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Recast of the Dublin regulation: enhancing the efficiency of the functioning of the current system

The Council adopted its position at first reading on the recast of the so-called Dublin regulation¹ ([15605/2/12 REV 2](#)). This position fully reflects the result of negotiations with the European Parliament. Once formally adopted, the regulation will be binding in its entirety and directly applicable in the member states. It will start applying three years after its entry into force. The United Kingdom and Ireland participate in the adoption of this regulation. Denmark is not taking part.

The purpose of the Dublin regulation is to lay down 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.

The main objectives of the amended regulation is to enhance the efficiency of the functioning of the current Dublin regulation, as well as to ensure higher standards of protection for the applicants who fall under the responsibility determination procedure, pursuant the regulation's legal framework.

¹ [Council Regulation \(EC\) No 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.

P R E S S

The new text provides notably for strengthened legal safeguards and rights for the applicants for international protection, while focusing in particular on the needs of vulnerable groups such as unaccompanied minors and dependent persons. At the same time, it caters for reducing abuses of the system set up by the Dublin regulation and for ensuring that disputes among member states in its context are tackled more efficiently. It also provides for addressing in a timely manner problems in the application of this regulation owed to particular pressure on a member state's asylum system, or because of its malfunctioning, through the setting up of a mechanism for early warning, preparedness and crisis management.

What's new?

- **A mechanism for early warning, preparedness and crisis management.** The compromise text provides for the setting up of a mechanism in order to address effectively and timely situations where the application of the Dublin regulation may be jeopardised (with direct effects on the applicants who are in the member state concerned), due to a particular pressure on a member state's asylum system, or problems arising in the functioning of the asylum system of a member state. It aims at ensuring effective cooperation and developing mutual trust and solidarity among member states, within the framework of the Dublin regulation, by way of preventing or managing a crisis in the asylum system of one or more member states. All parties concerned (the member state which encounters the crisis, the Commission, EASO, the Council and the Parliament) are duly informed and, where appropriate, involved.
- **Remedies.** The amended regulation provides for a comprehensive legal framework, whereby the fundamental rights of the applicants, or other persons entitled to a remedy, are observed, also in the light of the relevant case-law.

The text emphasises the right of the person concerned to an effective remedy against the transfer decision before a court or a tribunal. The member state shall provide for a reasonable period of time within which the aforementioned remedy may be exercised in order to be effective.

As regards the issue of the suspension of the implementation of the transfer decision until a decision on a remedy against it is taken, member states shall at least ensure in their national legislation that an effective remedy can be exercised by suspending the transfer until a decision on the first suspension request is taken.

The recast also delineates the framework within which the person concerned will have access to legal assistance, free of charge where appropriate, in order to exercise effectively his/her right to an effective remedy.

A provision has been added in Art. 3(2), in order to codify the recent ECJ case law and to make provision for the determination of the member state responsible to examine the application, where the transfer of the person concerned is impossible due to a real risk of violation of fundamental rights. Moreover, if the transfer cannot be made to any member state designated under this regulation, the member state which carries out the determination procedure shall become the member state responsible.

- **Detention.** The text provides for a comprehensive framework whereby the conditions under which a person concerned may be detained on the basis of “Dublin grounds” are clearly set out. These conditions are: a significant risk of absconding of the person concerned, the need to impose detention in order to secure transfer procedures, an individual assessment of each case before taking a decision on whether to impose detention, detention can be imposed only when is proportional and other less coercive measures cannot be applied effectively. The compromise also deals with the time limits of the detention period, stating that detention shall be for as short a period as possible and for as long as it is reasonably necessary to fulfil the arrangements for carrying out the transfer.
- **Unaccompanied minors and the definition of relatives.** The recast regulation provides for the legal framework under which an unaccompanied minor shall be united with family members, siblings, or relatives, with a view to rendering responsible for the examination of the application the member state where the reunification will take place. The ultimate check on all cases provided for under this provision is that any reunification shall be in the best interest of the minor. The best-interest-of -the-minor requirement also applies in the absence of any of the above family relations, in which case the member state responsible is the one where the unaccompanied minor lodged his/her application. In this context, the compromise text provides for the scope of the term "relative" as the applicant's adult aunt or uncle or grandparent, who is present in the territory of a member state.
- **Dependent persons.** The amended regulation deals also with cases where the applicant, due to certain grounds of vulnerability, is dependent on the assistance of his/her child, sibling or parent legally resident in one of the member states, or with cases where these persons depend on the applicant’s assistance on the same grounds. The compromise provides for the legal framework on the basis of which member states shall normally keep or bring together the applicant with the above persons, provided that certain conditions are met. It also provides for cases where health issues prevent the applicant from travelling for a significant period of time to the member state where the aforementioned people are legally residents. If such situation occurs the member state where the applicant is present shall be the one responsible to examine his/her application.
- **Right to information.** The new text provides for the right of the applicant to receive, in writing (or orally where appropriate) and in a language that the applicant understands or is reasonably supposed to understand detailed information regarding the contents of the Dublin Regulation upon the lodging of his/ her application. A common leaflet (and a special one on unaccompanied minors) containing at least the information to which the applicant is entitled in accordance with this provision, shall be established.

- **Personal interview.** The regulation provides for an obligation to hold a personal interview with the applicant, in a timely and appropriate manner, with a view to facilitating the process of determining the member state responsible. Grounds for omitting this interview are set out in this provision. However, a member state which omits the interview shall give the applicant the opportunity to present all further, relevant information, before a decision is taken on the transfer of the applicant.

 - **Guarantees for minors.** The compromise text regarding the guarantees for minors should be considered through the best-interest-of-the-child principle. It provides for member states' obligation to ensure proper representation of the minor, as well as for their obligation to take, as soon as possible, appropriate action to identify family members, siblings or relatives of an unaccompanied minor on the territory of another member state.
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