

Report on the evaluation of the Dublin system

The Commission adopted today a report on the evaluation of the Dublin system, which aims to determine which Member State is responsible for the examination of an asylum application lodged by a third-country national on the territory of one of the Member States, Norway or Iceland., Overall the system has been functioning generally well since 2003. Between September 2003 and December 2005, around 17.000 third-country nationals have been transferred from one Member State to another in view of having their asylum claim examined. At the same time, EURODAC has detected that around 12% of the asylum applications were in fact lodged by persons who already applied for asylum before.

The **Dublin system** comprises the **Dublin Regulation**, which lists sets of criteria to determine responsibility and establishes mechanisms to transfer asylum seekers, and the **EURODAC Regulation**, which establishes a technical tool for comparison of fingerprints as support to the application of the Dublin Regulation.

Requested to evaluate the Dublin Regulation as well as the EURODAC Regulation after three years of operation, the Commission has decided to present a global report on the application of those intrinsically linked instruments.

Whilst acknowledging that the Dublin system is applied in a generally satisfactory way, the report identifies certain issues related, on the one hand, to the correct application of the Regulation and, on the other hand, to the efficiency of the current legislative provisions.

The report clarifies certain provisions and proposes concrete ways to improve the application of both regulations, as well as to enhance their efficiency.

For example, it insists on the respect of basic principles enshrined in the Dublin Regulation, such as the principle of *non-refoulement* and the principle of the best interests of the child. It recalls that all means of proofs foreseen to support transfer requests, including credible and verifiable statements of the asylum seeker, should be used.

The report proposes amending the relevant legislation where this could improve efficiency and coherence with the asylum *acquis*.

For example, it proposes the extension of the scope of the Dublin Regulation to include subsidiary protection. It proposes certain amendments to discretionary provisions, namely those based on humanitarian considerations, in order to avoid misunderstandings and inefficiency and increase the possibility of family members to be reunited.

It proposes to introduce new deadlines, both in the Dublin Regulation as in the EURODAC Regulation, again to improve the system's efficiency.

For EURODAC in particular, the report proposes introducing technical amendments in order to help Member States analysing, within the imposed short time-limits, search results which, after three years of application, appear to be more and more complex.

Available statistics also show that, contrary to a widely shared assumption, the overall allocation between Member States located at the external borders of the EU and those which are not is actually rather balanced.

Also the idea that the application of the Dublin system has an important impact on the overall asylum seeker's population in certain Member States should be reviewed: only in Poland and, to a lesser extent, Slovakia, Lithuania, Latvia, Hungary and Portugal, the asylum seeker's population has effectively increased following Dublin transfers. On the other hand, in Luxembourg and Iceland, the number of asylum seekers decreased by around 20%.

EURODAC statistics reveal that, in average between 2003 and 2005, around 12% of the asylum applications (79.372 out of 657.753) were in fact subsequent applications. This number might indicate that the Dublin system did not have the expected deterrent effect against the "asylum shopping" phenomenon. Many asylum seekers continue trying to obtain a favourable decision for their case by lodging more than one asylum application. The provision of correct information to asylum seekers about the consequences of subsequent applications could be one of the measures which could help prevent this phenomenon. Further approximation of national asylum procedures, legal standards and reception conditions, as envisaged in the second phase of the Common European Asylum System, is bound to reduce the motivation of asylum seekers for secondary movements, which are mainly due to the diversity of applicable rules.

How does the Dublin system work?

The "Dublin system" comprising the Dublin Regulation¹ and the EURODAC Regulation², as well as their implementing rules³, 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 of the EU, Norway and Iceland.

¹ Council Regulation N° 343/2003 of 18 February 2003 establishing 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; OJ L50 of 25.2.2003

² Council Regulation N°2725/2000 of 11 December 2000 concerning the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of the Dublin Convention; OJ L316 of 15.12.2003

³ Commission Regulation N°1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation N° 343/2003; OJ L222 of 5.9.2003 and Council Regulation N°407/2002 of 28 February 2002 laying down certain rules to implement Council Regulation N°2725/2000; OJ L62 of 5.3.2002

The Dublin Regulation

The Dublin Regulation establishes a set of hierarchical determination criteria as well as rules which apply when a person has already lodged an asylum claim in another Member State.

The criteria are based on the general principle that responsibility for examining an asylum application lies with the Member State which played the greatest part in the applicant's entry into or residence on the territories of the Member States, subject to exceptions designed to protect family unity. If none of the criteria applies, the first Member State in which the application for asylum is lodged is responsible for examining it. Besides these rules, the Regulation contains two important discretionary provisions:

- The "sovereignty clause", according to which a Member State has always the possibility to decide to examine an asylum application, even if it is not responsible according to the criteria of the regulation;
- The "humanitarian clause", which gives the possibility to a Member State to bring together family members as well as other dependent relatives, on humanitarian grounds, notably for family or cultural reasons.

The Dublin Regulation establishes mechanisms for requesting another Member State to take back (in case of a previous asylum application) or to take charge of an asylum seeker and includes deadlines to be respected by both the requesting and requested Member States.

Since certain Member States have more intensive activity with some Member States than with others, it is envisaged that bilateral agreements may be concluded which are designed to facilitate the practical application of the regulation and increase its effectiveness.

The EURODAC Regulation

The EURODAC Regulation creates a tool for the comparison of fingerprints, in support of the application of the Dublin Regulation.

It establishes a **Central Unit** managed by the European Commission, which receives data and transmits positive or negative replies to national EURODAC units (**National Access Points**) operating in each Member State. The system works as follows:

- Collection of the data

Member States have the obligation to collect the fingerprints of each individual above the age of 14 who applies for asylum or who is apprehended in connection with an irregular crossing of their external border. They further have the possibility to collect data of third-country nationals over the age of 14 who are apprehended when illegally staying on their territory, with a view to check whether they have applied for asylum in another Member State.

- Transmission of the data

Member States have to send the above-mentioned data as soon as possible to the EURODAC Central Unit.

- Quality check

Before accepting any fingerprint data from the Member States, the Central Unit performs a quality check and is allowed to reject data.

- Comparison of the data

The Central Unit processes the fingerprints following different types of transmissions: It compares the data of asylum applicants against data of other asylum applicants; it compares the data of asylum applicants against data of persons apprehended in connection with an irregular border-crossing; it compares data of persons illegally residing against data of asylum applicants.

- Results of the comparison

The Central Unit returns a “no hit” reply when no match was found or a “hit” reply when it detects a match or matches between data recorded in the database and data transmitted by a Member State.

- Storage of the data

The data of an asylum applicant are stored in the EURODAC Central database for ten years or until the concerned individual acquires citizenship of any Member State. The data of an irregular border-crosser are stored for two years or until the individual receives a residence permit, leaves the territory of the Member State or obtains the nationality of one of them. The data of illegal residents are not stored.

Evaluation of the Dublin system

Both the Dublin Regulation and the EURODAC Regulations require the Commission to report on their application after three years of operation and to propose, where appropriate, the necessary amendments. Since the EURODAC Regulation establishes a tool for the efficient application of the Dublin Regulation, it was decided to merge the two evaluations in one comprehensive report.

The evaluation report comprises two documents: a Communication, which presents the main findings and conclusions of the analysis carried out by JLS, and an Annex, which contains the details of such an analysis. It aims at assessing the application of the Dublin system from the entry into force of the respective instruments until end 2005.

The report concludes that overall, the objectives of the Dublin system have, to a large extent, been achieved. Nevertheless some concerns remain, both on the practical application and the effectiveness of the system. The Commission will, therefore, propose the necessary measures in order to resolve these issues and further improve its effectiveness.

To find out more about Vice President Frattini's work please see his website http://www.ec.europa.eu/commission_barroso/frattini/index_en.htm