



## **EMN Ad-Hoc Query on immediate family members applying for asylum at the same time**

Requested by Kristina BEHUNOVA on 29th May 2017

### **Protection**

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (23 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.*

## **Background information:**

In the Slovak Republic, a legal representative lodges the asylum application on behalf of a minor (it is sufficient if one of the parents does so). According to the practice, if both parents and their minor children apply for asylum, minor children are usually assessed together with the parent who lodged the application for them. Due to this fact there might arise a situation when the second parent who lodges the asylum application separately, is assessed in a separate procedure and thus might be possibly granted a different status.

Marginal, o.z. (<http://www.marginal.sk/>), a member of the Slovak National Network and an NGO which currently provides integration services to beneficiaries of international protection in the Slovak Republic including social, psychological and legal assistance, would like to know about the practice in other EU Member States regarding decision making on asylum applications of immediate family members applying for asylum at the same time.

## **Questions**

1. How are the asylum applications of immediate family members (married couple, parents and their minor children, siblings) assessed in your Member State if they apply for asylum at the same time? Is one decision issued for the whole family, are children assessed together with one parent or is each family member assessed separately?
2. Is this practice defined by law?

## **Summary**

From 19 answers, in 10 Member States (AT, CY, FI, DE, HU, LV, LT, LU, PL a UK) asylum applications of family members (according to the definition of a family member in the national law) are assessed in joint procedure, provided that the applications are based on the same facts or there are no other reasons for separate applications. In BE if one of the partners rely merely on the other partner's asylum motives, a so-called "follow decision" will be taken referring to the partner's decision while both partners will be interviewed. In AT and PL the applications are examined separately but within a joint procedure. In UK a spouse, civil partner, unmarried partner or minor child accompanying a principal claimant may be included in the asylum claim as a dependant. However, if a separate applications are made in UK, separate procedures are also conducted. In CY if the one parent wants to have a separate file for a valid reason (e.g. in case of divorce), children are assessed with the file of their mother.

Minor children can be included in their parents' or legal representatives' asylum applications in 11 Member States (BE, HR, CY, EE, FI, IT, MT, NL, PL, SK and UK), provided that there are no other factors which might lead to a separate asylum claim of a minor. In some cases, a written consent of the second parent is required (e.g. PL).

Separate decisions on asylum applications of family members are issued in 9 Member States (AT, EE, HR, IT, MT, NL, SE, SK and NO). However, in AT, EE and HR the principle of family unity is taken into account. NO also assess the applications together before decisions are issued. In EE it is sometimes possible to make a single administrative act for the whole family even though usually there are separate decisions issued for the parents. In NL, in case a parent, child, spouse or partner is not granted international protection but the family member is, the Dutch law makes it possible to grant a derivative asylum status (derived from the status on the basis of international protection).

10 Member States (AT, HU, CY, IT, LV, LT, LU, PL, UK and partially also HR) have these practices defined by law. In the remaining 9 Member States (BE, EE, FI, DE, MT, NL, SK, SE and NO) this practice regarding family members' applications are not defined in the national law.

### Responses

	Country	Wider Dissemination	Response
	Austria	Yes	<ol style="list-style-type: none"> <li>1. Family members' asylum applications are examined separately, but within a joint procedure. In general, if one of the family members is granted international protection, all family members are granted the same protection status. Asylum status has priority over subsidiary protection status. Each family member receives a separate written decision on the asylum application.</li> <li>2. Yes (see Art. 34 Asylum Act).</li> </ol>
	Belgium	Yes	<ol style="list-style-type: none"> <li>1. In Belgium, in principle, minor children accompanied by one of their parents do not submit a separate asylum application and are not interviewed. In exceptional cases, for example, when the children have asylum motives apart from their parents' asylum motives, the children may submit an asylum application in their own name and/or can be interviewed separately. The asylum application of both partners is registered separately. If one of the partners rely merely on the other partner's asylum motives, a so-called "follow decision" will be taken referring to the partner's decision. Both partners will always be interviewed. With the exception of specific cases (eg exclusion, domestic violence, forced marriage, divorce during the asylum procedure, etc.), the unity of the family is pursued and the same outcome is granted to the entire nuclear family. Also the best interest of the child is taken into account.</li> </ol>

			2. This is an administrative practice that is not defined by law.
	Croatia	Yes	<p>1. In practice both parents lodge an asylum application separately. Applying parents are asked on whose application they decided to add underage child/children. Each parent is assessed separately and minor is assessed together with the parent who lodged application for them. Decision is issued for both parents separately, and child/children are covered by the application made by their legal representative. Principle of family unity is also taken into account in each case so there is a tendency in decision making process not to make different decisions regarding the parents.</p> <p>2. Yes partially in the Article 16 of Law on International and Temporary Protection concerning minors.</p>
	Cyprus	Yes	<p>1. According to the article 11(6)(a) of the Refugee Law, the applicant may submit an application on behalf of his dependants. Analytically, if core family members arrived at the same time (married couple, partner, minor and unmarried children and in case the applicant is minor his/her parents or a person responsible for him/her) the applications are treated as one file, taking into consideration possible individual elements that may exist in each application. Therefore, one decision is issued for the whole family and children are assessed with both parents. Nevertheless, if the one parent wants to have a separate file for a valid reason (for example in case of divorce), children are assessed with the file of their mother, and two different decisions are taken in this possible scenario. Please note that, the principle of family unity and also the best interests of the child are always taken into consideration.</p> <p>2. Article 11(6)(a) of the Refugee Law</p>
	Czech Republic	No	
	Estonia	Yes	<p>1. According to Article 14 (4) of the Act on Granting International Protection to Aliens, an application for international protection shall be submitted in person. According to Article 17 (2) of the same act, a minor has the right to submit an application for international protection in his or her</p>

			<p>own name if his or her active legal capacity has been extended or through his or her parent, other adult family member responsible for him or her or a representative. According to Article 18 (2) of the same act, the Police and Border Guard Board shall review each application for international protection individually and impartially and shall verify the correctness of the evidence and information provided, the credibility of the statements made by the applicant and other circumstances, and shall perform the procedural acts necessary for such purpose. The applications of the same family are thus examined and assessed separately, however in the proceedings the principle of family unity is taken into account. Usually decisions are issued for both parents separately but under some circumstances it is possible to include minors in the same administrative act with the parent or make a single administrative act for the whole family. It should be pointed out that even in such cases a separate decision is made for each member of the family.</p> <p><b>2.</b> This practice is not specifically defined by law. Although the Police and Border Guard Board reviews each application for international protection individually and impartially (see answer to question 1) the Administrative Procedure Act, Article 3 (2) as well as Article 5 (1) and (2) enable the administrative authority to make one single administrative act for the whole family taking into consideration the notion of purposefulness and proportionality in composing an administrative act.</p>
	Finland	Yes	<p><b>1.</b> Asylum applications of immediate family members are usually assessed at the same time and one decision is issued for the whole family. Children are usually assessed together with their parents. This is not a firm rule, and decisions can always be issued separately if need be; for example if certain information included in the decision shall not be disclosed to other family members, if outcomes of the decisions are different, etc. When it comes to asylum seeking unaccompanied minors, separate decisions are issued to siblings who arrive without parents.</p> <p><b>2.</b> No, by practice only.</p>
	France	Yes	<p><b>1.</b> The spouse's administrative and legal protection: If the spouse asks for asylum, he/she may, be granted refugee status on a primary basis if he/she has personal fears of persecution. In the absence of such fears, he/she may benefit from asylum under the principle of family unity, with the condition that he/she has the same nationality as the refugee and that the union between them (marriage or</p>

			<p>common life) existed before the spouse's asylum application. If the spouse that applies is not placed under the protection of the French office for the protection of refugee and stateless persons (OFPRA), he or she may apply for a residence permit at the prefecture of the spouse's place of residence as a refugee spouse). Children administrative and legal protection: If the refugee came to France accompanied by his minor children or if his children were born in France before he was recognized as a refugee, they can benefit from the same status as the refugee. The principle of family unity does not apply to beneficiaries of subsidiary protection and does not exist for children of stateless persons.</p> <p>2. Children of parents under international protection may be granted protection either for their personal situation or under the principle of family unity. The principle of family unity can only apply to a minor child if the parent has obtained his or her refugee status because of his or her personal situation (and not because of the family unit). Children of refugees who have arrived through family reunification or who were born in France after the granting of the status are placed under the protection of the OFPRA by the Protection department. Since the decision of the Council of State of 18 December 2008 (CE 18 December 2008, No. 283245), the principle of family unity is no longer applicable to beneficiaries of subsidiary protection. Thus the child can be placed under protection only on the basis of his personal fears. The principle of family unity does not exist for the children of stateless persons, this status being strictly individual. The new provisions of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA), resulting from the law of 29 July 2015 on the reform of the right of asylum, require prefectures to register applications submitted by minors accompanying their parents, as well as the issuance of a certificate proving the asylum application. Article L. 741-2 of the CESEDA provides that the OFPRA can only receive an application for asylum if it has been registered before by the competent administrative authority and if the certificate of asylum application was given to the person concerned. Article R. 741-4 paragraph 2 adds that such a certificate must also be drafted with the name of the accompanied minor on whose behalf an asylum application is lodged. The accompanying minors are in principle heard through their legal representatives (parents, guardian or president of the department council), who represent them legally. - In the event of a first simultaneous application by the minor and his legal representatives, the parents are heard about the request of the minor during the interview concerning their applications. - If the legal representatives have already been heard, on all the elements of the child asylum application, during their first asylum applications, the OFPRA considers that the obligation</p>
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			<p>of having an interview with the minor has been satisfied. It is therefore unnecessary to have another interview with the legal representatives, unless the minor's request contains specific reasons. Minors accompanying with sufficient discernment (ie over the age of 12) may be interviewed, only when the hearing is essential for the examination of their asylum application. The minor is heard when he has specific reasons (eg sexual orientation, political militancy or forced marriage) or, if the grounds for his asylum claim are linked to his legal representatives' claims. The minor is interviewed with the presence of his legal representatives. Under Article L. 723-6 of the CESEDA, a minor may exceptionally be heard without his legal representatives only if it appears that they have not been informed of the persecution suffered by their child. (such as aggression because of his or her sexual orientation) The asylum application of the accompanying minor is the subject of an individual decision. The individual decision concerning an accompanying minor shall be notified in writing to the legal representatives if they reside at the same address or to the parents with whom the minor is domiciled.</p>
	Germany	Yes	<p><b>1.</b> 1. According to the German Asylum Act, applications are always assessed individually. For practical reasons, the applications of immediate family members, such as married couples or parents with minor children, are combined and assessed simultaneously (while remaining individual applications). The similarities in the applicants' history and reasons of flight can thus reduce the necessary time and effort. If no differences concerning the reasons of flight should occur in the interviews, a combined decision is issued, in which all individual application are treated simultaneously. Should there on the other hand be differences concerning the reasons of flight, individual decisions are issued. This can result in a different outcome, notably in granting a different status. Art. 23 par. 2 of the directive 2011/95/EU corrects these discrepancies.</p> <p><b>2.</b> 2. German law does not define specific practices. Procedural decisions are administrative policy.</p>
	Hungary	Yes	<p><b>1.</b> The application is assessed at the same time and one decision is issued for the whole family. If one of the family members is granted international protection, all family members are granted the same protection status. This is applied to children born to couples where one of the parents have international protection. In the case where both parents have international protection, asylum status</p>

			<p>has priority over subsidiary protection.</p> <p><b>2.</b> Yes. Act LXXX of 2007 on Asylum 35. § (8) states that in the event of a joint application of family members, the person with full capability seeking recognition shall submit the application for recognition in such a way that it shall also extend to his/her family members. (9) states that a joint application for recognition shall extend to a family member with full or limited capability if s/he consents to the joint application in writing in advance or at the personal interview, at the latest. A joint application for recognition shall extend to an incapable family member with the written consent of the representative by law or guardian for the case.</p>
	Ireland	No	
	Italy	Yes	<p><b>1.</b> As for spouses and brothers, the application for international protection is individual as well as the examination procedure and the related decision. Instead, as far as children are concerned, the application submitted by a parent includes also non-married minors that are on the national territory with their parent at the time of submission (Article 6, paragraph 2, Legislative Decree 25/2008 ). The under 18s can submit the application directly through the parent.</p> <p><b>2.</b> Yes, specifically the Legislative Decrees 25/2008 and the Legislative Decrees 251/2007.</p>
	Latvia	Yes	<p><b>1.</b> If the family members apply for asylum at the same time and the asylum applications of adult asylum seekers are based on the same facts and special circumstances which may endanger the personal interests of each family member not to be disclosed during the examination procedure (particularly in relation with persecution due to sex, sexual orientation, gender identity or age) one decision for the whole family can be taken. The decision to grant or to refuses to grant refugee status or subsidiary form of protection (alternative status according to the national legislation) shall also apply to the minor children of the asylum seeker (including dependants), if they are located or arrive to the Republic of Latvia concurrently with the parents. In examining the application, the opinion of the minor shall be taken into account.</p>

			2. The previously mentioned practice is defined by the Asylum Law.
	Lithuania	Yes	<p>1. According to the Article 67, part 2 of Law on the Legal Status of Aliens of the Republic of Lithuania, an alien shall lodge an application for asylum in person. The application on behalf of minor family members may be submitted by other adult family member. According to the Description of the Asylum Procedure in the Republic of Lithuania, the Department of Migration takes decisions for the asylum seekers' family members, whose applications for asylum are submitted and (or) are examined together and are based on the same grounds. The applications are examined together if in taking decision asylum seeker's personal details are not disclosed which could lead to any possible threats. When the person is granted asylum, his family members, whose applications for asylum are examined together and are based on the same grounds, the same form of asylum is granted, except cases, when asylum seeker's family member would not be granted asylum according to Republic of Lithuania Law on the Legal Status of Aliens Article 88, part 2, paragraph 3-5 or part 3.</p> <p>2. Please see the answer to the question number one.</p>
	Luxembourg	Yes	<p>1. Article 5(1) of the Law of 18 December 2015, establishes that any individual who is an adult (at least 18 years of age) has the right to file an international protection application on his/her behalf. Article 5 (2) allows that an adult files a single application for all the family members under his/her responsibility. Nevertheless, in this situation, the adults who are dependents of the applicant must provide their consent that the application will be introduced in their name. The law establishes that this consent must be given at the moment of the filing of the application or at the moment of the personal interview at the latest. Also the adult will be informed in private of the consequences of the filing of the international protection application in his/her name and the possibility of filing a separate application. In regards with children, the non emancipated minor has the right that the application will be introduced by his/her parents or any other adult family member or a person who has the parental authority over the minor or by the ad-hoc administrator (art. 5 (3)). A decision will be taken for every application filed individually. If an application was filed for the whole family only one decision will be taken.</p>

			2. See answer to question 1.
	Malta	Yes	<p>1. First of all, it is important to note that according to Maltese legislation, as far as status determination is concerned, the definition of family members is aligned with the definition found in the Qualification Directive 2011/95/EU and therefore ‘siblings’ are not included in this definition. Each and every individual has the right to lodge an application for international protection. A minor has the right to make an application for international protection either on his own behalf if he has legal capacity to do so, or through his parents or other adult family members, or an adult responsible for him in accordance with national law, or through a representative. When the minor has no legal capacity to lodge an application on his or her own behalf, the application is lodged through one of the parents. Each application is assessed and an individual decision taken depending on the merits of the case. An application lodged by a minor is generally assessed together with that of the parent who lodged the application on his or her own behalf, unless the minor specifically requests for his application to be assessed separately. While applications lodged by family members who apply for international protection together are examined at the same time, the Office of the Refugee Commissioner issues separate decisions for all family members. Therefore, there might be cases where a family member qualifies for refugee status but the other family members qualify for subsidiary protection status.</p> <p>2. First of all, it is important to note that according to Maltese legislation, as far as status determination is concerned, the definition of family members is aligned with the definition found in the Qualification Directive 2011/95/EU and therefore ‘siblings’ are not included in this definition. Each and every individual has the right to lodge an application for international protection. A minor has the right to make an application for international protection either on his own behalf if he has legal capacity to do so, or through his parents or other adult family members, or an adult responsible for him in accordance with national law, or through a representative. When the minor has no legal capacity to lodge an application on his or her own behalf, the application is lodged through one of the parents. Each application is assessed and an individual decision taken depending on the merits of the case. An application lodged by a minor is generally assessed together with that of the parent who lodged the application on his or her own behalf, unless the minor specifically requests for his application to be assessed separately. While applications lodged by family members who apply for</p>

			<p>international protection together are examined at the same time, the Office of the Refugee Commissioner issues separate decisions for all family members. Therefore, there might be cases where a family member qualifies for refugee status but the other family members qualify for subsidiary protection status.</p> <p><b>3.</b> First of all, it is important to note that according to Maltese legislation, as far as status determination is concerned, the definition of family members is aligned with the definition found in the Qualification Directive 2011/95/EU and therefore ‘siblings’ are not included in this definition. Each and every individual has the right to lodge an application for international protection. A minor has the right to make an application for international protection either on his own behalf if he has legal capacity to do so, or through his parents or other adult family members, or an adult responsible for him in accordance with national law, or through a representative. When the minor has no legal capacity to lodge an application on his or her own behalf, the application is lodged through one of the parents. Each application is assessed and an individual decision taken depending on the merits of the case. An application lodged by a minor is generally assessed together with that of the parent who lodged the application on his or her own behalf, unless the minor specifically requests for his application to be assessed separately. While applications lodged by family members who apply for international protection together are examined at the same time, the Office of the Refugee Commissioner issues separate decisions for all family members. Therefore, there might be cases where a family member qualifies for refugee status but the other family members qualify for subsidiary protection status.</p> <p><b>4.</b> First of all, it is important to note that according to Maltese legislation, as far as status determination is concerned, the definition of family members is aligned with the definition found in the Qualification Directive 2011/95/EU and therefore ‘siblings’ are not included in this definition. Each and every individual has the right to lodge an application for international protection. A minor has the right to make an application for international protection either on his own behalf if he has legal capacity to do so, or through his parents or other adult family members, or an adult responsible for him in accordance with national law, or through a representative. When the minor has no legal capacity to lodge an application on his or her own behalf, the application is lodged through one of the parents. Each application is assessed and an individual decision taken depending on the merits of the case. An application lodged by a minor is generally assessed together with that of the parent who</p>
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			<p>lodged the application on his or her own behalf, unless the minor specifically requests for his application to be assessed separately. While applications lodged by family members who apply for international protection together are examined at the same time, the Office of the Refugee Commissioner issues separate decisions for all family members. Therefore, there might be cases where a family member qualifies for refugee status but the other family members qualify for subsidiary protection status.</p> <p><b>5.</b> Yes this practice is in line with the provisions established in the Refugees Act, Chapter 420 of the Laws of Malta.</p> <p><b>6.</b> Yes this practice is in line with the provisions established in the Refugees Act, Chapter 420 of the Laws of Malta.</p> <p><b>7.</b> Yes this practice is in line with the provisions established in the Refugees Act, Chapter 420 of the Laws of Malta.</p> <p><b>8.</b> Yes this practice is in line with the provisions established in the Refugees Act, Chapter 420 of the Laws of Malta.</p>
	Netherlands	Yes	<p><b>1.</b> The application of each family member is assessed separately, except from children under 15 years. In principle, the mother (or father in case the mother is absent) lodges the asylum application on behalf of her child(ren) under 15 years. When the child under 15 years states to have particular asylum motives, a separate interview with the child will take place and in exceptional cases, this will lead to a separate decision. In case a parent, child, spouse or partner is not granted international protection, but the family member is, the Dutch law makes it possible to grant a derivative asylum status (derived from the status on the basis of international protection). Therefore, in practice, the asylum applications of family members will generally be assessed in the same kind of procedure.</p> <p><b>2.</b> No, it is not defined by law.</p>

	Poland	Yes	<p><b>1.</b> Asylum applications of family members can be lodged on behalf of the accompanying dependant spouse and minor unmarried children, with the consent of the spouse in writing. The applications are examined separately, but within a joint procedure. In general, the decision to grant refugee status to the applicant also grants refugee status to the person on whose behalf the applicant is acting. The same is proceeded with refusal to grant refugee status.</p> <p><b>2.</b> Yes, it is defined by the Act on granting protection to foreigners within the territory of the Republic of Poland of 13th of June, 2003 (art. 25, 27, 48-51).</p>
	Slovak Republic	Yes	<p><b>1.</b> According to the practice, if both parents and their minor children apply for asylum, minor children are usually assessed together with the parent who lodged the application for them. The second parent is assessed separately.</p> <p><b>2.</b> No.</p>
	Slovenia	Yes	<p><b>1.</b> One decision is issued for the whole family (children with one parent or both parents).</p> <p><b>2.</b> YES. General Administrative Procedure Act – Article 130 (Joinder of Matters in One Proceeding).</p>
	Sweden	Yes	<p><b>1.</b> The Swedish Migration Agency assess each family member separately and issue separate decisions.</p> <p><b>2.</b> This practice is not defined by law in Sweden. However the Swedish Migration Agency think this practice serves the best interests of the child.</p>
	United Kingdom	Yes	<p><b>1.</b> Paragraph 349 of the Immigration Rules sets out that a spouse, civil partner, unmarried partner or minor child accompanying a principal claimant may be included in the asylum claim as a dependant. It also sets out that if the principal claimant is granted asylum or Humanitarian Protection and leave to enter or remain (LTE/R), any qualifying dependants will also be granted leave for the same duration. This applies whether the dependants arrived in the UK with the principal claimant or followed at a later date, but they must have been included in the claim before the decision was made.</p>

			<p>Dependants have no independent right of appeal against the decision if a negative decision is reached on the principle claimant. An independent claim must be made by a family member not covered by Paragraph 349 of the Immigration Rules and the claim will be considered individually in accordance with paragraphs 328 to 333B of the Immigration Rules. The Home Office has published guidance for use by caseworkers which outlines the UK approach to considering claims from Dependants and former dependants and Processing family cases. This sets out that claims from family members should normally be linked and considered at the same time, taking into account all relevant evidence available to reach an informed decision on the individual claims and in the context of the family unit.</p> <p>2. The European Council Directive 2004/83/EC (the 'Qualification Directive') lays down the provisions and criteria for interpreting the Refugee Convention to be adopted across the EU. The QD was transposed into UK law through The Refugee in Need of International Protection (Qualification) Regulations 2006 and the Immigration Rules. Paragraph 349 of the Immigration Rules sets out who may be considered as dependants of the principal claimant in an asylum claim: 'A spouse, civil partner, unmarried partner or minor child accompanying a principal applicant may be included in the application for asylum as a dependant, provided, in the case of an adult dependant with legal capacity, the dependant consents to being treated as such at the time the application is lodged.'</p>
	Norway	Yes	<p>1. The applications for protection by members of the same family applying at the same time are each considered separately, and each case gets its own decision. However, the cases are considered together and in context</p> <p>2. That such applications are being considered separately does not have an explicit legal basis, but is a consequence of the requirement in the general legislation on public administration ("Forvaltningsloven") that each rejected application has to be justified and explained.</p>