



## PRESS RELEASE No 28/26

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Judgment of the Court in Case C-458/24 | [Daraa] <sup>1</sup>

### **A Member State's refusal to take charge of asylum seekers for whom it is responsible may ultimately result in the requesting State having to examine an asylum application**

*The Commission or any other Member State may bring an action for failure to fulfil obligations against a Member State that does not comply with the Dublin III Regulation*

At the end of 2022, Italy notified the other Member States that, provisionally and subject to exceptions, it would no longer accept transfers of applicants for international protection under the Dublin III Regulation. <sup>2</sup> It thus refuses to take charge of any applicants for whom it is responsible. <sup>3</sup>

A German court has asked the Court of Justice about the consequences which such a refusal may have in terms of the division of responsibility for examining applications for international protection, established by the Dublin III Regulation. It must decide whether, despite Italy's refusal, Germany could reject an asylum application made by a Syrian national as inadmissible and order his removal to Italy on the ground that Italy was responsible for examining that application. In particular, the German court enquires whether Italy's refusal means that Germany becomes responsible for examining the application.

The Court holds that **the Member State designated as responsible under the criteria laid down in the Dublin III Regulation cannot discharge itself, by a mere unilateral announcement, of its responsibilities under that regulation.** Such a possibility would risk jeopardising the proper functioning of the Dublin III system. **The Member State in question therefore remains, in the first instance, the Member State responsible.** <sup>4 5</sup>

**However, where the Member State responsible has accepted the request to take charge of or to take back the person concerned or where, as here, <sup>6</sup> it is deemed to have accepted that request on account of its failure to reply thereto, the transfer must, in principle, take place within a maximum period of six months.** Where suspensive effect has been given to an appeal against a transfer decision, as in the present case, the time limit for transfer runs from the final decision on that appeal. Accordingly, the transfer decision must be implemented no later than six months from the final decision.

**Where the transfer does not take place within the six-month time limit, the Member State responsible is relieved of its obligation to take charge of or to take back the person concerned and responsibility is then transferred to the requesting Member State.** That transfer of responsibility occurs regardless of the reasons why the transfer did not take place. Consequently, it also occurs where the transfer of the person concerned could not be carried out within the time limit on account of the unilateral suspension, by the Member State initially responsible, of the procedures for taking charge and taking back. **The automatic nature of the transfer of responsibility ensures that the person concerned has effective access to the asylum procedure** and, thus, guarantees the effectiveness of his or her fundamental right to seek asylum in a Member State.

In order to remedy a possible infringement of the Dublin III Regulation by the Member State initially responsible, the European Commission or any other Member State **may bring an action for failure to fulfil obligations** before the Court against that Member State.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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<sup>1</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

<sup>2</sup> [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.

<sup>3</sup> According to the Administrative Court of Sigmaringen (Germany), which has submitted a request for a preliminary ruling to the Court of Justice in the present case, that is apparent from two circulars dated 5 and 7 December 2022 issued by the Italian 'Dublin' Unit to all other 'Dublin' units.

<sup>4</sup> Consequently, the determining Member State (in this case, Germany) must neither continue to examine the criteria laid down in the Dublin III Regulation nor itself become, at that stage, the Member State responsible. The situation is different where systemic flaws resulting in a risk of inhuman or degrading treatment make it impossible to transfer the applicant to the Member State responsible. The Court has previously held that the fact that the Member State responsible has unilaterally suspended the taking charge and taking back of applicants for international protection does not, in itself, justify a finding of such systemic flaws (see judgment of 19 December 2024, *Tudmur*, [C-185/24](#) and [C-189/24](#), and press release [No 201/24](#)).

<sup>5</sup> The Court also provides guidance on the possibility of rejecting as inadmissible an application for international protection under [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. According to the Court, the provision of that directive under examination does not allow an application for international protection to be rejected as inadmissible on the ground that the Member State responsible is not willing to take charge of or to take back the applicant. Where the determining Member State decides not to examine an application for international protection on the ground that another Member State is responsible for examining that application and that other Member State has accepted a request to take charge of or to take back the applicant, the rejection of such an application must be made not by means of a decision of inadmissibility, but by means of a decision to transfer and not to examine the application.

<sup>6</sup> In April 2023, Germany sent Italy a request to take charge of the person concerned. Since Italy did not reply to that request, it is deemed, under the Dublin III Regulation, to have accepted it.