



**COUNCIL OF
THE EUROPEAN UNION**

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ADD 1**

**ASILE 74
CODEC 1412**

ADDENDUM TO NOTE

from: Presidency
to: JHA Council
Subject: Common European Asylum System
= State of play/guidance on further negotiations on CEAS

In Doc. 13930/11 ASILE 74 CODEC 1412, the Presidency sets out the state of play of discussions on the CEAS and requests Ministers to guide the Presidency in its attempts to break the deadlock regarding the Dublin Regulation. This Addendum describes the possible key elements of the evaluation and emergency mechanisms.

The Presidency invites delegations to express their views on the approach.

**A process for early warning, preparedness and management of asylum crises
within the Dublin Regulation**

CONTEXT

Completing the Common European Asylum System by 2012 remains the primary objective of the EU institutions. The negotiations on a recast **Dublin Regulation** proved particularly challenging in respect of the proposed new article establishing an emergency mechanism for situations of particular pressure on Member States' asylum systems. One of the main concerns was related to the uneven level of implementation of the acquis throughout the EU. Member States were keen to ensure that assistance in situations of emergency, including via a temporary suspension of transfers to the affected Member State, could in no way turn into an unconditional help for countries not properly applying the acquis and accumulating a backlog of cases. The idea of having in place an early warning and preparedness mechanism, filling in the prior steps before triggering the emergency mechanism has thus been flagged up.

While a series of formal procedures are currently in place to follow up the transposition and implementation of EU acquis into national legislation, there is no mechanism evaluating the practical functioning of the national asylum systems, which could prevent a deterioration or collapse of the asylum systems and potentially destabilise the proper functioning of the Dublin system. This gap can be filled.

At the informal JHA Council in **Sopot** on 18 July 2011, the Ministers particularly welcomed a proposal by the Polish Presidency concerning the process of assessing the functioning of national asylum systems, with two objectives: 1. contribute to the development of mutual trust among Member States with respect to asylum policy, and 2. function as a mechanism for early warning and preparedness for crises, thus facilitating decisions on the application of emergency measures in such situations. Further informal discussions took place at senior official level in early September. The high-level tripartite consultation between the EP, the Polish Presidency and the Commission that took place on 13 September 2011 confirmed the will to work closely on these issues and the interest of the European Parliament in such a process.

The development of a continuously running '*early warning, and preparedness process*' is thus being considered. It should be equipped to respond to Member States' needs for assistance and used as a preventive step before triggering any crisis management measures, which would include only as a last resort a mechanism suspending Dublin transfers.

OBJECTIVES AND BASIC PRINCIPLES

Objectives

The main aim is to ensure a sustainable Dublin system. Hence this process should be an integral part of the Dublin Regulation, as a means to enhance the mutual trust and cooperation.

It would on the one hand complement the currently proposed emergency mechanism, thus addressing the concerns of some Member States that fear the emergency mechanism has not been conceived as a last resort measure. It would on the other hand allow for a speedy advancement of the negotiations on the asylum package.

The process would have two functions: first, ongoing monitoring of all Member States to ensure their constant preparedness; second, a structured, sequential course of action to address deficiencies before they grow into a fully-fledged crisis. Should a crisis arise despite the steps taken, the emergency mechanism could be activated.

Basic principles

The process should be coordinated by the Commission and supported by the EASO, experts from across Member States, other EU Agencies and UNHCR.

The monitoring would operate in an annual cycle. Every year, several Member States would be concerned, following a predetermined order ensuring that every Member State is monitored at least every six to eight years.

All Member States would be strongly involved at all stages of the process, including in the discussion of the reports produced by the teams and of any draft recommendations, which would form the basis of Commission's decisions and further actions.

Recommendations and reports produced as part of the process would be sent by the Commission to the European Parliament and the Council.

FUNCTIONING

Annual cycle

The cycle would start with a standard questionnaire that the Commission would send to the Member States concerned. The range of issues addressed in the questionnaire could include: the implementation of the *acquis*, resources and budget dedicated to the asylum system, geographical organisation, quality assurance, backlog management strategies, the impact of Dublin transfers, relocation and resettlement, the proper use of EU solidarity tools (EASO/Funds), participation in EU solidarity initiatives, dialogue with local authorities and international organisations, etc. For each Member State, the Commission would appoint a team which would consider the replies to the questionnaires and recommend areas to investigate in more depth.

Based on the reports, an annual programme would be adopted. It would list the areas to be further investigated and the relevant more in-depth monitoring activities to be carried out by the teams, such as visits or additional questionnaires.

Ad hoc monitoring

In addition to the annual cycle, ad hoc monitoring of a Member State could be conducted. This could be initiated at the request of that Member State or of the Council, or at the Commission's initiative.

Reports

Each team, under the responsibility of the Commission, would draw up a report. The report would also list any shortcomings or weaknesses identified, and propose draft recommendations for remedial actions. The Member State concerned would be given an opportunity to comment on the report.

After discussion with Member States' representatives, the Commission would adopt recommendations to each Member State addressing the reports' findings.

Addressing deficiencies

In case of serious deficiencies, the Member State could be requested to submit an action plan to remedy the weaknesses. The Member State would have a deadline to submit the action plan, which would then be assessed by the Commission and presented to Member States for comments. Such action plan could include a reference to the need to request support from the EASO or changes to the Member State's Asylum and Migration Fund programme.

The Member State would have the obligation to report about the implementation of the action plan. Depending on the progress of implementation, the Member State could be requested to intensify its efforts and/or additional monitoring activities could be scheduled.

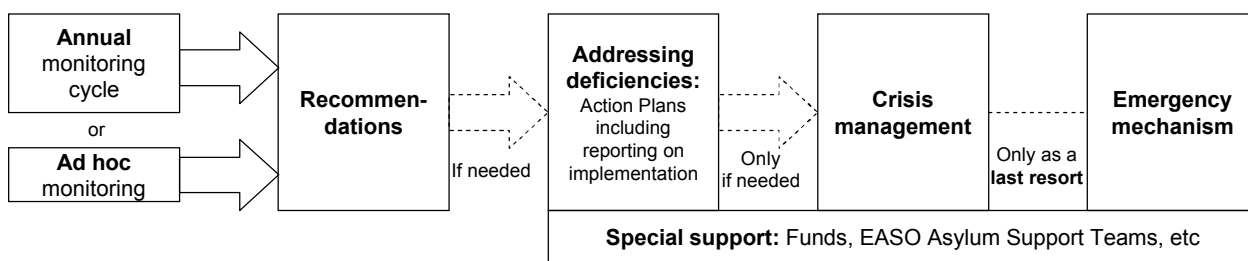
Managing crises, including link to the Dublin emergency mechanism

Where all such preparatory measures have failed to show positive results and the situation in the field develops into crisis, specific measures would be put in place. This would involve in particular stronger obligations for that Member State. They would also include an intensification of EU support, notably by the EASO or other EU Agencies and through additional (emergency) funding.

Where the difficulty of the situation amounts to strong and disproportionate pressure on the reception facilities and asylum system of that Member State, and where all previous measures have failed to provide necessary protection for applicants, and where the transfer of applicants to this Member State under the Dublin Regulation could add to that pressure, impacting on the Member State's capacity to process applications and to manage its asylum system, an emergency mechanism could be triggered as last resort.

The conditionality for triggering the mechanism in the spirit of what was discussed in the course of the last months would be maintained. The temporary character— six months, extendable to a maximum of another six — should also be preserved. Implementing and reporting obligations of that Member State should continue. The mechanism would be triggered by the most effective decision making procedure, which would take into account the general interest.

Thus, the mechanism would be activated only if strictly necessary, at the end of a gradual and structured process.



The Commission would keep the European Parliament and the Council constantly updated on the situation.

LEGAL BASIS

As the purpose is to ensure the sustainability of the Dublin system, the main legal basis of the Dublin Regulation would remain Art. 78(2)(e) TFEU. It could be complemented by Art. 74 on administrative cooperation.