.2 of the Regulation.
	United Kingdom	No	<p>If an individual arrived in the UK via another member state and according to a 'prior agreement' (e.g. agreeing to resettle someone referred to the UK by the UNHCR), it is unlikely that the Dublin procedure would be applied.</p> <p>However, in the event that an individual spontaneously arrived in the UK, was found to be a EURODAC 'hit' in another member state, and then claimed to be a mandate refugee, it is likely that the circumstances surrounding the claim would have to be investigated. This means, that credibility of the claim would have to be checked with the UNHCR, as well as contacting the other member state with potential Dublin links to the individual concerned to see whether or not the individual's refugee status had been recognised there. This would be the most significant issue in terms of whether or not the Dublin procedure applies.</p> <p><i>Special Note: If a mandate refugee makes an application for resettlement, <u>after</u> arriving in the UK, then they must be considered under the 1951 Convention. However caseworkers (those dealing with the individual) should confirm with UNHCR in London that the applicant has been recognised as a mandate refugee as claimed. In all cases, any opinion/information that UNHCR provides with an application/in support of an application, can be taken into consideration when assessing the claim, however UNHCR opinion is not binding upon UK Border Agency.</i></p> <p><i>It is important to bear in mind that mandate refugee status is not the same as refugee status under the 1951 convention, as mandate refugee status covers a much wider scope of people.</i></p>

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