



## EMN Ad-Hoc Query on Transfers to Bulgaria under the Dublin III Regulation

Requested by NL EMN NCP on 16th January 2017

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### **Background information:**


On 30 January 2017, the highest administrative court in The Netherlands will hear two cases concerning transfers to Bulgaria under the Dublin III Regulation. The court specifically wants to be informed by the Dutch Government on whether the principle of interstate trust is still applicable concerning Bulgaria in general and particularly with regard to vulnerable groups. The Dutch government is of the opinion that this principle still applies. The court also wants to be informed of the practices of other member states concerning transfers to Bulgaria.





### **Questions**




1. Do you still carry out transfers to Bulgaria under the Dublin III Regulation?
2. If so, are certain (vulnerable) groups exempted from transfers to Bulgaria? If so, which groups?
3. Do you make specific arrangements with the Bulgarian authorities to ensure a carefully organised transfer, e.g. arrangements about suitable reception facilities or medical treatment? If so, which arrangements are made and in which cases?
4. What is the case law in your member state concerning transfers to Bulgaria?



### **Responses**




	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	<b>Austria</b>	Yes	<ol style="list-style-type: none"><li>1. Yes, Austria carries out transfers to Bulgaria under the Dublin III Regulation. Source: Federal Ministry of the Interior.</li><li>2. It has to be noted that every single case is examined thoroughly and that arrangements with the authorities are made if necessary in the individual case. Source: Federal Ministry of the Interior.</li><li>3. It has to be noted that every single case is examined thoroughly and that arrangements with the authorities are made if necessary in the individual case. Source: Federal Ministry of the Interior.</li><li>4. The Federal Administrative Court examines every case separately. There are no noteworthy general decisions with respect to the Bulgarian asylum and reception system. Source: Federal Ministry of the Interior.</li></ol>



	<b>Belgium</b>	Yes	<p><b>1. Yes</b></p> <p><b>2. Yes</b> vulnerable persons are exempted from transfers to Bulgaria. However it is worth noting that the majority are not considered as vulnerable (95% are single men) and can be transferred to Bulgaria.</p> <p><b>3. No</b></p> <p><b>4. Decisions</b> taken by the Immigration Office are often suspended by the Council for Aliens Law Litigation (CALL). Three recent CALL judgments (178479, 178480, 178481) from 28 November 2016 annulled the decisions taken by the Immigration Office aimed at transferring three Afghans to Bulgaria. The Court stated that recent sources showed a decline, in recent months, regarding the quality of the handling of asylum applications and reception conditions for asylum applicants in Bulgaria. The Court noted that the Immigration Office could not refer to the situation as described in the UNHCR report of April 2014, which no longer reflected the current situation. Given the content of a more recent report, particularly the AIDA report from October 2015, it was manifestly unreasonable, without further investigation, to consider that there was no serious flaws. See the judgments on these links: <a href="http://www.rvv-cc.e.be/sites/default/files/arr/A178479.AN.pdf">http://www.rvv-cc.e.be/sites/default/files/arr/A178479.AN.pdf</a> <a href="http://www.rvv-cc.e.be/sites/default/files/arr/A178480.AN.pdf">http://www.rvv-cc.e.be/sites/default/files/arr/A178480.AN.pdf</a> <a href="http://www.rvv-cc.e.be/sites/default/files/arr/A178481.AN.pdf">http://www.rvv-cc.e.be/sites/default/files/arr/A178481.AN.pdf</a> Also judgments 168890 and 168891 dated from 1 June 2016 suspended by urgent necessity, the transfer of Afghan asylum seekers to Bulgaria. According to the judgments, the principle of care was breached in conjunction with Article 3 of the ECHR. The Court noted that the Immigration Office had failed to thoroughly investigate up to date reports on the asylum procedure and reception conditions in Bulgaria and selectively and wrongly concluded that the principle of interstate trust was fulfilled. The Court reminded that this principle does not apply when there are fundamental shortcomings relating to asylum and international protection procedures and relating to reception conditions that can lead to a real risk that the asylum seeker, in case of transfer, is subject to a treatment that can be considered as inhuman and degrading. With regard to this case, the CALL referred to the following documents: • ECRE/ELENA Note from February 2016 • AIDA Report from 30 September 2015 • UNHCR Report from 1 April 2014 • Amnesty International Report 2015/16 - The State of the World's Human Rights - Bulgaria, 24 February 2016. • UNHCR Global Appeal Update, 2015 Earlier on, in judgment 165304 from 6 April 2016, the CALL suspended by urgent necessity, the transfer of an Afghan asylum seeker to Bulgaria, due to selective reading of UNHCR and AIDA reports. The CALL considered that the asylum procedure had deteriorated in Bulgaria, including on grounds of inadequate translation services and legal assistance.</p>
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	<b>Croatia</b>	Yes	<ol style="list-style-type: none"> <li>1. Yes, the Croatian government still transfer applicants for international protection to Bulgaria under the Dublin III Regulation.</li> <li>2. The Croatian government gives special attention to vulnerable applicants, e.g. persons with serious health conditions, and they are exempted from transfers to Bulgaria.</li> <li>3. No, the Croatian government did not make specific arrangements with the Bulgarian authorities to ensure a carefully organised transfer, e.g. arrangements about suitable reception facilities or medical treatment.</li> <li>4. On 5th May 2016 the High Administrative Court of the Republic of Croatia ruled that the applicant's appeal was adopted because the relevant facts for transfer to Bulgaria were not established before transfer, and that without determination of the actual circumstances in which appellant was in Bulgaria cannot be properly and lawfully decided. The Court ruled in this case that this can be violation of Article 3 the European Convention on Human Rights and Article 4 of the EU Charter of Fundamental Rights.</li> </ol>
	<b>Cyprus</b>	Yes	<ol style="list-style-type: none"> <li>1. No such cases have ever been experienced in Cyprus</li> <li>2. n/a</li> <li>3. n/a</li> <li>4. There is no relevant case law in Cyprus</li> </ol>
	<b>Czech Republic</b>	Yes	<ol style="list-style-type: none"> <li>1. YES, such transfers are carried out; the number is not high though.</li> <li>2. No cases of transfers of (vulnerable) groups are known.</li> <li>3. No special arrangements are made in this regard.</li> <li>4. Standard procedures apply as regards realization of transfers. No case law is thus available.</li> </ol>
	<b>Estonia</b>	Yes	<ol style="list-style-type: none"> <li>1. There have been no transfers from Estonia to Bulgaria under the Dublin III Regulation.</li> </ol>



			<p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>
	<b>Finland</b>	Yes	<p>1. Yes.</p> <p>2. Certain vulnerable groups are exempted from transfers as recommended by UNHCR in 2014. Due to the low number of possible transfers to Bulgaria we are unable to give examples. The cases are decided on an individual basis.</p> <p>3. The police are responsible for practical arrangements regarding transfers. So far there has been no need for special arrangements with transfers to Bulgaria. Should the need arise, the police will make the necessary arrangements. According to Asylum guidelines if the health status of the applicant requires it, the Finnish Immigration Service will, with the consent of the applicant, inform the receiving state of the need for continued health care.</p> <p>4. According the jurisprudence no transfer decisions have been overruled in appeal.</p>
	<b>France</b>	No	<p>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</p>
	<b>Germany</b>	Yes	<p>1. Germany continues to apply the Dublin procedure with regard to transfers to Bulgaria. However, only 95 persons were actually removed to Bulgaria between January and December 2016, whereas Bulgaria accepted responsibility in 2,643 cases during the same period.</p> <p>2. Bulgaria is currently making considerable efforts to comply with the rules of the Common European Asylum System. Nevertheless, in each case the BAMF carefully checks whether the sovereignty clause should be invoked before a removal takes place. In particular, the German authorities take care to check whether transfers to Bulgaria are equivalent to individual hardship in the case of vulnerable persons. There are no statistics on removals of vulnerable persons.</p>



			<p><b>3.</b> In each case, the BAMF examines the legality of the removal, if necessary in cooperation with the Bulgarian authorities.</p> <p><b>4.</b> No findings.</p>
	<b>Hungary</b>	Yes	<p><b>1.</b> The Hungarian authorities continue to carry out transfers to Bulgaria under the Dublin Regulation.</p> <p><b>2.</b> Hungary has not made a decision to explicitly exempt any certain group from transfers to Bulgaria, however, it should be noted that no Dublin transfer was carried out to Bulgaria in the past year concerning unaccompanied minors, families with minor children, or any person in serious medical condition or requiring special kind of medical treatment.</p> <p><b>3.</b> Prior to organizing the transfer, medical information regarding all transferees is collated (medication used, treatment necessary following the readmission) and forwarded to the Bulgarian authorities so that they would be able to arrange properly the suitable treatment for the transferees.</p> <p><b>4.</b> Transfers to Bulgaria are usually carried out using a charter flight and therefore 15-20 applicants are transferred simultaneously.</p>
	<b>Italy</b>	Yes	<p><b>1.</b> After the judgment n. 3999/2016 made by the Italian Council of State (see point 4))IT authorities are waiting a legal assessment required to The Attorney General</p> <p><b>2.</b> No</p> <p><b>3.</b> Actually Italy has no specific agreement for Dublin transfers.</p> <p><b>4.</b> The case law concerning transfers to Bulgaria is represented by the judgment n. 3999/2016 made by the Italian Council of State. The sentence suspended transfers of asylum-seekers to Bulgaria in order to prevent risks of inhuman or degrading treatments (in violation to Article 4 of the EU Charter of Fundamental Rights) caused by systemic deficiencies in the asylum procedures and in the reception conditions applied by the Country. The judgment has been built up holding a plurality of reliable sources of information - as reports by the European Commission against Racism and Intolerance (ECRI), UNHCR and Amnesty International,</p>


			above all - that proved the above-mentioned risks for asylum-seekers. Therefore, the impossibility to allow the asylum-seekers transfer was established.
	<b>Latvia</b>	Yes	<p><b>1.</b> Yes, Latvia carries out transfers to Bulgaria under the Dublin III Regulation.</p> <p><b>2.</b> In cases with Bulgaria Article 17.1 of the Dublin III Regulation (the sovereignty clause) is applied on a case-by-case basis (with special attention to vulnerable applicants and in cases concerning family ties taking into consideration the best interest of the child).</p> <p><b>3.</b> No</p> <p><b>4.</b> Latvia does not have any general rules for implementing the sovereignty clause. We are taking into account the ruling of the ECHR and UNHCR reports concerning the situation in the Member States.</p>
	<b>Lithuania</b>	Yes	<p><b>1.</b> Lithuania has not had indicated cases.</p> <p><b>2.</b> N/A</p> <p><b>3.</b> N/A</p> <p><b>4.</b> N/A</p>
	<b>Luxembourg</b>	Yes	<p><b>1.</b> Yes. During 2016 (January – November 2016), the Luxembourg authorities carried out one transfer to Bulgaria in the framework of Dublin III.</p> <p><b>2.</b> No. In Luxembourg each international protection application is analysed case by case and each applicant has the right to a personal interview. The Minister in charge of Immigration and Asylum decides the transfer to another Member State based on all the elements contained in the file and the vulnerability issues of an applicant. After the examination of these elements the Minister can decide not to proceed with the transfer to another Member State and decide to examine the application under the normal international protection procedure.</p> <p><b>3.</b> No.</p>

			4. There is no specific case law on this issue.
	<b>Netherlands</b>	Yes	<p>1. Yes, the Dutch government still transfer applicants for international protection to Bulgaria.</p> <p>2. The Dutch government gives special attention to vulnerable applicants, e.g. pregnant women, families with young children and persons with serious health conditions. In these cases the Dutch government takes also into account the period the applicant(s) stayed in Bulgaria, the condition of the reception facilities in which they stayed and the phase of the asylum procedure.</p> <p>3. No, the Dutch Government doesn't make specific arrangements with the Bulgarian authorities before transferring.</p> <p>4. On 15 July 2016 the highest administrative court ruled that the principle of interstate trust is still applicable (in general) concerning Bulgaria and transferring applicants to Bulgaria would not be in violation with article 3 of the European Convention on Human Rights. On 25 October 2016 the highest administrative court came to the conclusion that the principle of interstate trust could not be applied in that case because of the 'Country Report: Bulgaria' of AIDA of October 2015 and the fact that the person concerned was diagnosed with PTSD, severe depressive episodes and suicidality.</p>
	<b>Poland</b>	Yes	<p>1. In case of identification by Polish Border Guard, on the basis of the Regulation of the European Parliament and of the Council (EU) No 604/2013 of 26 June 2013 on the establishment of 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 (Dublin Regulation III), that the responsibility of a foreigner could take over Bulgaria, the Office for Foreigners proceeds with the request to determine the responsibility of the Bulgarian Party. The Office for Foreigners on the basis of the data collected and other material shall consider each case individually and decide whether the preparation of the matter to the authorities of Bulgaria should occur. In accordance with the adopted position Poland is not preparing transfers of foreign nationals belonging to vulnerable groups, such as minors). The scale of foreigner's transfers to Bulgaria under the Dublin Regulation III is very small. In 2015 the transfer to that country did not take place, and in 2016 there were transferred 3 Iraqi citizens (men) who submitted applications for international protection in Poland.</p> <p>2. see above</p>



			<p>3. No.</p> <p>4. see above</p>
	<b>Slovak Republic</b>	Yes	<p>1. Yes, Dublin transfers to Bulgaria are carried out.</p> <p>2. No (vulnerable) groups are exempted from transfers to Bulgaria. However, each case is considered separately.</p> <p>3. No.</p> <p>4. No case law on the transfers is available. The transfers are carried out in a standard manner.</p>
	<b>Slovenia</b>	Yes	<p>1. In 2016 we carried out only one transfer to Bulgaria under Dublin III Regulation. In the majority of cases these persons abscond from the procedure and leave Slovenia.</p> <p>2. According to relevant laws certain and especially vulnerable groups are exempted from transfers.</p> <p>3. NO.</p> <p>4. Our case law confirms the existence of systemic flaws and our decisions are essentially rejected. But since we have no relevant reports that would deny the existence of these flaws we are not successful also in the subsequent procedure which is a big problem.</p>
	<b>Spain</b>	Yes	<p>1. Spain does not have any specific experience on cases concerning transfers from Spain to Bulgaria under Dublin III regulation.</p> <p>2. -</p> <p>3. -</p> <p>4. -</p>

	<b>Sweden</b>	Yes	<ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No groups have general exemption but according to the judicial steering within the Swedish Migration Agency it should be considered if Sweden should try cases with regard to article 3.2 of the Dublin regulation if it concerns persons with special needs or who are especially vulnerable.</li> <li>3. For all transfers according to the Dublin regulation we make the necessary measures regarding special arrangements if the applicant, due to a medical condition or for some other reason, has special needs. This of course also goes for Bulgaria. But apart from that no specific measures have been taken in addition regarding Bulgaria in order to assure future medical assistance, or equivalent, for the asylum seeker in Bulgaria.</li> <li>4. There is no particular current ruling from any Swedish High Court specifically dealing with neither asylum procedures nor reception conditions in Bulgaria, nor Dublin transfers to Bulgaria.</li> </ol>
	<b>United Kingdom</b>	Yes	<ol style="list-style-type: none"> <li>1. Yes. The UK agrees that the principle of interstate trust is still applicable concerning Bulgaria in general and with regard to vulnerable groups.</li> <li>2. Where there is evidence that Bulgaria is responsible for examining an application for asylum we will seek to secure the transfer of the applicant, taking into account any individual representations made on a case-by-case basis or any individual legal challenges.</li> <li>3. N/A</li> <li>4. There have been legal challenges to Dublin Regulation transfers from the UK to Bulgaria. In April 2016, the High Court ruled in the case of HK and others [2016] EWHC 857 (Admin) that the Claimants' Dublin Regulation transfer to Bulgaria would not constitute a breach of Article 3 of the European Convention on Human Rights or Article 4 of the Charter of Fundamental Rights of the European Union that prohibit inhuman or degrading treatment. Mr Justice Garham also ruled that none of the Claimants had shown a real risk that Bulgaria would refole them to their home countries without properly determining their asylum claims. The ruling of the Court can be accessed using the following link <a href="http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2016/857.html&amp;query=(duncan)+AND+(lewis)">http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2016/857.html&amp;query=(duncan)+AND+(lewis)</a>. Permission to appeal was sought by the Claimants but was refused by the Court of Appeal on the papers on 29 July 2016.</li> </ol>

			The Claimants subsequently obtained permission to appeal to the Court of Appeal at the renewed oral hearing in November and a date for the hearing is awaited.
	<b>Norway</b>	Yes	<p><b>1.</b> The Norwegian government is of the opinion that the principle of interstate trust still applies concerning Bulgaria in general and with regard to what can be considered as vulnerable groups. The Norwegian Directorate of Immigration (UDI) thus makes decisions concerning transfers to Bulgaria under the Dublin III Regulation after an individual assessment in each case, as the Directorate does in all cases under the Regulation. The UDI has observed that the Immigration Appeals Board (UNE) has suspended transfer decisions to Bulgaria under the Dublin III Regulation in cases concerning families. For further information on practice concerning Bulgaria in UNE, please be advised to contact the Board directly, cf. <a href="http://www.une.no/en/Contact/">http://www.une.no/en/Contact/</a></p> <p><b>2.</b> See information above.</p> <p><b>3.</b> There are no special agreements with Bulgaria concerning Dublin transfers of vulnerable groups to Bulgaria. The Appeal Board (UNE) has given suspensive effect of implementation for families with accepted Dublin returns to Bulgaria, but there is not yet any final decisions in these cases.</p> <p><b>4.</b> There does not seem to be any court decisions concerning Dublin transfers to Bulgaria</p>