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**COMMISSION STAFF WORKING DOCUMENT**

*accompanying the*

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**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**

(recast)

**Summary of the Impact Assessment**

{COM(2008) 820 final}  
{SEC(2008) 2962}

## 1. INTRODUCTION

The adoption of a proposal for the amendment of the Council Regulation (EC) No 343/2003 on the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (hereafter referred to as the Dublin Regulation)<sup>1</sup> was included in the Commission's Work Programme for 2008<sup>2</sup> as one of its strategic initiatives.

With a view to preparing for the second stage of asylum legislation, as called for by The Hague Programme, the Commission launched the evaluation process of the results achieved in the first stage of the establishment of the Common European Asylum System (hereafter referred to as the CEAS).

Regarding the Dublin Regulation, the Commission has firstly issued a comprehensive **Evaluation Report** of the Dublin system on 6 June 2007<sup>3</sup> based on a wide range of contributions from different stakeholders. Secondly, the Commission presented on 6 June 2007 a **Green Paper** on the future of the CEAS<sup>4</sup> aiming to identify the possible options for shaping the second phase of the CEAS. While the Evaluation Report served as a **technical assessment** for the Dublin system, the consultation based on the Green Paper served as a **policy evaluation**.

Finally, several **expert' meetings** were organised between October 2007 and July 2008 with Member States, NGOs and the UNHCR, lawyers and judges, and Members of the European Parliament in order to seek their opinion on the improvements needed to the Dublin Regulation.

The issues raised and the suggestions put forward during the consultation process have provided the basis for the preparation of this Impact Assessment.

## 2. STATE OF PLAY AND PROBLEMS

The following clusters of problems have been identified with regard to the application of the Dublin Regulation:

- Unclear or inadequate operational provisions of the Dublin Regulation are counterproductive for the efficiency of the system and create hardship for asylum-seekers;
- Disputes between Member States concerning the application of the Dublin rules are not tackled in an efficient way;
- Transfers under the Dublin procedure could contribute to further overburden Member States confronted with situations of particular pressure;
- Transfers under the Dublin procedure could, in exceptional circumstances, result in asylum-seekers not receiving an adequate standard of protection;

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<sup>1</sup> CLWP reference No: 2008/JLS/022

<sup>2</sup> COM (2007) 640

<sup>3</sup> Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system, COM (2007) 299 final, SEC (2007) 742. The "Dublin system" aims to determine which Member State is responsible for examining an asylum application lodged by a third-country national on the territory of one of the Member States. It consists of the Dublin and Eurodac Regulations and their implementing rules.

<sup>4</sup> COM (2007) 301

- Inadequate information and legal safeguards for asylum-seekers under the Dublin procedure;
- Family unity and the interests of children and other vulnerable groups are not sufficiently ensured by Member States.

The Impact Assessment then looks into the possible evolution of the situation if no action at EU level was taken and concludes that the existing problems would persist and that there is a strong case for EU action.

### 3. POLICY OBJECTIVES

The **general objectives** of the second phase of the CEAS with regard to the proposal to amend the Dublin Regulation are i) to ensure that the needs of applicants for international protection are comprehensively addressed under the mechanism for determining responsibility, and to increase the system's efficiency in order to reduce the time and resources spent by Member States and ii) to contribute to better address situations of particular pressure on Member States' reception facilities and/or asylum procedural capacities.

The general objectives are to be underpinned in particular by the following **specific objectives**:

- I) To ensure that the procedure for determining responsibility operates smoothly;
- II) To ensure that disputes between Member States are tackled in an efficient way;
- III) To prevent further overburdening of Member States confronted with situations of particular pressure and to ensure that asylum-seekers receive an adequate standard of protection;
- IV) To strengthen the legal safeguards for asylum-seekers and enable them to better defend their rights;
- V) To ensure respect for the right to family unity and to improve the management of vulnerable groups in order to address their special needs.

A number of indicative operational objectives are also defined.

### 4. POLICY OPTIONS

Taking into consideration the different nature of the above mentioned specific objectives, the Impact Assessment proposes policy sub-options for each of these objectives. The preferred policy option has been constructed by combining the preferred policy sub-options identified for each specific objective.

#### **Status Quo (this option addresses all identified problems)**

The existing legal framework would remain unchanged and ongoing activities in the Member States would continue. The Commission would continue monitoring the implementation of the Dublin Regulation.

#### **4.1. Preferred policy option**

Given the level of complexity of the proposed policy sub-options, this summary is limited to an enumeration of the main elements composing the preferred policy option. The preferred policy option is made both of **legislative options** and of options focused on **fostering practical cooperation** between Member States.

**With regard to:**

**I) ensuring that the procedure operates smoothly**, the preferred legislative policy sub-options foresee:

- Introducing adequate time-limits for submitting take back requests and for replying to requests on humanitarian grounds and reducing the deadline for replying to information requests;
- Setting up rules concerning the Member State which has to bear the costs entailed by the Dublin transfers and clarifying the consequences in the case of erroneous transfers and where a transfer decision has been overturned on appeal after the person has already been transferred;
- Clarifying the circumstances and procedures for applying several clauses of the Regulation (the cessation of responsibility clauses, the sovereignty and the humanitarian clauses).

The preferred practical cooperation options which complement the preferred legislative ones propose:

- Identifying and disseminating via meetings of experts, best practices in carrying out transfers of asylum-seekers;
- Creating a handbook on the application of the Dublin Regulations, containing answers to questions raised by Member States' experts on the application of the Regulations in concrete cases and which should be used as a reference for similar cases.

**II) ensuring that disputes between Member States are tackled effectively**, the preferred legislative policy sub-option provides for a conciliation mechanism for all matters of dispute on the application of the Dublin Regulation;

The preferred practical cooperation option which complements the preferred legislative one refers to the creation of a handbook on the application of the Dublin Regulations (the same as in point I).

**III) preventing further overburdening of Member States confronted with situations of particular pressure** and ensuring that asylum-seekers receive an adequate standard of protection in the responsible Member State, the preferred policy sub-option provides for the possibility to take a decision under the applicable comitology rules to suspend transfers towards the Member State responsible in limited and well-defined circumstances;

The setting up of asylum expert teams coordinated at EU level to assist Member States that would be overburdened by the high number of Dublin transfers, is the preferred practical cooperation option, partially alternative to the preferred legislative option (it should be applied when there was no decision to suspend the transfers (according to the legislative measure) or in case such a decision was taken, for a temporary period until the situation is stable in the affected Member States).

**IV) strengthening the legal safeguards for asylum-seekers and enabling them to better defend their rights**, the preferred legislative policy sub-options propose:

- Inserting an obligation for Member States to provide asylum-seekers with extended information about the Dublin procedure and their rights within it. Moreover, Member States will be obliged to carry out a specific Dublin interview with the asylum-seekers subject to the Dublin procedure. The need to adopt a standard EU-wide multilingual leaflet about the Dublin procedure under the applicable comitology rules is also laid down;
- Establishing the right to appeal against a transfer decision, and obliging the courts or tribunals to examine on their own initiative the need to temporarily suspend enforcement of a transfer decision;

- Defining limited grounds and conditions for the detention of asylum-seekers under the Dublin procedure. In particular, such detention should be a measure of last resort, after a transfer decision has been notified to the asylum-seeker and when all other non custodial measures are not expected to achieve satisfactory results, because there are objective reasons to believe that there is a risk of the asylum-seeker absconding;
- Clarifying that an asylum-seeker subject to the Dublin procedure shall in all circumstances have access to the asylum procedure, in accordance with the rules laid down in the Asylum Procedures Directive;
- Retaining the right of the Member States to send an asylum-seeker to a third country, but only after a careful examination of the safe third country criteria set out in the Asylum Procedures Directive.

**V) ensuring respect for family unity and improving the management of vulnerable groups**, the preferred policy sub-options propose:

- Strengthening the safeguards in relation to unaccompanied minors, for example: the right of unaccompanied minors to reunite with relatives present in a different Member State who can take care of them will be made compulsory; a rule on the representation of unaccompanied minors throughout the procedure will be inserted; the applicability of the principle of the 'best interests of the child' in determining the responsible Member State will be clarified;
- Introducing a new provision obliging Member States to exchange relevant information (such as medical information) before carrying out the Dublin transfers, with the primary aim of ensuring continuity in the protection offered to asylum-seekers ;
- Extending the right to family reunification by including applicants for and beneficiaries of subsidiary protection within the scope of the Regulation and clarifying that the application of the sovereignty clause should not prevent asylum-seekers from reuniting with members of their family. The right to reunification with dependent relatives will be made compulsory and the definition of 'family member' will be extended in order to ensure better compliance with the principle of the 'best interests of the child'. Moreover, the application of the humanitarian clause will be extended to relatives who are not necessarily dependent on one another in a strict humanitarian sense (such as adult siblings could be).

The preferred practical cooperation options which complement the preferred legislative ones concern:

- The need for Member States to provide staff involved in the procedure for determining responsibility with appropriate trainings, so that they can appropriately handle cases involving vulnerable groups in particular;
- The setting up of a network of Member States' experts dealing with minors.

The **main advantages** of the preferred policy option are:

- **The efficiency and coherence** of the procedure for determining responsibility will be increased through legislative measures, such as, the setting up of adequate time-limits, the clarification of the circumstances and procedures for the application of several provisions as well as through practical cooperation measures, such as the creation of a handbook on the application of the Dublin Regulation;
- **The level of protection** afforded to asylum-seekers falling under the Dublin system would substantially increase through, for example, clarifying the conditions of detention and strengthening the legal safeguards related to the Dublin transfer decisions.

- The needs of Member States confronted with **situations of particular pressure** would be adequately addressed under the Dublin procedure and the rights of asylum-seekers in this type of situations would be better guaranteed.

As far as the **main impacts** are concerned:

- The preferred policy option has an overall strong positive impact for the asylum-seekers subject to the Dublin procedure, from a fundamental rights point of view. In particular: the right to family unity would be considerably reinforced by extending the scope of family reunification under the Dublin procedure; the best interests of unaccompanied minors would be better taken into account during the Dublin procedure; the right to liberty and free movement would be reinforced by the limitation of detention etc;
- By ensuring a smoother, quicker and more protective operation of the system, and by better informing asylum-seekers about the application of the Dublin mechanism and their rights within it, the incentive to resort to irregular secondary movements could be reduced, with a final positive impact as regards their social acceptance and integration in the receiving societies;

As far as the **financial feasibility** is concerned, financial and administrative costs would generally increase, but in some cases long-term cost-reductions or savings could arise as well:

- Additional costs would be required to comply with the new time-limits proposed, but some economies of scale could be achieved in the medium term because of a more efficient procedure;
- Some Member States would face further costs if a decision is taken to suspend outgoing transfers to the responsible Member State due to situations of particular pressure, as they would become responsible for examining the applications of the persons not being transferred;
- Costs would rise where Member States have to adapt their existing information to the requirements of this policy option and to set up a Dublin specific interview. Savings could arise if the information provided fosters a more collaborative and compliant attitude on the part of applicants under the Dublin procedure;
- If granted, the suspensive effect of an appeal to a transfer decision could bring costs for the Member State where the applicant is to remain temporarily. However, savings could arise as well, due to the fact that the costs of possible returns following overturned decisions would be avoided.
- Reducing the cases where Dublin applicants can be detained should in principle lead to savings, as the strain on Member States' detention facilities and the considerable costs this implies would be reduced.
- Costs would increase to deal with unaccompanied minors (i.e. for ensuring their representation throughout the Dublin procedure) and to exchange information regarding vulnerable transferees. Costs could increase for practical cooperation measures, such as training staff and setting up an expert network. However, a large proportion could also be co-financed by projects under the European Refugee Fund.

## 5. MONITORING AND EVALUATION

The monitoring and evaluation of the implementation of the preferred policy option will be an important element to ensure the effectiveness of the revised Dublin Regulation. In this respect, the Commission will regularly evaluate and report on the application of the revised

Regulation by Member States. Regular expert meetings will continue to take place in view of discussing implementation problems and exchange best practices between Member States.

The entry into force of the Regulation on Community statistics on migration and international protection,<sup>5</sup> which includes specific references to Dublin-related statistical data, will contribute to ensuring adequate monitoring and evaluation.

Moreover, as announced in the Policy Plan, in addition to evaluation at regular intervals, the Commission is committed to re-evaluating the principle on which the Dublin system is based, once the second stage of the CEAS is in place.

The following main indicators could be used to assess the progress and effectiveness of the preferred policy option in achieving the policy objectives:

- Implementation by Member States of the amendments proposed to the Dublin Regulation;
- Resources devoted to implementing the amendments proposed to the Dublin Regulation;
- Number of effected transfers of asylum seekers in comparison with the number of accepted transfer requests;
- Number of disputes settled under the dispute settlement mechanism;
- Number of cases where the sovereignty and humanitarian clauses are applied;
- Resources used to inform and provide legal assistance to applicants for international protection under the Dublin procedure;
- Number of applicants subject to the Dublin procedure;
- Transfers suspended in situations of particular pressure;
- (Distribution of) applications for international protection relative to population size (per 1000 inhabitants) per Member State;
- Number of asylum expert teams set up and sent to Member States under particular pressure.

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<sup>5</sup> Regulation (EC) No 862/2007, OJ L 199, 31.7.2007