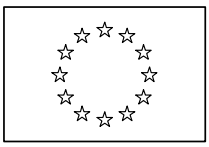

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**REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

on the evaluation of the Dublin system

**ANNEX TO THE
COMMUNICATION ON THE EVALUATION OF THE DUBLIN SYSTEM**

{COM(2007) 299 final}

ANNEX

Study on the implementation of the Dublin System

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1. INTRODUCTION

1.1. Scope of this report

Article 28 of 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 (the "Dublin Regulation")[1], requires the Commission to report to the European Parliament and the Council on the application of this regulation three years after its entry into force and to propose, where appropriate, the necessary amendments.

Article 24 (5) of Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "EURODAC" for the comparison of fingerprints for the effective application of the Dublin Convention (the "EURODAC Regulation")[2], calls for an "overall evaluation of EURODAC, examining results achieved against objectives and assessing the continuing validity of the underlying rationale and any implications for future operations" three years after EURODAC has started operations and every six years thereafter.

In order to give a complete picture of the overall functioning of the Dublin system[3], the Commission has decided to present a single evaluation, comprising the Dublin Regulation and the EURODAC Regulation as well as their respective Implementing Regulations.

This evaluation report is presented in four parts.

An introductory part (section 2) deals with the general presentation of the Dublin system, with a special focus on its underlying principles; it ends with preliminary findings and figures resulting from the evaluation exercise.

The second part (section 3) is dedicated to the practical review of the Dublin Regulation following the structure of the Regulation itself and addressing each provision in turn, including identification of possible shortcomings in application and suggestions for clarifying or adjusting certain provisions.

The third part (section 4) examines the practical application of the EURODAC Regulation following the structure of the Regulation itself. It also identifies possible shortcomings in its application and suggests ways to improve its effectiveness.

The fourth part of the report (section 5) aims to measure to what extent the Dublin flows have affected the overall asylum seekers population of the Member States.

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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 (OJ L 50, 25.2.2003).

2 Council Regulation (EC) No 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 L 316, 15.12.2003).

3 The term 'Dublin system' is used to refer to the 4 instruments which serve to determine the Member State responsible for examining an asylum application, the Dublin Regulation and its implementing Regulation (hereafter referred to as "the Implementing Regulation") and the EURODAC Regulation and its implementing Regulation.

1.2. Methodology

1.2.1. Sources

The evaluation has been based on a comprehensive variety of sources.

In July 2005, a detailed questionnaire was sent to all the Member States participating in the Dublin system, asking to provide information on the national implementation and practical application of the Dublin and EURODAC Regulations. All Member States submitted replies to the questionnaire, though the completeness of such information varied considerably from one Member State to another.

Information on the application was also gathered during discussions regularly held between national experts of the Dublin and EURODAC Regulations and the Commission services.

Statistical data formed an essential source for the evaluation. Statistical data on the operation of the Dublin Regulation are provided by Member States on six monthly basis since September 2003. However, some shortcoming in the availability and comparability of statistical data on the application of the Dublin Regulations should be underlined. Analysis of such statistics often revealed differences in the registration of Dublin data. For example, where one Member State counts a family of two parents and three minor children as 1 case, others may count it as 5 cases and others as 2. Such differences make comparisons and analysis very difficult.

In addition to these statistics, in view of the present evaluation, the Commission asked Member States to provide a complete set of statistical data based on commonly agreed definitions.[4]

Contributions from other stakeholders have also been considered, in particular the Evaluation Report published by UNHCR in April 2006[5]. The Commission also looked at input from civil society organisations, including the report from ECRE/ELENA network published in March 2006[6], written comments from Save the Children submitted in March 2006 and suggestions from Amnesty International. Furthermore, the Commission services have carefully examined several available academic articles and publications on the subject published during last three years.

For EURODAC, the Commission has relied in the main on the three past annual reports on the activities of the EURODAC Central Unit[7] as well as reports from the European Data Protection Supervisor and the written contributions of Member States. As far as statistical data on the practical application of the EURODAC system are concerned, they are fully reliable since this data was provided by automatic reports from the Central Unit.

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4 Those definitions are without prejudice to the definitions set in the Draft Regulation of the European Parliament and of the Council on Community statistics on migration and international protection

5 UNHCR, The Dublin II Regulation, a UNHCR discussion paper, April 2006.

6 ECRE/ELENA, Report on the Application of the Dublin II Regulation in Europe, March 2006.

7 SEC(2004) 557; SEC(2005) 839; SEC(2005) 1170.

1.2.2. Benchmarks for the evaluation of the Dublin system

In order to measure the performance of the Dublin system, the Commission has identified four criteria:

- First, the Commission has looked at whether the application of the Dublin system has fulfilled its objectives, which are clearly indicated in the preamble of the Dublin Regulation.

- Second, the Commission has looked at whether the Dublin Regulation has addressed some of the particular problems noted in the application of the Dublin Convention, highlighted in its evaluation report[8] and the Commission Staff working paper "Revisiting the Dublin Convention"[9], namely time limits for requests processing, family unity and the system's overall efficiency, in particular the implementation of transfers.

- Third, the Commission has looked at the efficiency of the operation of the Dublin system in isolation, looking at the number of effective transfers of asylum seekers between the Member States.

- Finally, the Commission has examined to what extent the Dublin system influences the individual asylum systems of Member States, notably to measure whether the operation of the system represents any advantage or disadvantage to particular Member States. This more general framework of analysis allows the provision of a far more comprehensive perspective on the role the Dublin system plays in the overall asylum picture.

2. OVERVIEW OF THE DUBLIN SYSTEM

2.1. Introduction

As expressed in the conclusions of the European Council held in Tampere in 1999, the overall objective of the "responsibility determination system" (the Dublin system), is that in an area without controls at the internal borders, it is necessary to have a clear and workable mechanism for determining responsibility for asylum applications lodged in the Member States of the European Union.

This is needed on the one hand to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications. In other words, addressing the phenomenon of refugees in orbit should be regarded as one of the main objectives of the Dublin system. On the other hand, the Dublin system was expected to address the phenomenon of asylum shopping by preventing abuse of asylum procedures in the form of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States with the sole aim of extending his/her stay in the European Union.

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[8] Evaluation of the Dublin Convention - SEC(2001) 756, 13.6.2001.

[9] Commission staff working paper. Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member States - SEC(2000) 522.

There should be always one, but only one Member State responsible for examining an asylum application lodged by a third-country national on the territory of a Member State.

2.2. Historical overview and geographical scope of the Dublin system

In order to achieve the objectives stated above, the Dublin Convention was signed on 15 June 1990[10].

On 18 February 2003, the Council adopted the Dublin Regulation (the "Dublin II system") , which significantly improved on the Dublin Convention, particularly in respect to the principle of family unity and with restricted time-limits for determining responsibility and transferring an asylum seeker. The Regulation was also enforceable in the European Court of Justice. The Commission laid down detailed rules for the application of the Dublin Regulation in the Commission Regulation (EC) No 1560/2003 of 2 September 2003[11]. Both the Dublin Regulation and its Implementing Regulation entered into application respectively on 1 and 6 September 2003.

To enable Member States to more accurately identify those third country nationals who may already have lodged asylum applications in the EU, it was agreed, in 1991, to establish a Community-wide system for the comparison of the fingerprints of asylum applicants, named EURODAC.

The Regulation creating this system was adopted by the Council on 11 December 2000 and was followed on 28 February 2002 by a Council Regulation laying down its implementing rules[12]. The EURODAC Regulation came into force on 15 December 2000. The Central Unit of EURODAC began operating on 15 January 2003 with an empty database.

Since its application in 2003, EURODAC is to be considered as an integral part of the Dublin system.

The Dublin system, comprising the Dublin and EURODAC Regulations, applies to all 25 EU Member Stats, Iceland and Norway. It has further been extended to Switzerland, through an international agreement which is until now only provisionally applicable[13].

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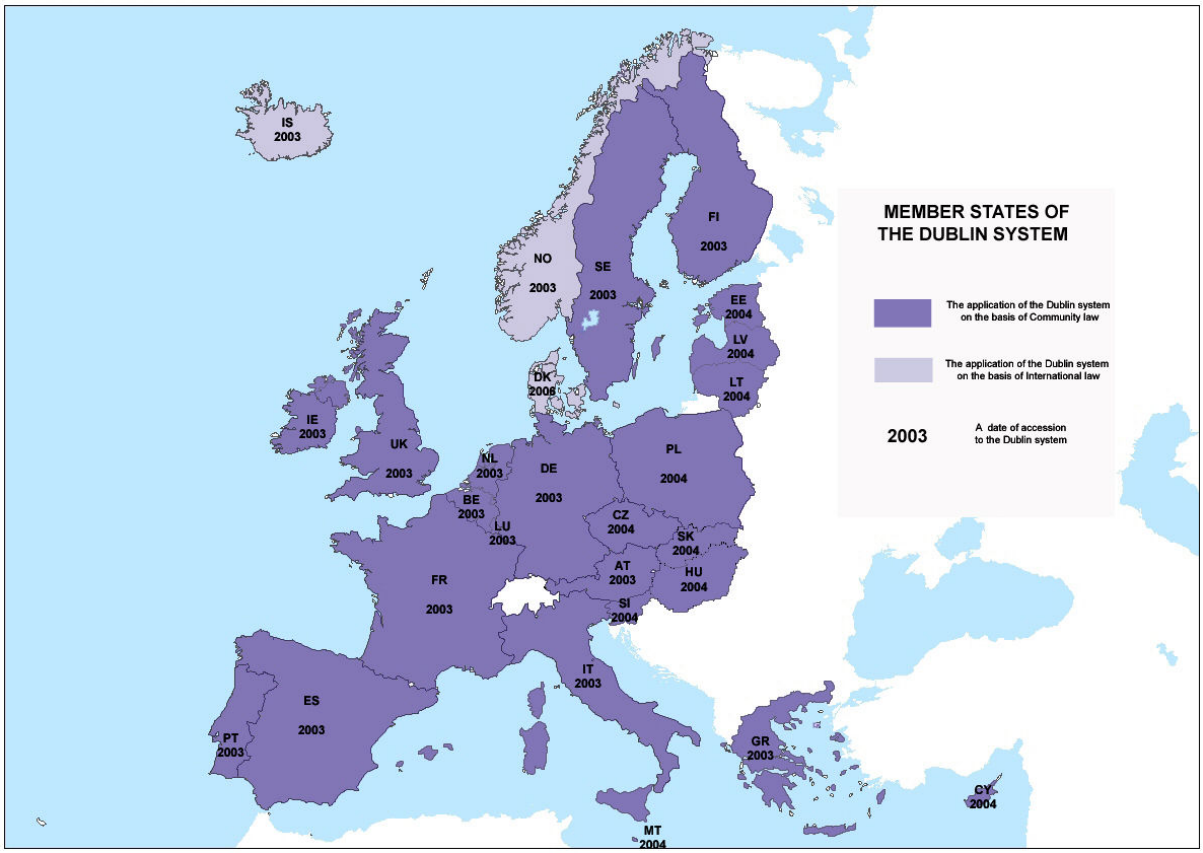
10 Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (OJ C 254, 19.8.1997).

11 Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 (OJ L 222 of 5.9.2003) and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Council Regulation (EC) No 2725/2000 (OJ L 62 of 5.3.2002).

12 Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Council Regulation (EC) No 2725/2000 (OJ L 62 of 5.3.2002).

13 In this report, 'Member States' are all States to which the Dublin system applies, except for Denmark, to which the Dublin system did not apply during the reference period of the evaluation.



Map 1. Geographical scope of the Dublin system in 2006

2.3. Content of the Dublin system

2.3.1. Outline of the Dublin Regulation

The Dublin Regulation has two distinct components with different purposes: the criteria for determining which Member State is responsible for considering an asylum application; and the readmission rules which apply when a person has previously lodged an asylum claim in one Member State and is subsequently present in a second Member State.

The hierarchical responsibility criteria are based on the general principle underpinning the Dublin system, 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. In accordance with those criteria, a particular Member State is requested to take responsibility for examining a specific asylum claim, in other words, "to take charge" of an asylum applicant. The determining criteria are set in the following hierarchical order:

- Criteria related to the principle of family unity (Articles 6-8 and 14);
- Criteria related to the issuance of residence permits or visas (Article 9);
- Criteria related to the illegal entry or illegal stay in a Member State (Article 10);
- Criteria related to the legal entry in a Member State (Article 11).

If none of these criteria applies, the first Member State in which the application for asylum is lodged is responsible for examining it (Article 13).

The readmission criteria contained in the Dublin Regulation are essentially concerned with ensuring that an asylum applicant cannot continue to pursue an asylum claim in a Member State other than the one which is responsible for considering his or her application. The Regulation therefore provides for arrangements for the applicant to be readmitted, in other words to be "taken back", by the Member State responsible in the following circumstances:

- If the applicant is in another Member State whilst his/her claim is under examination in the State responsible (Article 16(1)(c));

- If the applicant withdraws his/her application for asylum while it is under examination in the State responsible and lodges another asylum application in a second Member State (Article 16(1)(d));

- If the applicant's claim has been rejected in the State responsible and he/she is in another Member State without permission (Article 16(1)(e));

- If the asylum applicant is in a second Member State and there lodges an application for asylum after withdrawing his application in the first Member State while the process to determine the Member State responsible is not yet completed (Article 4(5));

However, the Dublin Regulation also 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 (Article 3(2));

- 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 (Article 15).

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

There is also a provision to ensure administrative cooperation between the Member States. Each Member State can request another Member State personal data concerning an asylum applicant as far as it is appropriate, relevant and non-excessive for three purposes:

- for determining the Member State responsible for examining an asylum claim;

- for examining an asylum claim and

- for implementing any obligation arising under the Dublin Regulation, such as taking back an asylum applicant who has travelled to another Member State without obtaining permission.

Member States are requested to communicate to the Commission which authorities are responsible for fulfilling the obligations under the Dublin Regulation. 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.

2.3.2. Outline of the EURODAC Regulation

The EURODAC Regulation and its Implementing Rules identify the responsibilities for the collection, transmission and comparison of the fingerprint data to support the operation of the Dublin Regulation. This includes the establishment of a Central Unit managed by the European Commission containing an Automated Fingerprint Identification System (AFIS), which receives data and transmits positive or negative replies to national EURODAC units (National Access Points) operating in each Member State. The Regulation also includes the means through which the transmission can take place, the statistical tasks of the Central Unit and the standards that are used for the data transmission.

(1) Collection of data

Member States have the obligation to collect sets of fingerprints (full 10 fingerprints and 4 control images) of each individual above the age of 14 who apply for asylum or who are 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.

(2) Transmission of data

Member States have to send the above-mentioned data as soon as possible to the EURODAC Central Unit. The transmission of data of asylum seekers is called a "category 1 transaction"; the transmission of data of persons apprehended in connection with an irregular border-crossing is called a "category 2 transaction" and the transmission of data of an illegal resident is called a "category 3 transaction".

Although a Member State may collect the different types of EURODAC data from many different locations, the Central Unit works with only one National Unit or Access Point (NAP) in each Member State which is responsible for the collection, transmission and receipt of results. The NAPs are also responsible for checking the comparison results returned by the Central Unit.

(3) Quality check

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

(4) Comparison of the data

The Central Unit processes the fingerprints following different types of transmissions.

- It compares the data of "category 1 transactions" against fingerprints of other asylum applicants who have previously lodged their application in another Member State (previous "category 1 transactions").

- It also compares the data of "category 1 transactions" against fingerprints of persons apprehended in connection with an irregular border-crossing (previous "category 2 transactions").

- It compares data of "category 3 transactions" against fingerprints of other asylum applicants who have previously lodged their application in another Member State (previous "category 1 transactions").

(5) Results of the comparison

Once data sent under "category 1" or "category 3" are processed, the Central Unit returns the result. A “no hit” result means that no match to this data was found, a “hit” result means the existence of a match or matches between fingerprint data recorded in the database and those transmitted by a Member State, without prejudice to the requirement that Member States shall immediately check the results of the comparison.

The Central Unit can transmit three types of “hits”:

- “Category 1 against category 1” hit

A “category 1 against category 1” hit means that the fingerprints of an asylum applicant have been recognised by the Central Unit as matching against the stored fingerprints of an asylum applicant. This hit is "local" when the asylum seeker has already applied for asylum in the same Member State and "foreign" when he/she has already applied for asylum in another Member State.

- “Category 1 against category 2” hit

A “category 1 against category 2” hit means that the fingerprints of an asylum applicant match the stored fingerprints of an alien who has illegally crossed the border and who could not be turned back.

- “Category 3 against category 1” hit

A “category 3 against category 1” hit means that the fingerprints of an alien found illegally present within a Member State are being recognised by the Central Unit as a match against the stored fingerprints of an asylum applicant.

(6) Storage of the data

The data of asylum applicant (category 1) are stored in the EURODAC Central database for ten years. However, they must be deleted when the concerned individual acquires citizenship of any Member State.

The data of irregular border-crossers (category 2) are stored in the EURODAC Central database for two years. However, they must deleted before the end of that time-limit when 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 (category 3) are not stored.

2.4. Infrastructure of the Dublin system in the Member States

Article 22 of the Dublin Regulation requires that the Member States ensure that the responsible authorities for fulfilling the obligations under the Regulation have the necessary resources for carrying out their tasks. Such resources are merely administrative and financial.

It should be stressed that the "Reception conditions" directive[14] applies to the asylum seekers falling under the application of the Dublin Regulation. Therefore, one should add to the costs exclusively related to the implementation of the responsibility determination procedure, all expenses linked to the stay of an asylum seeker on the territory of a Member State.

2.4.1. Administrative implementation of the Dublin procedure

Most Member States have established separate units dealing only with the practical application of the Dublin Regulation, to handle "take charge" and "take back" requests as well as information sharing. The biggest Dublin unit operates in Germany and is composed of more than 60 permanent employees. Relatively large units were created in the Netherlands (45 employees), Austria (32 employees, 17 of which work exclusively with Dublin related matters), Sweden (more than 30 employees), Belgium (20 employees), Finland (18 employees). Other Member States employ usually between 3 and 6 persons in their respective Dublin authorities.

In several Member States, such as Slovenia, Latvia, Cyprus or Estonia, there are not separate Dublin units and the operation of the Dublin system is ensured by members of general asylum units. Apart from Cyprus, they all count a very low number of asylum seekers.

In the large Dublin units, officers tend to specialise in handling specific types of requests, such as exclusively incoming or outgoing requests, or even specifically relating to minors, families or ill persons. This practice appears to enhance the efficiency of the unit concerned.

In almost all Member States, the Dublin authorities belong to administrative structures of national asylum and immigration services. In Malta and Greece, however, the Dublin units were set up within the administrative framework of the national police.

The transfers of asylum seekers are most often separated from the determination procedure *stricto sensu* and are carried out by law enforcement forces or border guards.

The services responsible for the operation of the EURODAC Regulation are usually distinct from the Dublin units, and often are not part of the immigration or asylum services.

As far as the **average time** devoted by the Dublin authorities to each stage of the procedure is concerned, it appears that interviewing the asylum applicants for the purpose of the Dublin procedure lasts approximately 90 min, ranging from 30 minutes up to few hours. This stage of the procedure is usually carried out during one meeting, however in Austria, the hearing of applicants is composed of two meetings with the Dublin officials. As far as the preparation and the sending of a request is concerned, it may differ from 15 minutes in Austria (minimum) to 3 hours in Germany (maximum), but averagely it amounts to 90 minutes.

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[14] Council directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18).

It appears that in regard to handling an incoming request the time frame may differ considerably from one Member State to another. In half of the Member States, all activities related to processing incoming requests can be in general conducted within few hours. Nevertheless, several Member States emphasised that in some cases it can take up to few days or even up to few weeks before the final decision regarding the responsibility for an asylum application will be taken. Some Member States have stated that processing take back requests, often based on EURODAC evidence, goes quicker than replying to take charge requests, which in general require more instruction. As far as requests for information are concerned, the handling of such requests, both incoming and outgoing, takes averagely 20-30 minutes, though several Member States indicate that it can take even up to few weeks in particular cases where consultations with different authorities, such as national courts, consular services, or police forces would be required.

2.4.2. Financial dimension

In general, the financial dimension of the Dublin system involves four categories of expenses. The first concerns costs related to the administrative operation of Dublin units such as material and personnel costs, office equipments and the maintenance of the DubliNet and EURODAC infrastructures. As Dublin authorities are often part of a more general administrative structure of immigration services, it has proved difficult for most Member States to measure those costs. However, it seems that the annual expenditure generally reflects the number of employees.

The second category of costs includes operational and material costs of requests handling. It appears that there are large disparities between costs of requests handling in different Member States. For example, handling outgoing or incoming requests in Norway costs approximately 880 € whereas in Estonia this does not exceed 15 €. In general, the handling of outgoing cases tends to be more expensive than incoming cases.

The third category of costs relates to transfers, which is probably the most costly part of the procedure. For example in Ireland, the overall cost of outgoing transfers in 2005 exceeded 100 000 € whereas the annual operation of the Dublin unit amounted to 250 000 € for that period.

In addition, since the requesting Member State bears the main part of the costs of transferring asylum applicants, an average outgoing transfer reportedly costs much more than an average incoming transfer. The costs of transfers differ largely due to different transport means (by land or by plane), destination or whether a transfer is carried out on a voluntary basis, as a supervised departure or under escort.

The fourth category of costs includes all other expenses related to the reception of an asylum applicant during the determination process, such as accommodation, allowances, health care, legal aid or costs of administrative custody measures. Most Member States who replied on that subject, said that persons under the Dublin procedure benefit from the usual asylum seekers reception arrangements. The total amount of reception related expenditures depends largely on the length of the Dublin procedure. For instance in the United Kingdom, asylum applicants stay on average 22 days in the procedures, whereas Finland estimates an average procedure of 3 months.

The Dublin system is very often regarded as a resources intensive mechanism to be operated. Nevertheless, the financial dimension of the Dublin system should also be looked at in a wider perspective. Even if it is difficult to make estimates regarding the overall cost of the Dublin system, most Member States seem to consider that the application of the Dublin procedure is cheaper than examining the asylum application themselves. As the system contributes to preventing abuse of asylum procedures, notably by detecting, through the EURODAC system, multiple applications, it could be assumed that it also helps reducing costs for Member States. This is particularly true in the case of "local multiple applications" (subsequent applications lodged in the same Member State), which represent approximately 1/3 of all detected multiple applications.

Furthermore, it should be stressed that fulfilling the political objectives of the system is regarded by Member States as very important, regardless of the financial implications of running the system.

2.5. General figures and findings

This section offers an overview of general statistics illustrating the implementation of the Dublin System from September 2003 till December 2005 for 14 "old" Member States (all except Denmark), Iceland and Norway and from May 2004 till December 2005 for the 10 "new" Member States.

In order to give a framework for comparison, table 1 and table 3 also include statistics on the application of the Dublin Convention contained in the evaluation report of the Dublin Convention[15] covering the period between 1998 and 1999. The figures are also seen in the wider context of total asylum applications. However, it should be stressed that for the sake of methodological correctness, some adjustments had to be made regarding the relative numbers presented in table 3, in particular on the rate of effective transfers. Reference values used in the table, namely numbers of asylum applications and numbers of acceptances, were adjusted according to the availability of data for Member States. For example, if the number of transfers was not available for a certain Member State, in the calculation of the rate of effective transfers (the total number of transfers as a share of the total number of acceptances), the number of acceptances regarding this particular Member State has been deduced from the total number of acceptances. This explains the apparent discrepancy between absolute numbers of table 1 and the relative numbers of table 3.

Since the inception of the Dublin system in September 2003, Member States reported having received nearly 72 300 requests, whereas they have also reported having sent out more than 55 300 requests[16].

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15 Evaluation of the Dublin Convention - SEC(2001) 756, 13.6.2001.

16 Incoming requests: requests for taking back an asylum seeker, in order to complete his/her asylum application, or for taking charge of an asylum seeker, in order to examine his/her asylum application, sent by another Member State to the reporting Member State.
Outgoing request: requests for taking back an asylum seeker, in order to complete his/her asylum application, or for taking charge of an asylum seeker, in order to examine his/her asylum application, sent by the reporting Member State to another Member State.
A significant mismatch between numbers of incoming and outgoing requests submitted on the basis of the Dublin Regulation can be noticed in the table. This may be explained by different definitions of registration used by Member States or by the incompleteness of some of the data provided.

Since the introduction of EURODAC, requests based on the fingerprint hits have constituted more than 50% of all incoming and outgoing requests. Nevertheless, it appears that the impact of the new tool on the number of acceptances has been limited, since the level of acceptances as a share of the total number of requests has only modestly increased, from 69 % of incoming requests under the Convention to 73 % under the Regulation.

Table 1. Application of the Dublin Convention and of the Dublin Regulation (absolute numbers)

	Dublin Convention		Dublin Regulation	
Geographical scope	EU-15		EU 24+IS+NO [1]	
Period	January 1998- December 1999		September 2003-December 2005 [2]	
	Incoming data	Outgoing data	Incoming data	Outgoing data
Requests	42.525	39.521	72.281 [3]	55.310 [3]
EURODAC based requests	X	X	38.807 [4]	28.393 [4]
Acceptances	29.514	27.588	52.952 [3]	40.180 [3]
Refusals			14.132 [3]	10.536 [3]
Transfers	10.896	10.998	16.099 [5]	16.842 [6]

1 Demark has joined the Dublin system based on the Dublin Regulation only since 1 April 2006.
2 Regarding New Member States May 2004-December 2005.
3 For Italy, UK, Luxembourg and Spain data available only for the period between January 2004 and December 2005. For France: no data available.
4 For Italy, UK and Spain data available only for the period between January 2004 and December 2005. For France and Luxembourg: no data available. For Sweden: no outgoing data available.
5 For Italy, UK, Luxembourg and Spain data available only for the period between January 2004 and December 2005. For France, Finland, Sweden, Norway: incomplete data or not data available.
6 For Italy, UK, Luxembourg and Spain data available only for the period between January 2004 and December 2005. For France, Sweden and Belgium: no data available.

In addition, it appears that there has been a significant change of the substance of requests. In accordance with the above-mentioned evaluation report, under the Convention regime, take charge requests[17] tended to prevail over take back requests[18]. Table 2 shows that in the framework of the Dublin II system, take back cases represent the predominant share of all incoming and outgoing requests, and although the relevant statistics are not available for all Member States, it can be said that such cases amount averagely to 70 % of all requests, but in some of Member States represent nearly 100 % of outgoing requests. Concerning requests sent to Greece, Spain and Hungary, however, the number of take charge requests was higher then the number of take back requests.

17 Take charge request: request sent from one member State to another Member State requesting to take responsibility for an asylum applicant, on the basis of a particular criterion of the Dublin Regulation.

18 Take back request: request sent from one member State to another Member State requesting to take back an asylum applicant which has previously applied for asylum in the requested Member State.

Table 2. Take charge and take back requests submitted under the Dublin Regulation since September 2003 till December 2005

	CZ	EE	EL	ES	IE	IT	CY	LV	LT	LU	HU	MT	NL	PT	SI	SK	FI	SE	UK	IS	NO	Total	Total %
Total number of outgoing requests	724	1	52	446	760	1509	5	0	5	321	62	3	3658	47	101	154	3181	11688	5135	61	5732	33645	100%
Number of requests to another Member State to take charge of an asylum seeker	253	1	20	327	14	606	2	0	4	50	15	0	654	11	17	82	397	4515	604	10	992	**8574**	**25,48%**
Number of requests to another Member State to take back an asylum seeker	471	0	32	119	746	903	3	0	1	271	47	3	3004	36	84	72	2784	7173	4531	51	4740	25071	74,52%
Total number of incoming requests	834	5	2908	1345	262	5078	21	10	51	162	1574	241	5539	121	453	2919	1317	7213	793	6	4094	34946	100%
number of requests by another Member State to take charge of an asylum seeker	398	5	1792	1088	126	2362	12	10	27	6	965	5	754	89	161	367	550	1175	37	2	15	9946	28,46%
number of requests by another Member State to take back an asylum seeker	436	0	1116	257	136	2716	9	0	24	156	609	236	4785	32	292	2552	767	6038	756	4	4079	25000	71,54%

All presented data refer to the period 1st September 2003 - 31st December 2005, but for Lithuania all the data refer to the period May 2004 - October 2005, for Slovak Republic to the period 1st May 2004 - 30th June 2005; for the Czech Republic to the period May 2004 - December 2005; for Spain to the period September 2003 - August 2005; for Ireland to the period September 2003 - October 2005; for Latvia to the period May 2004 - October 2005; for Finland, to the period September 2003 - September 2005 and for Norway, to the period September 2003 - September 2005.

Data submitted by Belgium, Germany, France, Austria and Poland did not differentiate between take charge and take back requests, therefore it was not included in this table.

In table 3, a substantial increase of transfers as a percentage of the acceptances can be noted, from 27% of outgoing acceptances under the Dublin Convention to 52,28% under the Dublin Regulation and respectively from 25,62 % to 40,04 % in case of incoming transfers. The increase is even more apparent in the context of general asylum flows in the EU. Transferred asylum applicants under the Convention amounted to 1,66 % (incoming transfers) and 1,67 % (outgoing transfers) of the overall number of asylum applications lodged in the given period. Under the Regulation, the proportion has doubled and in the surveyed period it reached 4,05 % and 4,28 % respectively.

Against the presented background it would appear that the performance of the system in regard to the determination of the responsible Member State has improved since the Dublin Regulation entered into force.

Nevertheless, despite the sizeable increase, the rate of transfers remains at a fairly low level. The issue of transfers should therefore be considered as the main problem for the efficient application of the Dublin system.

Table 3. Application of the Dublin Convention and of the Dublin Regulation in the context of the general asylum statistics (relative numbers)				
	Dublin Convention		**Dublin Regulation**	
Geographical scope	EU-15		EU 24+IS+NO [1]	
Period	January 1998- December 1999		September 2003-December 2005 [2]	
Total number of asylum applications	655.204		589.499	
	Incoming data	**Outgoing data**	**Incoming data**	**Outgoing data**
n° of Dublin requests/ n° of asylum applications (%)	6,40%	6%	15,14%	11,59%
n° of EURODAC based requests (%)/ n° of Dublin requests	x	x	54%	58,5%
n° of Dublin acceptances / n° of Dublin requests (%)	69%	69%	73%	72%
n° of Dublin acceptances / n° of asylum applications (%)	5%	4,21%	11,09%	8,42%
n° of Dublin transfers / n° of Dublin acceptances (%)	25,62%	27,82	40,04%	52,28%
n° of Dublin transfers / n° of asylum applications (%)	1,66%	1,67%	4,05%	4,28%

1 Demark has joined the Dublin system based on the Dublin Regulation only since 1 April 2006.

2 Regarding New Member States May 2004-December 2005

3. REPORT ON THE APPLICATION OF THE DUBLIN REGULATION

3.1. Introduction

The Dublin Regulation has been applied by the Member States, Norway and Iceland since September 2003 with general satisfaction.

Twice a year, national administrators responsible for the daily implementation of the regulations, compare their experience at informal meetings organised by the Commission services. In addition, frequent bilateral and multilateral discussions take place among the Member States on the practical application of the regulations, their strong and weak points in terms of clarity, effectiveness and implications. This section draws on the results of those experts' discussions as well as on the replies given by the Member States to the questionnaire sent to them in 2005. It also takes into account the observations and recommendations of UNHCR and NGO's.

For each of the most important provisions of the Dublin Regulation, this section provides for a description of its application. A particular emphasis is put on the problematic issues which have been identified. Appropriate solutions are consequently proposed, ranging from simple interpretative guidelines to suggestions for improvement.

3.2. The application of the rules set out in the Dublin Regulation

3.2.1. Scope of the Dublin Regulation

The Dublin Regulation applies to all 'applications for asylum' lodged by third-country nationals in any of the Member States. Article 2(c) defines an 'application for asylum' as 'a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum unless a third-country national explicitly requests another kind of protection that can be applied for separately.' This means that, if an asylum seeker explicitly applies for subsidiary protection, his/her application would not fall within the scope of the provisions of the Dublin Regulation.

Article 7 of the Dublin Regulation says that an asylum seeker can only be re-united with a family member "who has been allowed to reside as a refugee in a Member State". A 'refugee' is defined under Article 2(g) as a *'third-country national qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State'*. This means that Article 7 of the Dublin Regulation does not apply to beneficiaries of subsidiary protection. Such limitation has had particularly negative consequences for asylum seekers who could not be reunited with family members who are beneficiaries of subsidiary protection.

The main reason why the Dublin Regulation does not include references to subsidiary protection is that at the time of its adoption such a concept was not yet part of the EU asylum *acquis*. However with the adoption of the Qualification Directive[19] such a concept has

[19] Directive 2004/83/EC of 29 April 2004, on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004).

become an integral part of the EU legislative framework on asylum which should be reflected in all asylum instruments.

The Commission intends to propose to extend the scope of the Dublin Regulation to include subsidiary protection.

3.2.2. Application of the general principles

(a) Effective access to the asylum procedure

One of the underlying general principles of the Dublin Regulation is that every third-country national lodging an application for asylum in one of the Member States should have his/her needs for international protection assessed by one - but only one – Member State. Indeed, as indicated in recital 4 of the Dublin Regulation, this Regulation aims to guarantee effective access to the procedure for determining refugee status, by making it possible to determine rapidly a single Member State responsible for the examination of an asylum application, on the basis of objective and fair criteria. It is to this end that Article 3(1) places on the Member State determined as responsible on the basis of the criteria set out in Chapter III *an obligation to examine the asylum application.*

While most Member States correctly interpret the *obligation to examine the asylum application* as an obligation to proceed to the full assessment of the protection needs of the asylum applicant, to the knowledge of the Commission, one Member State does not carry out, under certain circumstances, such an assessment when taking back asylum seekers from other Member States.

It should be reminded that the notion of an "examination of an asylum application" as defined in the Dublin Regulation should be interpreted as implying the assessment whether the applicant in question qualifies as a refugee in accordance with the Qualification directive[20].

(b) Discretionary clauses

The Dublin Regulation provides for two provisions which allow Member States to derogate from the responsibility determination criteria: Article 3 (2) (so called 'sovereignty clause') and the humanitarian clause (Article 15).

The **sovereignty clause** allows a Member State, where an asylum application is lodged but who is NOT responsible under the criteria laid down in the Dublin Regulation, to nevertheless decide to examine the asylum application, for political, humanitarian or practical reasons.

The **humanitarian clause** allows a Member State, even where it is not responsible under the criteria set out in the Dublin Regulation, to bring together family members as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations.

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[20] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 0.9.2004, p. 12).

- The Sovereignty clause (Article 3(2))

The sovereignty clause has been applied for different reasons. Some Member States, such as Austria, Finland and Ireland apply it where there is a risk of violation of *Article 3 of the European Convention on Human Rights (ECHR)*, e.g. if the decision to transfer the asylum seeker to another country would in itself result in inhuman or degrading treatment.

Member States can also decide to examine an asylum application when the strict application of the Dublin Regulation would result in the dispersal of family members.

Finally, the sovereignty clause is sometimes applied where transferring a person would lead to chain deportation, in violation with the *non-refoulement* principle.[21]

The application of the sovereignty clause for humanitarian reasons should be encouraged, as this appears to correspond to the underlying objective of this provision.

Other Member States, e.g. Germany and Italy apply the sovereignty principle also for reasons of a more *practical* nature, e.g. when processing a claim through an accelerated procedure would be less resource intensive than launching a transfer request under the Dublin Regulation.[22]

It should be noted that, contrary to the Dublin Convention, Article 3(2) of the Dublin Regulation does not require the consent of the asylum seeker for the application of the sovereignty clause. The reason for this change is the assumption that the asylum seekers would have no objection to the Member State where he has applied for asylum examining his/her application.

However, in certain circumstances the asylum seeker might not necessarily implicitly consent with such an "auto-designation" by a particular Member State, and would prefer the designation criteria to be strictly applied, notably when this would allow him to rejoin family members in another Member State.

The Commission will propose to better specify the circumstances and procedures for applying the Sovereignty clause, notably to introduce the condition of consent of the asylum seeker concerned by the application of the sovereignty clause, in line with the similar provision in the Dublin Convention.[23]

- The Humanitarian clause (Article 15 of the Dublin Regulation and Chapter IV of the Implementing Regulation)

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21 UNHCR Discussion Paper, op. cit.

22 Ibid. and ECRE/ELENA report.

23 Article 3(4) of the Dublin Convention: "Each Member State shall have the right to examine an application for asylum submitted to it by an alien, even if such examination is not its responsibility under the criteria defined in this Convention, provided that the applicant for asylum agrees thereto. The Member State responsible under the above criteria is then relieved of its obligations, which are transferred to the Member State which expressed the wish to examine the application. The latter State shall inform the Member State responsible under the said criteria if the application has been referred to it".

The application of this provision varies widely from one Member State to another: some have never requested another Member State to take charge of an asylum seeker under this provision and others, like Poland, base 50% of their outgoing requests on this provision.

Most Member States who apply the provision complain they often do not receive any reply to their request, despite the obligation set in Article 13(3) of the Implementing Regulation on the requested Member State to *carry out the necessary checks*.

In addition, some Member States, such as Austria, consider that, despite the discretionary nature of the humanitarian clause, the non reunification of relatives could in some cases amount to a breach of article 8 ECHR.

Even if the wording of Article 15(2) and Article 15(3) do not set any obligation on Member States, as they say that a Member States *'shall normally'* and *'shall if possible'* unite, keep or bring together relatives, they should be interpreted as setting an obligation for motivation in case of refusal.

As far as the application of *time-limits* is concerned, some Member States are of the view that the deadlines for "take charge" requests should apply. Others consider that such deadlines should not apply because the provisions applying to "take charge" requests and those referring to the application of the humanitarian clause are contained in different sections of the Regulation.

Another argument invoked for the impossibility to apply time-limits to the humanitarian clause relates to the unforeseeable nature of the circumstances which might lead to requesting that relatives be united.

An issue has also arisen regarding the *consent* to be given by the persons concerned in the application of the humanitarian clause. In accordance with Article 17(1) of the Implementing Regulation, the consent must be given in writing. It is however nowhere specified which Member State should obtain those written consents. Member States generally agree that each Member State should obtain the consent of the person(s) residing on its territory, and that both Member States should cooperate in order to exchange the relevant consents necessary to ascertain the responsibility and proceed to the transfer.

The Commission intends to propose better specifying the circumstances and procedures for application of the humanitarian clause, including the issue of consent and of transmission of information between Member States.

The fact that the conciliation mechanism provided for in the Implementing Regulation for settling disputes concerning the application of the humanitarian clause, does not lead to binding decisions voids this mechanism of any real impact. That is why Member States have never started a conciliation procedure.

The Commission will consider how to amend the Implementing Regulation in order to improve, if possible, the effectiveness of the conciliation procedure

Determination of the Member State responsible (Chapter IV)

3.2.3. Criteria related to family unity (Articles 6-8, 14)

(a) Unaccompanied minors

Article 6 says that when an unaccompanied minor applies for asylum, the Member State where a member of his/her family is legally present is responsible for examining his/her claim, provided that this is in the best interest of the child. If no family member is legally present, the Member State where the asylum claim is lodged is responsible.

Few Member States are in a position to give the exact number of requests for transfer of unaccompanied minors received or transmitted since the application of the Dublin Regulation. For example, in the Netherlands, out of 654 requests to other Member States to take charge of an asylum seeker, 16 concerned unaccompanied minors and out of 754 requests coming from other Member States to take charge of an asylum seeker, 10 concerned unaccompanied minors. In the United Kingdom, 5 out of 604 outgoing requests and 14 out of 37 concerned unaccompanied minors. Those figures indicate that there are a number of unaccompanied minors subject to the Dublin procedure.

Some confusion exists on the possibility to request to take back an unaccompanied minor who has previously applied for asylum in another Member State and whether also in that case the principle of the best interest of the child should prevail. Some Member States, such as Norway, reportedly refrain from requesting to take back an unaccompanied minor.

UNHCR[24] also fears that the consideration of the best interest of the child is limited to the first stage of an asylum procedure, when an unaccompanied minor first applies for asylum.

Even if the application of the take back requests should not be ruled out in the case of unaccompanied minors, the principle of the best interests of the child should always be taken into due account.

The assessment of age is also difficult, and for this reason some Member States consider bone tests as the most reliable means for determining age. However it should be stressed that this means of proof is not always completely reliable and it is considered as costly.

Bone testing should be used as a last resort, when on the basis of general statements of the asylum seeker and other evidence there is still doubt on the age, for instance in the case where persons who introduced an asylum application as adults in one Member State claim to be a minor upon transfer to another Member State.[25]

(b) Family unity

The criteria relating to the respect of family unity are generally welcomed by the Member States and other actors working with asylum seekers. However, these provisions are rarely applied. For example, in the reference period, there were only 122 incoming requests and 88 outgoing requests in Germany, and 54 incoming requests and 46 outgoing requests in the United Kingdom.

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[24] UNHCR discussion paper, p. 25.

[25] As reported by several Member States.

Member States indicate that the level of proof for the family link required by the requested Member State is often an obstacle for the application of this provision. Many Member States require DNA evidence before accepting to take charge of an asylum seeker. However, as DNA testing is costly, time consuming and not relevant for all cases, the Commission recalls that according to Annex II of the Implementing regulation such evidence should be used only as a last resort. Other means of probative evidence (such as extracts from registers) and circumstantial evidence (such as the statements of the family member concerned) are mentioned in this annex.

While understanding the importance of clear evidence in order to avoid abuse of the system, in particular in view of family reunification, the Commission considers that Member States should apply the Dublin Regulation and its Implementing Rules in their entirety, using all means of proofs foreseen, including credible and verifiable statements of the asylum seeker.

UNHCR and ECRE have recommended to extend the definition of family members to families formed outside the country of origin, to siblings, to family members having another legal status then a refugee status (Article 7) or a an asylum seeker status (Article 8). Those extensive interpretations are already applied in a number of Member States.

As stated already in section 3.2.1., the Commission intends to propose, for reasons of consistency with the rest of the asylum *acquis,* to extend the applicability of article 7 to beneficiaries of subsidiary protection.

As far as the definition of family members used in the Regulation is concerned, that is coherent with the rest of the EU asylum and immigration *acquis*. One should also bear in mind that the sovereignty clause and humanitarian clause were inserted in the Regulation precisely to avoid situations where family members not strictly corresponding to the definitions referred to under Article 8 would be separated due to strict application of the Dublin criteria.

3.2.4. Criteria related to documentation (Article 9)

The criteria for allocating responsibility to the Member State which has played the biggest role in the third-country national's entry into or residence in the territory of the Member States, e.g. by issuing a residence document or a visa, are applied frequently. For instance, in 2005 it concerned 13% (401) of incoming requests in Greece and 6% (313) in Italy. In Germany, there were 2789 incoming requests (out of 14.680 total incoming requests) and 824 outgoing requests. In the Netherlands there were 201 outgoing requests and in the United Kingdom 133. A large majority of those requests was based on the issuance of a visa. The number of such requests can only increase once the draft Regulation of the European Parliament and the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas will be adopted. This regulation will grant access to the VIS database for the national asylum authorities. This will avoid lengthy information requests under Article 21 of the Dublin Regulation and will provide information on the status of a visa issued.

3.2.5. Criteria related to illegal entry / stay (Article 10)

Requests for taking charge of an asylum seeker under Article 10(1) (illegal entry) far exceed the number of transfers effected on the basis of this provision.

Member States indicate as a reason for this shortfall the lack of EURODAC based evidence and point to a poor application of the obligations to fingerprint illegal entrants. This issue will be further analysed in section 4.3.2 of the present report.

The criterion which allocates responsibility to the Member State where an asylum seeker has resided for at least 5 months after having entered irregularly the territories of the Member States and where another Member State cannot or no longer be held responsible on the basis of the irregular entry (Article 10(2)), is applied less often, again mainly due to the difficulties to prove such a situation. Germany received 351 such requests and sent out 821, whereas the Netherlands received 66 and sent out 44 requests.

Dublin experts consider that the applicant's general statements are not sufficient for allocating responsibility to a Member State. In the absence of formal evidence supporting the statement of the applicant, Member States should make all reasonable efforts to obtain detailed statements (for instance on the travel route), so that the requested Member State can accept its responsibility. Dublin experts also consider that responsibility should not be denied solely on the basis of absence of formal evidence where the statements of the applicant are detailed, coherent and in line with relevant information from reliable sources on the ways and means asylum seekers use to enter the territories of the Member States.

3.2.6. Criterion related to legal entry (Article 11)

Only a small proportion of the requests are related to the fact that the asylum applicant entered the territory of a Member State in which he or she is not in need to have a visa, as this situation is rare.

3.2.7. Responsibility "by default" (Article 13)

Article 13 says that if no criterion designates another Member State as being responsible, the Member State where the asylum application is lodged is responsible for examining it. This implies that there was no previous asylum application in another Member State. Therefore, a Member State cannot invoke this article as a basis for taking back requests.

However, this provision caused some confusion amongst national Dublin experts in the beginning of the application of the Dublin Regulation and was sometimes used as a basis for take back requests.

After a clarification on the part of the Commission on the correct interpretation to be given to this provision, no problems in its application have been reported.

3.3. Requests for taking back or taking charge of an asylum seeker (Chapter V)

3.3.1. Procedure for requests to "take charge" (Articles 16(1)a, 17-19)

(a) Time-limits

The Dublin Regulation has shortened the deadlines of the Dublin Convention for requesting another Member State to take charge of an asylum seeker and for replying to such a request, as well as introduced flexibility on the requirements of proof for determining responsibility. The underlying principle is that Member States should decide as quickly as possible on who is

responsible in order not to compromise the overall objective of the rapid processing of asylum applications.

Most Member States are satisfied with the time limits set out under the Dublin Regulation, even if some find the one week deadline for replying to a take charge request in case of urgency (Article 17(2)) is sometimes too short. However, several Member States and UNHCR have pleaded for further shortening of the deadlines.[26]

Deadlines should be respected as the provisions of the Regulation are very clear in this respect and provide both the Member States and the asylum seekers legal certainty concerning the responsibility of a Member State.

Member States should strictly respect the time-limits set in the Dublin Regulation, bearing in mind the sanction of implicit acceptance where no answer to a request is given within the requested time-limits and the possibility for asylum applicants to challenge a Member State's authority not respecting a deadline.

(b) Evidence

As mentioned in several sections above, the evidence required for accepting to take charge of an asylum seeker is often difficult to provide and therefore considered by Member States as an obstacle to the effective application of the Dublin Regulation.

Member States have nevertheless agreed on a list of means of proof and a list of circumstantial evidence which have been annexed to the Implementing Regulation. Therefore, Member States should be more flexible and cooperative when evidence is given with a request to take charge of an asylum seeker.

In particular, the Commission recalls Article 18(5) which states that in the absence of formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

3.3.2. Procedure for requests to "take back" (Article 20)

The Dublin Regulation does not foresee a time-limit for filing a request to take back an asylum seeker. Some Member States, as well as UNHCR, consider this as detrimental to the efficiency of the Dublin system.

Two different situations can be identified.

Firstly, a Member State can be requested to take back an asylum applicant when he applies subsequently in another Member State, while he/she is still in the responsibility-determination procedure or in the asylum procedure in the first Member State or after he has withdrawn his application, or after his application was rejected by the first Member State.

[26] in particular the six-week deadline for replying to requests for information, as replies are often necessary for determining responsibility (see infra)

In this case, there is no obstacle to introduce time-limits for the second Member State to request the first Member State to take back the asylum seeker as quickly as possible.

The Commission intends to propose introducing time-limits for "take back" requests.

Secondly, a Member State can be requested to take back a person who has asked for asylum on its territory and who is found illegally present on the territory of another Member State, without applying for asylum there.

In this second case, it is difficult to know for how long a third-country national has been residing illegally on the territory of another Member State. Therefore, it is also difficult to establish a time-limit for requesting the first Member State to take back a third-country national in this kind of situation.

As far as the time limits for replying to a "take back" request are concerned, Member States have to react within one month, or 2 weeks if the request is based on a EURODAC hit (Article 20(1)b). Some Member States consider the two-week deadline to be too short, since an asylum case with several EURODAC hits can sometimes not be solved out easily. It might be possible to help Member States solve these particularly complex cases by introducing amendments to the EURODAC Regulation (see section 4.3.3.). However, if no solution in this sense can be found, it might be useful to consider establishing longer deadlines for these particular cases.

3.4. Responsibility for non compliance with deadlines

Article 18(7) and Article 20(1)c automatically shift the responsibility to the requested Member State where it does not reply within the deadlines set out in the Regulation.

Where the requested Member State is deemed responsible according to Article 18(7) and Article 20(1)c, arrangements still have to be made for the practical transfer of the asylum seeker.

It has been observed that some Member States which did not reply to a request within the time-limits do not cooperate for taking charge of or taking back an asylum applicant. Such situations end up with the requesting Member State having to keep an asylum seeker, in breach of the principles of the Dublin Regulation.

Once the responsibility has been established on the basis of article 18(7) and 20(1), the responsible Member States must, in accordance with the rules of the Dublin Regulation, take the necessary steps for receiving the asylum seeker.

Article 19(4) and Article 20(2) reassign responsibility to the Member State which does not transfer the asylum seeker for which responsibility has been accepted by another Member State within the time-limits set in the Regulation.

3.5. Cessation of responsibility

The responsibility of a particular Member State for examining an asylum application is not indefinite and the Dublin Regulation contains a series of provisions setting out the circumstances leading to cessation of responsibility.

Responsibility ceases when the third-country national has left the territory of the Member States for at least three months, unless the Member State responsible issued him/her a valid residence document. (Article 16(3))

The obligation to take back an asylum seeker or third-country national ceases in the following circumstances:

- where the responsible Member State has adopted and actually implemented, following a withdrawal or rejection of the asylum application, the provisions that are necessary before the third-country national can go to his/her country of origin or to another country to which he may lawfully travel(Article 16(4));

- after 12 months, where it is established, on the basis of proof or circumstantial evidence, including a EURODAC hit, that an asylum seeker has irregularly crossed the EU- border into a Member State by land, sea or air (Article 10(1))[27];

- after six months , which can be extended up to one year or 18 months, depending on the case, when an accepted transfer does not take place (Article 20(2)).

However, the application of these provisions has caused problems in several Member States. Three kinds of problems have in particular been identified:

- Difficulties to prove the different requirements set in the Regulation, for instance that the asylum seeker has left the territory of the Union for more than three months;

- Divergent interpretation of the terms 'adopted and actually implemented' and 'another country to which he may lawfully travel' in Article 16(4) ;

- Difficulties in determining with which Member State lays the burden of proof.

The Commission intends to propose - clarifying the circumstances under which the cessation clause should apply - better defining the relevant provisions - clarifying which Member State bears the burden of proof.

3.6. The effective transfer of asylum seekers

Transfers after a positive (or implicit) reply to a "take back" or "take charge" request should be carried out, in accordance with national law, as soon as practically possible, but not later than six months from the date of acceptance, except for well-defined derogations.

In the reference period, there were reportedly 16.099 incoming transfers and 16.842 outgoing transfers[28]. It should be borne in mind, as already mentioned, that certain data, especially concerning transfers, are missing. As a result, numbers should not be regarded in absolute terms but rather as an indication of main trends.

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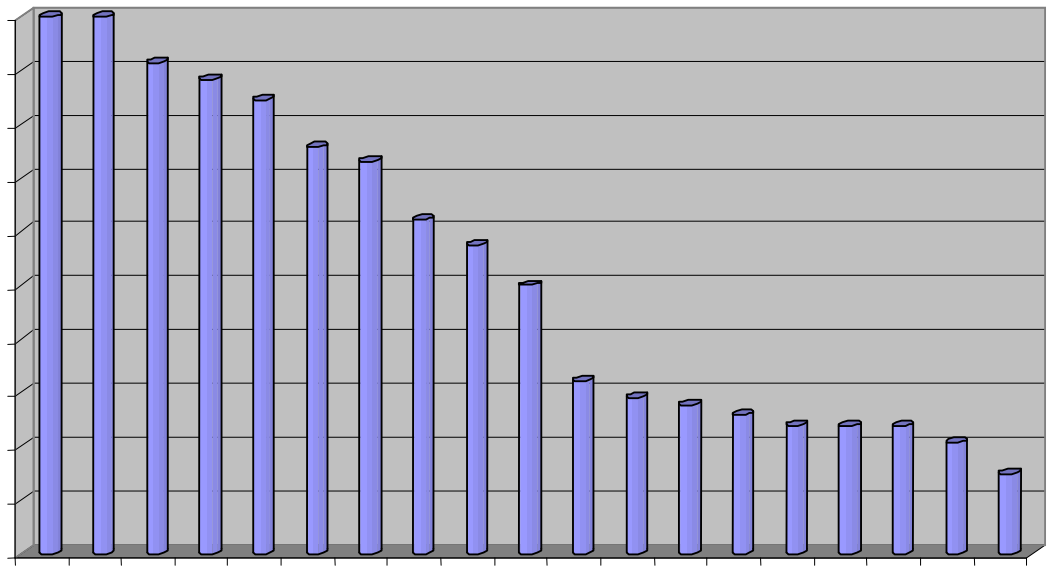
[27] See also Section 3.3.3

[28] See also Tables 1 and 3



Graph 2. Rate of effective transfers carried out from Member States (outgoing transfers) in 2005

All Member States reported that the number of transfers of asylum seekers – incoming and outgoing – is lower than the number of acceptances. [29]

Lithuania, Estonia and Malta have carried out all accepted transfers but numbers are so low that they cannot be considered of any statistical significance. A group of Member States show rates of effective outgoing transfers much higher than the average of 52 %. The Czech Republic with 91,51 % of effective transfers has the highest rate. This is followed by a group of Member States with a rate higher than 70 %, namely the United Kingdom (88,43 %), Iceland (84,61 %), Luxembourg (75,65 %) and the Netherlands (73,13 %). In three Member States the rate was between 50 % and 70%, namely in Norway, Germany and Ireland. In Finland, Greece, Italy, Slovenia, Hungary, Portugal, Spain, Slovakia and Austria the rate of effected transfers was below the average rate (between 15 and 32%). The lowest proportion of effective transfers was noted in Austria where only 14,9 % of all accepted outgoing requests were followed by effective transfers.

As high rates of effected transfers of asylum seekers are a good indicator of the efficiency of the operation of the Regulation, it is important to examine possible reasons for the different results of Member States in carrying out transfers successfully.

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[29] In addition, the available statistics on the application of the Dublin Regulation, reveal a discrepancy between the declarations of Member States on the number of incoming and outgoing transfers, which logically should be the same. Indeed according to statistics, 40 % of the accepted incoming requests led to a transfer, whereas 52 % of the accepted outgoing requests led to a transfer.
The assessment in the present report is based on the analysis of 'outgoing transfers', since the reporting Member States were responsible for carrying out the transfers. Therefore, and figures on 'outgoing transfers' appear to be more valuable for comparison of related policy measures.

All Member States pointed to the absconding of asylum seekers after the announcement of the decision as the main reason for non effected transfers.

Another reason for non carried out transfers seems to be based on the suspensive effect of appeals against transfer decisions. In addition, illness or trauma of asylum seekers or voluntary return to their country of origin were mentioned as other reasons for not transferring people.

3.6.1. Custodial measures

Amongst Member States with the highest rates of effective transfers, namely the United Kingdom, Iceland, Luxembourg and the Netherlands, detention was commonly used during the whole responsibility determination process or was imposed immediately after the announcement of the final decision. The Czech Republic very often conducted a transfer within a short period of time after the announcement of the decision. In addition, the Czech Republic usually detains all apprehended migrants, even if they subsequently lodge an asylum claim[30]. However, two other Member States with a rate of effective outgoing transfers higher than the average, Norway (62,25 %) and Ireland (50,34 %), apply custodial measures in a more limited way.

Most of the Member States with rates below average said they use detention either not at all or in very exceptional cases. Finland tends to apply custodial measures mainly in case of immediate transfers.

The Commission is of the opinion that detention of asylum seekers subject to a transfer decision must be possible. In this context, it is interesting to recall the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.[31]

However, detention should be only used as a final resort when all other non custodial measures are not expected to bring satisfactory results because there are objective reasons to believe that there is a high risk of the asylum seeker absconding.

In addition, due account should always be taken of the situation of families, persons with medical needs, women and unaccompanied minors.

Finally, detention should not be employed merely for the purpose of accelerating the Dublin procedure with use of article 17 (2) of the Dublin Regulation claiming urgency and expecting

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30 Pro Asyl, Report from a seminar on the impact of the Dublin II Regulation on the protection of refugees in Central Europe, held on 23 January 2006 in Prague, available at: http://www.proasyl.de/en/information/newsletter/newsletter-icf/newsletter-nr-12005/newsletter-nr-12005/index.html

31 Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status - COM(2002) 326 - 2000/0238 (CNS) - Article 18: "Member States may hold the applicant in detention to prevent him from absconding or effecting an unauthorised stay, from the moment at which another Member State has agreed to take charge of him or to take him back in accordance with Council Regulation .../...[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] until the moment the applicant is transferred to the other Member State. Detention for this reason shall not exceed one month".

a quicker reply due to detention. Moreover, it should be stressed that the use of such a solution should fully respect the right to appeal.

3.6.2. Practical arrangements

As far as the practical arrangements between Member States for transfers are concerned, rules are set out in Chapter III of the Implementing Regulation. Accordingly, transfers may be carried out on a voluntary basis, by supervised departure or under escort. Practice of Member States differ considerably. The majority of Member States reported to use escorts only in exceptional cases where a transferee appeared to represent a security risk, resisted previous transfer attempts, was violent, had a medical condition which requires medical escorts or the requested Member State asked for escort. In Germany, Belgium and Sweden, the transfers are carried out very often by supervised departure, i.e. the asylum seeker is accompanied to the point of embarkation (e.g. airport, railway station). A small group of Member States does not use escorts at all. On the contrary, five Member States, namely Iceland, Luxembourg, Slovakia, Estonia and Latvia, transfer automatically under escort. France reports to systematically request escorts when they take an asylum seeker back.

Table 4. Outgoing transfers within the Dublin system September 2003 - December 2005				
		Rate of effective outgoing transfers (%)	n° accepted outgoing requests	n° effective outgoing transfers
1.	Lithuania	**100,00%**	4	4
2.	Estonia	**100,00%**	1	1
3.	Malta	**100,00%**	1	1
4.	Czech Rep.	**91,51%**	566	518
5.	UK	**88,43%**	3165	2799
6.	Iceland	**84,61%**	39	33
7.	Luxembourg	**75,65%**	571	432
8.	Netherlands	**73,13%**	1969	1440
9.	Norway	**62,25%**	4893	3046
10.	Germany	**57,59%**	10694	6159
11.	Ireland	**50,00%**	717	361
12.	Finland	**32,16%**	2285	735
13.	Greece	**29,16%**	24	7
14.	Italy	**27,80%**	223	62
15.	Slovenia	**25,80%**	31	8
16.	Hungary	**24,00%**	25	6
17.	Portugal	**23,80%**	42	10
18.	Spain	**23,82%**	256	61
19.	Slovakia	**20,62%**	223	46
20.	Austria	**14,98%**	6373	955
21.	Latvia	**0%**	0	0
22.	Cyprus	**0%**	2	0
23.	Poland	**N/A**	N/A	N/A
24.	Belgium	**N/A**	N/A	N/A
25.	Sweden	**N/A**	N/A	N/A
26.	France	**N/A**	N/A	N/A
	N/A - incomplete data avaliable			

3.7. Review of Administrative decisions of transfer (Articles 19(2) and 20(1)e)

The decision to transfer an asylum seeker to the Member State deemed responsible for examining his/her claim may be subject to a review or appeal, but this will not suspend the implementation of the transfer unless, according to national legislation, the courts or competent bodies decide otherwise on a case by case basis.

Apart from Austria and Norway which report a high percentage of appeals against decisions taken under the Dublin Regulation, most of the Member States have a low rate of appeal. Only in Austria, until 1 January 2006, and in Portugal, did the appeal automatically suspend

the transfer decision. In other Member States, the suspensive effect is rarely granted. When granted, it would usually be in case of serious illness or risk of breach of ECHR.

The Dublin Regulation does not indicate whether judicial review of transfer decisions should be limited to the interpretation of the Dublin criteria and the respect of Dublin procedural rules or whether it could be extended to the examination of the legal and factual situation of the receiving Member State.

However, it should be recalled that in the *TI v. UK* case[32], the European Court of Human Rights emphasised that the application of the Dublin Convention may not absolve states of their obligations under international human rights law and in particular their obligation to ensure that the transfer may not result in a violation of the *non-refoulement* principle. This case plays an important role in the way national courts examine appeals against Dublin transfer decisions.

Another issue related to the reviews of decisions is the access to an effective remedy. It has been pointed out, in particular by UNHCR and NGOs, that while all Member States allow for appeal or review of transfer decisions, there remain concerns about the effectiveness of the right to remedy, in particular, when transfer decisions are communicated to the asylum applicant only very shortly before the effective transfer takes place and if the asylum applicant does not have rapid access to legal aid. In its monitoring role of the correct implementation of Community legislation by Member States in the full respect of fundamental rights, including the right to an effective remedy, the Commission will pay particular attention to these situations.

Further problems may arise when a decision has been overturned on appeal after the transfer has already been carried out. Cases have been reported where there was no agreement on which Member State should bear the costs involved for transferring back the asylum seeker. Even if no specific rules are set out in the Dublin Regulations, the Commission considers that it is for the Member State where the asylum seeker has to be transferred back to cover all incurred costs.

The Commission intends to propose to introduce rules concerning the consequences of an overruled decision after transfer.

3.8. Cooperation between Member States (Chapter VI)

3.8.1. Administrative cooperation between Member States

Member States are informed regularly by the Commission of the contact points in other national administrations responsible for the implementation of the Dublin system.

Dublin experts from all Member States meet twice a year to discuss issues regarding the application of the Dublin Regulation. UNHCR representatives also attend those meetings. The results of the discussions help Dublin officers in their daily application of the Regulation. However some Member States regret that the results of such discussion do not have a binding nature. The Commission will examine ways to give a more structured follow up to those discussions.

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[32] ECHR: T.I. v. U.K., application No 43844/98, Admissibility decision of 7 March 2000.

The Dublin experts are kept informed of developments concerning the Dublin system via the secure Circa[33] network as well as via Email. Experts can send questions concerning the practical application of the Dublin Regulation to colleagues, inviting them to share their opinion or experience on particular matters.

3.8.2. DubliNet

Article 22(2) foresees the creation of a secure electronic transmission channel between the responsible authorities for transmitting the different types of requests and ensuring that senders automatically receive electronic proof of delivery. DubliNet has been created for this purpose.

The DubliNet system is a bilateral exchange of data between technical national access points (NPAs), sent over the TESTA II network (Trans-European Services for Telematics between Administrations) which is a Generic Service of the Community IDA Programme (Interchange of Data between Administrations). This is an encrypted private network for public administrations, providing a secure telecommunications infrastructure based on IP.

During the implementation several technical difficulties were encountered, mainly caused by the variety of national technical infrastructures. Solutions were found for the major difficulties.

Some Member States had problems implementing an automatic proof of receipt, which is very important to establish the dates from which deadlines start. At the end of the evaluation exercise, only France was still in a test phase which is expected to be finalised shortly.

It should be stressed that not all Member States exclusively use the secured DubliNet system to exchange requests and information, which is particularly problematic notably when personal data are being exchanged.

The Commission recalls that the use of DubliNet is always compulsory safe for the exceptions defined in article 15 (1) second subparagraph.

A technical evaluation of DubliNet was carried out in 2005. The main conclusion of the assessment recommended, in the short term, technical improvements to the current system and, in the long term, a reconfiguration of the DubliNet architecture on the basis of a centralised system. Such an upgrade would be necessary in order to handle the growing number of transactions passing through DubliNet efficiently. It would also allow the creation of reliable automated statistics. The automatic collection of statistics based on the transactions between the NAPs, would contribute to solve difficulties in gathering reliable and complete statistics on the application of the Dublin Regulation.

This study was presented to the national DubliNet experts in October 2005, but there was no consensus on whether the creation of a centralised system was needed.

[33] Communication and Information Resource Centre Administrator (CIRCA) is an extranet private space on the Internet and has been developed by the European Commission in order to facilitate communication and information sharing between Public Administrations of Member States and the European Institutions.

3.9. Information sharing (Article 21)

Article 21 obliges each Member State to communicate on request from Member State information concerning an asylum seeker as is appropriate, non-excessive and relevant for the determination of responsibility for examining the application or for implementing any obligation arising from the Dublin Regulation.

This information relates to personal data, such as the personal details of the applicant and his/her family members, identity or travel documents. If it is necessary for the examination of an application, Member States may also exchange information on the grounds on which an asylum applicant has lodged his/her claim and on the grounds for any decisions taken by the asylum authorities concerning the applicant. The requested Member State can for security reasons refuse to transmit such information and in any event the communication of such information is subject to the approval of the asylum applicant. The data protection rules set out in Directive 95/45 of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data apply to the exchange of information under this provision.

While the requested Member State is obliged to reply within six weeks, the Dublin Regulation does not foresee any sanction for non-compliance with this deadline. Several Member States and UNHCR have pleaded for a shortening of the six-week deadline for replying to requests for information, as replies are often necessary for determining responsibility.

The Commission will propose shortening the deadline for replying to requests for information to 4 weeks.

3.10. Practical arrangements between Member States (Article 23)

To facilitate application and increase effectiveness, the Dublin Regulation makes provision for administrative arrangements between Member States concerning practical details of the implementation of the regulation. Such arrangements may relate to the exchange of liaison officers or to the simplification of procedures and shortening of time limits.

Most of the existing arrangements appoint - bilaterally or not – liaison officers. According to the information sent to the Commission services, Belgium has a liaison officer in the Netherlands and in Germany; Germany has one in Belgium, the Netherlands, Sweden and the United Kingdom. France, Italy, the Netherlands and the United Kingdom have one in Germany. The Netherlands had one in the Slovak Republic till end of 2005 and has one in Austria. Austria has one posted in the Netherlands. The exchange of liaison officers between Member States which experience an important bilateral flow of asylum seekers has proved very useful. The presence of a representative of one Member State, equipped with all necessary technical links with its national information systems, has in many cases led to very quick and efficient solutions to otherwise complex bilateral issues. One of the exchanges of liaison officers was supported under the financial ARGO[34] programme.

As far as other practical arrangements are concerned, Germany has arrangements with Luxembourg and Austria, which date from the Dublin Convention and is negotiating one with

[34] ARGO is an action programme for administrative cooperation at European Union level in the fields of asylum, visas, immigration and external borders.

Italy. Austria has other agreements with Hungary, Slovenia, the Czech Republic and the Slovak Republic and is also under negotiations with Italy. Finally, Sweden and Norway have a bilateral arrangement.

It should be recalled, that in accordance with Article 23(2) of the Dublin Regulation, Member States shall communicate their bilateral arrangements to the Commission for verification.

The Commission initial proposal for the Dublin Regulation included the possibility for Member States to establish bilateral arrangements also in order to set up mechanisms for limiting the number of transfers. The idea was that where there was a significant number of asylum seekers transferred between two Member States which according to various factors, including their geographical situation, have frequent exchanges of asylum seekers, those Member States would agree to "annul" an equal number of transfers so as to carry out a one-way transfer of a limited number of persons.[35] Those persons would be identified on the basis of appropriate criteria. This measure would be designed to reduce the workload and operating costs of the departments responsible for transfers. It could also avoid further secondary movements following transfers. However, such a mechanism should have been flanked with guarantees that the objectives of the regulation are still met: therefore, the period at the end of which an assessment is made of the number of transfers to be effected should be strictly limited and transfers based on family unity should be carried out whatever the circumstances.

This proposed mechanism was rejected during the negotiations in Council for the Dublin Regulation, mainly due to the lack of objective criteria for selecting the candidates for effective transfers. It is obvious that the criteria on the basis of which it is decided to perform or not to perform the transfer of the asylum seeker concerned should be clearly established. Priority should be given to voluntary transfers (including extended family unity cases) and to asylum applicants who have been living for some time in the responsible state.

The Commission will propose to introduce the possibility for Member States to conclude bilateral arrangements concerning "annulment" of the exchange of equal numbers of asylum seekers in well-defined circumstances.

3.11. Information of the asylum seekers

One of the reasons that could explain secondary movements of asylum seekers could lay in a lack of awareness of asylum seekers of responsibility determination procedures. Experience has shown that in many cases, the asylum seeker does not understand why he/she is sent to another Member State than his/her choice. The communication policy towards asylum seekers varies widely from one Member State to another. Certain Member States have developed good information tools which explain clearly the responsibility determination procedure. As this might contribute to deter asylum seekers from applying for asylum in several Member States, the Commission services encourage the Member States to share best practices in this field.

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[35] Though monthly figures on the accepted requests are not available, the size of six monthly bilateral flows between certain Member States indicates that such exchanges could significantly decrease the number of asylum seekers to be transferred between particular Member States. For instance, in the second half of 2005, Germany accepted 383 requests from Austria, while Austria accepted 190 requests from Germany.

3.12. Transitional provisions

The Dublin Regulation applies fully from the date of accession of the new Member States to a previous asylum application or any situation leading to the establishment of responsibility occurring before accession.

4. REPORT ON THE APPLICATION OF THE EURODAC REGULATION

4.1. Implementation of the EURODAC system

All Member States have successfully implemented the EURODAC system in their national infrastructure. This has been preceded by training and information sessions given by the Commission services. Before starting testing the system, Member States have provided the Commission with the list of the national authorities which have access to the EURODAC national database. In accordance with the EURODAC Regulation, these authorities formally notified the Commission of their technical readiness before accessing the system.

The accession of 10 new Member States did not give raise to any problems; only two of them started operations two months later because of internal procurement issues.

4.2. Application of the EURODAC Regulations

4.2.1. Central Unit

– Establishment of the Central Unit

The Central Unit started operations on 15 January 2003. The AFIS system was designed for being able to handle 7,500 transactions per day, 500 transactions per hour with an availability of 99.9%. In terms of accuracy, more then 99.9% certainty for all returned submissions was a requirement with a probability of less then 0.5% of missing a match where a match should happen. Another requirement was that it had to be capable of storing up to 800,000 full 10 print images. In addition to these important requirements, the contract included the delivery of a reference client that could emulate a Member State to prove that the AFIS was capable of handling transactions from a Member State for all data types. System Management Tools have been implemented as well, to help the Central Unit monitor the activities of the AFIS and produce statistics to match the statistical requirements identified in the Regulation. The Monitoring System had also to include a logging system so that Central Unit personnel activities could be monitored.

In addition, a Business Continuity System (BCS) was established in case of unavailability of the Central Unit. The BCS has also testing capabilities to allow Member States or Accession Countries to test any new solutions being implemented by a National Access Point and therefore prevent issues arising with the "live" Central Unit.

The network infrastructure that links the Central Unit to the National Access Points is provided through the TESTA II network which is a Generic Service of the Community IDA Programme (see section 3.9.2)).

Security is an important element of all data transmission and this is ensured by using the TESTA network and the use of PKI (Public Key Infrastructure) services again provided through the Generic Services of the IDA Programme.

– Processing of data

Time-limit: The EURODAC Implementing Regulation requires that the Central Unit carries out comparisons in the order of arrival of transaction within 24 hours, and within one hour if required by a Member State for reasons related to national law.

Since it started its operations in January 2003 the Central Unit has always managed to meet time-limit requirements.

Quality check: According to Article 3(1) of the Implementing Regulation, the Central Unit immediately checks the quality of the data transmitted by Member States, i.e. it checks whether the fingerprints transmitted lend themselves to comparison using the computerised fingerprint recognition system.

During the reference period from 15 January 2003 till 31 December 2005, the Central Unit rejected on average 6% of the transactions on the basis of quality default. Unfortunately, and despite of promising adjustments made in some Member States, the rejection rate is not decreasing (2003: 6,46%; 2004: 5,82%; 2005: 6,12%). Problems of quality are mainly due to human errors, the quality of ink, and the configuration of the equipment.

Specific training of national EURODAC operators combined with a systematic implementation of local quality checks would help reduce the excessive rejection rate. In addition, those Member States having a very low rejection rate could share their know-how with others with a view to improving the overall quality of the system. Moreover, the use of state of the art equipment (live scanners) to capture the fingerprint would greatly reduce the rejection rate.

The Commission will organise training seminars for Member States administrations to improve the quality of data

– Statistics

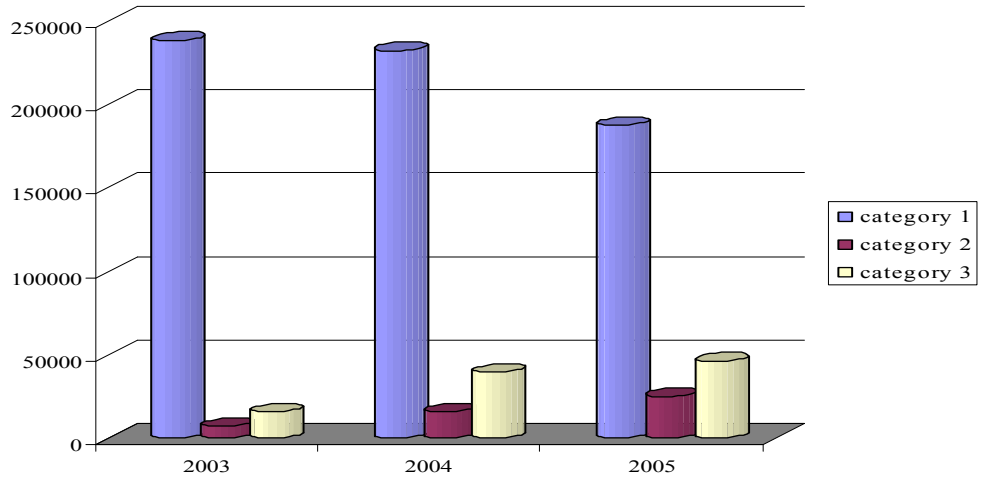
The EURODAC Regulation[36] requires that the Central Unit draws up statistics every quarter, and yearly in the form of a compilation, on the number of data sets transmitted under the three different categories, on the number of hits of the three different types mentioned above and on the quality rate of the transmissions. Those statistics have to contain a breakdown of data for each Member State.

Since the beginning of its operations, the Central Unit has been producing the required statistics on a monthly basis and published them on the secured Circa-website, accessible for designated EURODAC users, which is a “closed user group” where users have to be invited to join in. At the end of each year, a compilation of these statistics is made available as an annex to the relevant annual report of its activities.

[36] Article 3(3).

In accordance with the Implementing rules, the Central Unit has also collected statistics on the number of persons who, having been admitted as refugees in a Member State, have further applied for asylum in another Member State and other relevant data (cfr infra).

4.2.2. Transmission of data by the Member States



Graph 4. Data transmitted to the EURODAC Central Unit between January 2003 and December 2005

– Applicants for asylum (category 1)

From 15 January 2003 until 31 December 2005, 657.753 sets of data of asylum applicants were successfully sent to the Central Unit. The number of such transactions has constantly been decreasing since the start of operations (2003: 238.325; 2004: 232.205; 2005: 187.223), with a total decrease of 21, 44%.

This decrease is even more significant if one considers that as of 1 May 2004, 10 new Member States added their transactions to those of the "old" Member States and that this number does not reflect necessarily "new" asylum applications (subsequent applications are included). This decrease clearly reflects the general drop of asylum applications observed in the EU for some years (31,4% from 2003 to 2005).

– Aliens apprehended in connection with the irregular crossing of an external border (category 2)

In the reference period, 48.657 sets of data of third-country nationals apprehended in connection with the irregular crossing of an external border were successfully sent to the Central Unit.

The annual reports on the activities of the Central Unit showed an extremely low number of such "category 2" transactions. They also indicated that some Member States never sent such transactions.

However, the number of "category 2" transactions considerably increased in 2004 (+121% compared to 2003). Part of the increase was certainly due to the accession of 10 new Member

States in May 2004. The number of such transactions increased again in 2005 (+55% compared to 2004).

It is difficult to draw firm conclusions on the proportion which "category 2" transactions represent in comparison to the size of irregular migratory flows in the EU, as statistics in this field are not available. The number of 25.162 "category 2" transactions, as recorded in 2005, seems however very low if one considers the strong irregular migratory pressure at the borders of the EU, even taking into account that not necessarily each irregular migrant is apprehended at the border. In this context, it is interesting to note that rough estimates based on information given by Member States for setting up the capacity requirements of the Central database tabled on a maximum of 400.000 "category 2" transactions a year.

The Commission therefore urges Member States to abide by the rules set in the EURODAC Regulation. Systematic non compliance with the obligation to fingerprint illegal entrants could be taken into account by the Commission when reviewing the implementation of the Solidarity and Management Migration Flows Framework Programme in 2010 and in particular the relevant distribution criteria applicable for the different funds.

Another issue which has emerged in the context of "category 2" transactions, concerns asylum applications made right after the irregular crossing of an external border. When a third-country national is apprehended when irregularly crossing the external border of a Member State and consequently applies for asylum, only a "category 1" transaction should be sent. Since the rationale of the EURODAC system is to support the application of the Dublin Regulation, this implies that a previous asylum application should have priority over the criterion of irregular entry for determining which Member State is responsible for examining an asylum claim.

– Aliens found illegally present in a Member State (category 3)

In the reference period, 101.884 sets of data of third-country nationals found illegally present on the territory of a Member State were successfully sent to the Central Unit.

This figure has also been increasing each year, showing a growing interest from Member States to make use of such checking possibility.

Due to the optional character of this provision, it makes no sense to try making comparisons with other figures on illegal migration. However, knowing that during the reference period 1.231.076 apprehensions of persons illegally staying were reported to Eurostat[37] and bearing in mind that under the EURODAC system, fingerprint data are taken from third-country nationals above 14 years of age, one could draw a rough conclusion that in less then 10% of the cases, data of illegally staying third-country nationals are checked in order to know whether he/she has applied for asylum.

– Transmission time

The delay between taking fingerprints and sending them to the EURODAC Central Unit varies largely from one Member State to another. Over the period of three years, this delay

[37] Source: Eurostat CIREFI data 2003-2005.

varied from some hours to over 30 days. In some Member States, little progress has been observed since the installation of EURODAC, despite regular reminders by the Commission services through the annual activity reports and experts meetings. The Commission is concerned about the consequences a delay in transmissions can have for the proper application of the Dublin Regulation, as this may lead to results contrary to the responsibility principles laid down in this regulation. For example: while the fingerprints of an alien who illegally crossed a border (category 2) are still on their way to the Central Unit, the same person could already present him/herself in another Member State and ask for asylum (category 1). If this second Member State sends the fingerprints faster than the first Member State, the Central Unit would register a category 1, and the second Member State would handle the application instead of the first one. Indeed, when a category 2 transmission arrives later on, a hit will be missed because category 2 is not searchable.

The Commission urges the Member States to make all necessary efforts to send their data promptly to the EURODAC Central unit, in accordance with Articles 4 and 8 of the EURODAC Regulation.

The Commission intends to propose a clear deadline for transmitting data to the EURODAC Central Unit.

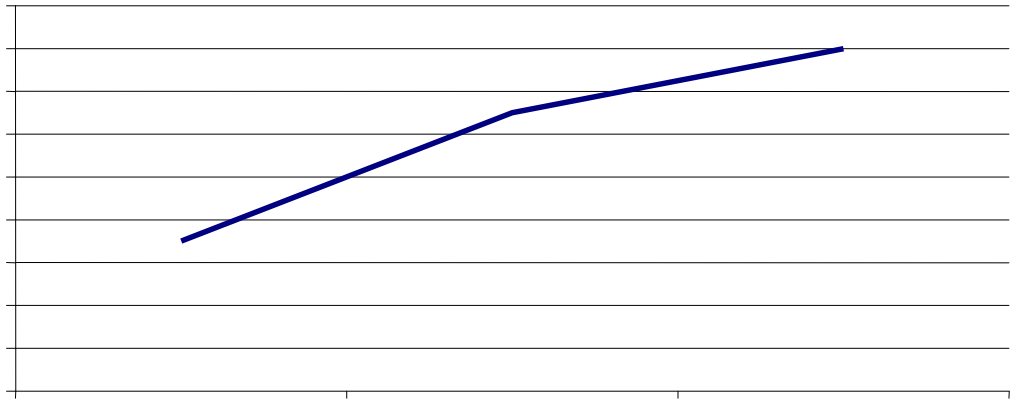
4.2.3. Results of the comparison (hits)

– "Category 1 against Category 1"

The statistics concerning local hits shown in the tables annexed to the annual reports on the activities of the EURODAC Central Unit may not necessarily correspond to the hit replies transmitted by the Central Unit and recorded by the Member States. The reason for this is that Member States do not always use the option, provided by Art. 4(4), which requests the Central Unit to search against their own data already stored in the Central Unit database. However, even when Member States do not make use of this option, the Central Unit must, for technical reasons, always perform a comparison against all data (national and foreign) stored in the Central Unit. In these concrete cases, even if there is a match against national data, the Central Unit will simply reply “no hit” because the Member State did not ask for the comparison of the data submitted against its own data.

The annual reports on the activities of the EURODAC Central Unit give an indication of the secondary movements of asylum seekers through the EU. As it could been expected, such flows primarily occur between neighbouring states. The tables, even if not requested explicitly by the terms of the EURODAC Regulation, show as well the proportion between "local" and "foreign" hits (cf. explanation in section 2.3.2.): it is striking that, during the whole reference period, in Member States such as Italy and Cyprus, asylum seekers tend to apply a second time more in the same state rather than applying in another state.

– Multiple applications



Graph 5. Multiple applications lodged in Member States from January 2003 to December 2005

The number of multiple applications, i.e. the number of cases where an asylum applicant has at least applied once before, in the same or in another Member State, is constantly increasing (from 7% of the asylum applications in 2003 to 16% in 2005). In 2005, 4 persons lodged already 11 times an asylum application. The increasing trend is normal because of the fact that the Central database started empty. It is however a very clear indication that an important number of asylum seekers try to have their asylum claim examined in more than one Member State or more then once by the same Member State. Obviously, the indication of a hit allows a Member State to react accordingly: either it can prioritise the examination of a subsequent application, or it can request the other Member State concerned to take back the asylum seeker[38].

– "Category 1 against Category 2"

The annual reports on the activities of the EURODAC Central Unit, give an indication of routes taken by persons who irregularly enter the territory of the European Union, before applying for asylum. In the first year of application, no conclusion could be drawn, due to the low number of "category 2" transactions registered. From 2004 on, and without important variation in 2005, it appeared clearly that most hits of "category 1" transactions against "category 2 transactions" occurred against data sent previously by Spain, Italy and Greece. However, in those three Member States, a large part of the hits were "local", which means that persons apprehended in connection with the irregular crossing of their external border subsequently applied for asylum in the same Member State they entered. In Italy, this was indeed the case for as much as 73% of the cases.

A large section of those who entered the European territory via Italy, Greece or Spain and who travelled further, are headed mainly for the United Kingdom and France.

– "Category 3 against Category 1"

[38] Further analysis of this phenomenon in section 4.3.1.

The annual reports on the activities of the EURODAC Central Unit, give an indication as to where illegal migrants first applied for asylum before travelling to another Member State. It has to be borne in mind, however, that the "category 3" transaction is not mandatory and that not all Member States use the possibility for this check. It is interesting to note, that in a number of Member States, aliens whose claim for asylum has been rejected, do not move to another Member State subsequently. This is particularly the case in Poland and the Slovak Republic. Also worth noting is the average of "success" in 2005, i.e. "category 3" transactions matching with previous "category 1" transactions sent by other Member States: in four Member States with the highest record of such transactions, namely Germany, the Netherlands, Norway and Czech Republic, around 19% of the persons apprehended when illegally staying on their territory, had previously lodged an asylum claim.

4.2.4. Blocking and deletion of data

– Blocking

In accordance with Article 12 of the EURODAC Regulation, Member States have to instruct the Central Unit to block the data of persons who are recognised as refugees. If a hit occurs against data of an asylum seeker, the Central Unit will record the hit for statistical purposes but will send a "no-hit" reply to the Member State of origin.

The rationale behind this provision is that, in accordance with Article 6(1) of the Data Protection Directive,[39] no data should be kept in a form which allows the identification of data subjects for longer than is necessary for the purposes for which data were collected.

In 2005, 6711 sets of data were blocked. In 2004, 21 "category 1" transactions produced a hit against blocked data and in 2005, this number amounted to 44. This means that in 44 cases, asylum authorities were confronted with an asylum applicant who had already been granted a refugee status in another Member State. However, because of the blocking rules, they were not aware of this information, which can be decisive in an asylum procedure.

The analysis of these figures also indicates that the number of 6711 blocked data of asylum applicants is far too low compared to the number of 64.429 refugees recognised by Member States in the last three years. This means that Member States have correctly applied the EURODAC Regulation only in approximately 10% of the cases.

It should also be noted that persons granted subsidiary protection, as defined by the Qualification Directive, do not enter into the scope of Article 12 of the EURODAC Regulation.

According to Article 12 of the EURODAC Regulation, a decision should be taken after five years of operations, whether data relating to persons who have been recognised as refugees but subsequently claimed asylum in another Member State should a) be treated in the same way as data relating to any other asylum applicants or b) be erased in advance as soon as the person has been recognised as a refugee.

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[39] Directive 95/45/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995).

Ahead of the proposal for a decision on this specific issue which will have to be presented in 2008, the Commission already observes that, due to this provision, asylum authorities can not automatically obtain an essential piece of information which is necessary for examining an asylum application.

In addition, the Commission notes that if this provision is to be kept, consistency should be ensured between the European asylum instruments and data of beneficiaries of subsidiary protection should receive the same treatment as those of recognised refugees.

– Deletion

In accordance with Article 7 and Article 10(2) respectively, the Member State of origin - i.e. the Member State which entered the data of an asylum seeker or of a person apprehended when irregularly crossing an external border in the EURODAC Central database - has to delete the data of asylum seekers or persons apprehended in connection with the irregular crossing of an external border as soon as they become aware that a data subject has acquired citizenship of any Member State and, for the second category of persons, also as soon as they become aware that the person has left the territory of the Member States or that he/she has been issued with a residence permit (advance erasure).

It is very hard to draw sound statistics of deleted data, the main reason behind this being that Member States do not specify for which specific reason data are deleted.

The introduction of a specific code for each type of deletion would help assessing if the obligation of advance erasure is fully respected.

Another concern relates to the fact that the Member State of origin is often not aware of the fact that another Member State has issued a residence permit or granted citizenship to a third-country national of which it entered data in the EURODAC system or even less of the departure of a third-country national from the EU territory.

The functionalities of DubliNet could be enhanced. Member States could use the secured Email possibility to inform other Member States of the issuance of a residence permit or the granting of citizenship or a refugee status to an asylum seeker. It would be an effective means for the Member State of origin — to have the necessary information for deleting or blocking those data from the EURODAC Central database, in accordance with Articles 7, 10 and 12 of the EURODAC Regulation.[40]

4.2.5. Status of the Central Database on 31 December 2005

At the end of the reference period, the Central database counted 651.455 data sets of asylum applicants and 40.523 data sets of persons apprehended in connection with an irregular crossing of the external border.

4.2.6. Recording and conservation of data

Certain provisions of the EURODAC Regulation concerning the recording and conservation of data are of difficult readability and lack, in certain cases, consistency.

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[40] See analysis in the report on the application of the EURODAC Regulation.

According to Article 16(2), records of all data processing operations, which show the purpose of the access, the date and time, the data transmitted, the data used for interrogation, should be erased after one year, if they are not required for monitoring procedures which have already begun. Article 14(2) read in combination with Article 14(1)c imposes to the EURODAC Central Unit to guarantee that it is possible to check and establish "a posteriori" what data have been recorded in EURODAC, when and by whom, without establishing a time-limit. However, Article 14(2) read in combination with Article 16(2) should lead to the conclusion that such control should be possible only "during one year after the record".

On the other hand, Articles 6(1) concerning asylum applicants and 10(1) concerning irregular border-crossers, state that their personal data, which are also included in the "records" mentioned in Article 16(2), should be stored for respectively 10 and 2 years.

In accordance with Article 16(1), "records" are kept on the purpose of the access, the date and time, the data used for interrogation and the name of both the unit putting in or retrieving the data and the persons responsible. In accordance with Article 18(7), however, data sent to the EURODAC Central Unit for the purposes of data-protection ("special searches") are not stored and immediately destroyed.

The destruction of all records as referred to under Article 16(1) would be problematic for the efficient application of Article 3, which requests that the Central Unit draws statistics on its activities.

The Commission intends to clarify which data should be recorded by the EURODAC Central Unit, for how long and for which purposes.

4.2.7. Data protection and liability

– Security measures taken by the Member States

Member States have to take a series of measures ensuring the security of the data transmitted to and received from the Central Unit (Articles 13 and 14). They shall further ensure that the use of data recorded in the Central database contrary to the purpose of EURODAC shall be subject to appropriate penalties. Upon request, Member States have sent to the Commission services information on which legal measures were applied at national level for that purpose.

– Access to the data

Member States have to communicate to the Commission a list of the authorities which have access to data recorded in the Central database. Those lists are kept by the Commission and updated regularly.

– Data Protection

Article 18 of the EURODAC Regulation lays down provisions concerning the modalities for the exercise of the rights of data subjects with respect to their personal data processed in EURODAC. These rights are granted to data subjects, i.e. those persons whose personal data are recorded in the EURODAC database, by EU data protection legislation, namely Directive 95/46/EC. Under Article 18(2) any data subject, in each Member State, shall have the right to obtain communication of the data relating to him/her recorded in the Central database and of the Member State which transmitted them to the Central Unit. On the basis of this

information, the data subject may also exercise his/her right to have their personal data corrected, erased or blocked. Access to such data can only be given by a Member State, which will therefore send the data of the requesting data subject to the EURODAC Central Unit. In order to differentiate such transmissions from those directly related to the efficient application of the Dublin Regulation, they are also called "special searches".

The sole purpose of Article 18 is the protection of rights of data subjects with the exclusion of any other purpose. The use of the mechanism laid down in Article 18 for purposes other than the exercise by a data subject of the rights of information, rectification or erasure of personal data recorded in EURODAC is therefore unlawful.

In the successive annual reports on the activities of the EURODAC Central Unit, the Commission services have expressed their concern relating to the surprisingly high number of "special searches" transmitted by some Member States.

This concern has been the object of discussions with the national EURODAC experts, with the European Data Protection Supervisor and with the national data protection supervisory authorities.

Despite the efforts of the Commission services to remind national authorities of their obligations under the EURODAC Regulation and the ongoing monitoring by the national supervisory authorities, the Commission notes that the number of "special searches" continued to be high until the end of the reference period. The Commission has therefore written to certain Member States, with the request for clarifications and has been available to help those Member States to correctly apply the EURODAC Regulation. However, if such situation persists, it will not hesitate to take more drastic measures.

4.3. Efficient application of the Dublin Regulation

4.3.1. Multiple applications

Table 5. Multiple asylum applications lodged between January 2003 and December 2005

	N° of EURODAC registered asylum applications (category 1)	N° of all multiple applications	Mulitple applications/ EURODAC registered asylum applications (%)	N° of 3rd and subsequent multiple applications	3rd and subsequent mulitple applications/ EURODAC registered asylum applications (%)
2003	238325	16429	6,89%	1860	0,78%
2004	232205	31307	13,48%	7873	3,39%
2005	187223	31636	16,89%	9307	4,97%
Total	**657753**	**79372**	**12,06%**	**19040**	**2,89%**

One of the most important functionalities of EURODAC has been detecting previous asylum applications. In 2005, 16% of the asylum applications were in fact multiple applications. When a Member State receives a hit reply, proving that an asylum seeker has applied for asylum before in another Member State, it will in the majority of the cases request the other Member State to take back the asylum applicant. However, the requested Member State can have reasons to deny its responsibility, if, for example, it has returned the third-country

national to his/her country of origin or if it can prove that the person has left the territory of the EU for at least three months.

This high number of multiple applications indicates that the Dublin system did not have the expected deterrent effect against the "asylum shopping" phenomenon. A lot of asylum seekers continue trying to obtain a favourable decision for their case by lodging more then one asylum application. The lack of correct information of the asylum seekers about the asylum procedures, as referred to under section 3.12, probably contributes to this phenomenon.

This high rate also raises questions about the efficiency of migration policies in Member States. An efficient return policy of rejected asylum seekers would contribute to decreasing the number of subsequent applications of third-country nationals staying on the EU territory. The adoption of the Directive on Return[41] will certainly lead to more concrete measures in this field, in the respect of rights of those falling under the application of the Asylum Procedures directive.[42]

4.3.2. Irregular entry

The Commission does not have statistics on the rate of requests for taking charge of an asylum applicant on the basis of EURODAC-evidence that a third-country national has crossed an external border irregularly.

The provision allocating responsibility to the Member State through which external border an asylum seeker entered the EU raises concern as it could put an excessive burden on Member States most "exposed" to irregular migration due to their geographical situation. One might expect that the strict application of the EURODAC rules, i.e. when each irregular entrant's fingerprints will be registered in the EURODAC database, might lead to a higher demand for taking charge of an asylum seeker towards some border States then they are facing now. However, it must be observed that Member States without external borders which receive a high number of asylum applications, such as Germany, claim that it is currently most of the time impossible to determine which border Member State an asylum seeker first entered and/or when he/she did so.

Only if all Member States comply with the obligation to collect data of each alien who enter illegally the territory of Member States, the EURODAC Regulation will effectively contribute to the application of the Dublin Regulation.

4.3.3. Complex cases

EURODAC and Dublin experts have been complaining about the increasingly complexity of the cases. After three years of operation, it is not unusual to receive a reply from the Central Unit stating 5 different hits. Even if it is often easy to identify the only relevant hit, in accordance with the Dublin rules, it happens that Member States have to contact several

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41 Commission's proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third country nationals - COM(2005) 391.

42 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

others before reaching the one which enters into consideration for responsibility determination.

As said before, contacted Member States might answer to a request to take back that they are not responsible anymore because the asylum seeker left the territory of the Member States for at least three months or that, after rejection or withdrawal of the case, they have taken the necessary measures for returning the person to his/her country of origin.

Therefore, technical functionalities of EURODAC should be amended in such a way that the Member States authorities would be asked to mark previously transmitted data with a specific code, depending on the reason for which they would not be responsible anymore.

For instance, when a Member State of origin is aware that an asylum seeker has left the territory for at least three months, it would send a specific message to the EURODAC Central Unit asking to mark the data of the individual with a specific code. In the case where the Member State of origin has rejected an asylum application or when the asylum applicant has withdrawn its application and the Member State responsible has taken the necessary provisions for returning the person to his/her country of origin or to a country in which he/she may lawfully travel, the Member State would again send a specific message to the Central Unit asking it to add another specific code to the data of the individual.

The Commission intends to propose technical amendments to the transmission mechanism of data to the EURODAC Central Unit in order to include more information about the status of asylum seeker.

As a consequence, and combined with a warning system for advanced deletions of data (cf. section 4.2.4.), a Member State receiving an asylum application, could after research in the EURODAC database still be confronted with multiple hits but only one or no hit should lead to a request for taking back or taking charge of an asylum seeker. With such a system, Member States would gain a lot of time for determining the responsibility for an asylum claim.

4.4. Analysis of Dublin flows

4.5. Introduction

In order to give a more comprehensive picture of the extent to which Dublin flows have affected the overall asylum seekers population of the Member States, the Commission has looked at both **the real number** of Dublin transfers, i.e. taking into account the transfers which actually took place, as well as the **potential number of transfers**, i.e. the situation if all accepted transfers were effected.

In addition, Dublin flows were compared first **in absolute terms**, i.e. the numbers representing net volumes of acceptances and transfers, and secondly **in relative terms**, i.e. as a share of the overall number of asylum applications in a given Member State. Such an approach will enable the measurement of both net movements between different Dublin States and to what extent asylum systems of the Member States have been affected by these movements.

A clarification should be added on the different impact of "take charge" and "take back" cases. In principle, "take charge" cases will amount to new applications in asylum systems of the Member States, whereas take back cases represent applications that have been already previously registered in the asylum statistics.

Some clarifications should be given on the statistics used. Available statistical data concerning requests make a distinction between "take back" and "take charge" requests. However, statistical data on acceptances and transfers do not indicate whether these are based on either "take charge" or "take back" requests. Only certain estimations can be made.

Of the respective total numbers of sent and received requests, outgoing "take back" requests amounted to nearly 75 % and incoming "take back" requests to more than 70 %.[43] Because "take back" requests are usually based on strong evidence produced by EURODAC it can be assumed that the level of acceptance of such requests is high.

Therefore, it can also be assumed that a high proportion of transfers will be based on take back requests. This would imply that a large part of transferred asylum seekers were already registered in the national asylum statistics of Member States and they should not be all regarded as additional applications to be examined as most will not constitute new applications.

Finally, it should be noticed that the Commission services have decided to use 2005 statistical data in order to carry out this evaluation as in that year all Member States (but Denmark) where participating in the Dublin system.

[43] See table 2

4.6. Dublin flows

Table 6. Incoming and outgoing transfers within the Dublin zone in 2005 (absolute numbers and ratio)							
		incoming transfers	outgoing transfers				Ratio between incoming and outgoing transfers
1.	Germany	2716	2748		1.	Greece	58-1
2.	Poland	1196	148		2.	Malta	39-1
3.	Netherlands	862	982		3.	Hungary	26,6-1
4.	Slovakia	453	32		4.	Slovenia	17,4-1
5.	Italy	419	47		5.	Slovakia	14-1
6.	UK	366	1824		6.	Latvia	10-0
7.	Greece	350	6		7.	Italy	8,9-1
8.	Spain	315	52		8.	Poland	8-1
9.	Austria	805	589		9.	Spain	6-1
10.	Hungary	160	6		10.	Lithuania	3,7-1
11.	Czech Rep.	114	359		11.	Portugal	3,2-1
12.	Slovenia	87	5		12.	Cyprus	2-0
13.	Luxembourg	72	257		13.	Austria	1,3-1
14.	Ireland	45	262		14.	Estonia	1-1
15.	Malta	39	1		15.	Germany	1-1
16.	Portugal	16	5		16.	Netherlands	1-1,1
17.	Lithuania	15	4		17.	Czech Rep.	1-3,2
18.	Latvia	2	0		18.	Luxembourg	1-3,5
19.	Cyprus	2	0		19.	UK	1--5
20.	Estonia	1	1		20.	Ireland	1-5,8
21.	Iceland	1	19		21.	Iceland	1-19
22.	Belgium	180	N/A		22.	Belgium	N/A
23.	Finland	N/A	735		23.	Finland	N/A
24.	Sweden	N/A	N/A		24.	Sweden	N/A
25.	Norway	N/A	848		25.	Norway	N/A
26.	France	N/A	N/A		26.	France	N/A

Table 6 shows a large disproportion between Member States as far as the absolute number of incoming and outgoing transfers is concerned. For instance, almost half (47%) of all incoming transfers go to Germany and Poland and 71% of all outgoing transfers are carried out by Germany and the United Kingdom.

In addition to absolute numbers, Table 6 also presents the ratio between incoming and outgoing transfers, which enables comparison between incoming and outgoing transfers in different Member States. The analysis of these figures indicates a significant difference

between the volume of incoming and outgoing flows in certain Member States while in other Member States this trend was not observable. [44]

It should nevertheless be stressed that the Dublin mechanism was never intended to balance incoming and outgoing transfers within the asylum system of each Member State.

In general, three groups of Member States can be identified.

In Greece, Malta, Hungary, Slovenia, the Slovak Republic, Latvia, Italy, Poland, Spain,Portugal, Cyprus and Austria the number of incoming transfers was higher than the number of outgoing transfers.

In Ireland, the United Kingdom, Luxembourg, the Czech Republic and Iceland, the situation is reversed.

Only in two Member States, namely Germany and the Netherlands, was the ratio between incoming and outgoing transfers almost balanced. It is worth stressing that Dublin incoming and outgoing flows for both countries represent a significant share of all transfers within the Dublin system.

Although there are not overall figures concerning transfers from and to Sweden, Belgium and Finland, it may be assumed on the basis of numbers of acceptances and other fragmented reports that in Sweden there are more incoming transfers than outgoing, while in Belgium and Finland, the situation is reversed.

Moreover, it is also worth looking at the volume of Dublin net transfers (the number of incoming transfers reduced by the number of outgoing transfers). As it can be seen from Table 6, Member States having higher numbers of incoming transfers than outgoing ones, do not necessarily belong to the group of States with the higher volumes of Dublin net transfers.

Contrary to a widely shared supposition that the majority of transfers are directed towards the Member States located at an external border, it appears that the overall allocation between border and non border countries is actually rather balanced. In 2005, the number of all incoming transfers to EU external border countries was 3055, while there were 5161 incoming transfers to Member States without an EU external border. [45]

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[44] However, it should be borne in mind that ratio of incoming and outgoing transfers should be always seen in the context of absolute numbers. For example, for Greece the ratio of 51:1 stands for 350 incoming transfers versus 6 outgoing transfers, but for Malta the ratio of 39:1 represents exactly 39 received asylum seekers against one carried out transfer.

[45] According to rough calculations on the basis of other Member States reports, outgoing transfers can be estimated as high as 2000 towards Belgium, France, Sweden and Finland.

4.7. Dublin flows in real terms

Table 7. Dublin transfers vs. asylum applications in 2005 (real terms)

ABSOLUTE NUMBERS						RELATIVE NUMBERS		
		net Dublin transfers (incoming - outgoing transfers)			**Asylum applications (n°)**			**net Dublin transfers/ asylum applications (%)**
1.	Poland	1048	1.	France	42572	1.	Poland	**19,28**
2.	Slovakia	421	2.	UK	30460	2.	Slovakia	**12,06**
3.	Italy	372	3.	Germany	29915	3.	Lithuania	**11**
4.	Greece	344	4.	Austria	22460	4.	Latvia	**10**
5.	Spain	263	5.	Sweden	17570	5.	Hungary	**9,56**
6.	Austria	216	6.	Belgium	15360	6.	Portugal	**9,56**
7.	Hungary	154	7.	Netherlands	12320	7.	Slovenia	**5,29**
8.	Slovenia	82	8.	Italy	9346	8.	Spain	**5,2**
9.	Malta	38	9.	Greece	8285	9.	Greece	**4,15**
10.	Portugal	11	10.	Cyprus	7715	10.	Italy	**4,13**
11.	Lithuania	11	11.	Poland	5435	11.	Malta	**3,67**
12.	Latvia	2	12.	Norway	5400	12.	Austria	**0,96**
13.	Cyprus	2	13.	Spain	5050	13.	Cyprus	**0,02**
14.	Estonia	0	14.	Ireland	4320	14.	Estonia	**0**
15.	Iceland	-18	15.	Finland	3595	15.	Germany	**-0,1**
16.	Germany	-32	16.	Czech Rep.	3590	16.	Netherlands	**-0,97**
17.	Netherlands	-120	17.	Slovakia	3490	17.	UK	**-4,78**
18.	Luxembourg	-185	18.	Hungary	1610	18.	Ireland	**-5,02**
19.	Ireland	-217	19.	Slovenia	1550	19.	Czech Rep.	**-6,82**
20.	Czech Rep.	-245	20.	Malta	1035	20.	Iceland	**-20**
21.	UK	-1458	21.	Luxembourg	800	21.	Luxembourg	**-23,1**
22.	Belgium	N/A	22.	Portugal	115	22.	Belgium	**N/A**
23.	Finland	N/A	23.	Lithuania	100	23.	Finland	**N/A**
24.	Sweden	N/A	24.	Iceland	87	24.	Sweden	**N/A**
25.	Norway	N/A	25.	Latvia	20	25.	Norway	**N/A**
26.	France	N/A	26.	Estonia	10	26.	France	**N/A**

The volume of net Dublin transfers is presented here as a share of the overall number of asylum applications. The analysis of such relative numbers of the Dublin flows in 2005 shows that there is a group of Member States where net Dublin transfers constitute a substantial proportion of the general number of asylum applications.

This tendency has been especially observed in Poland, where applicants transferred under Dublin amounted to nearly 20 % of the total number of asylum applicants. In Slovakia this share was 12 % and in Hungary about 10%. In several other Member States, namely Slovenia, Spain, Italy, Greece and Malta this proportion was between 3 % and 6%. In the case of

Austria, Germany, Estonia and Cyprus, the Dublin mechanism does not seem to have an influence on the asylum figures and Dublin net transfers amounted to less than 1% of the total population of asylum seekers.

In contrast, in Luxembourg and Iceland, the population of asylum seekers in 2005 decreased, due to the Dublin procedure, by 23 % and 20% respectively and in the United Kingdom, Ireland and Czech Republic this decrease has been slightly smaller (between 4% and 7%).

It could be concluded that in real terms the Dublin mechanism did not increase or decrease the total number of asylum seekers by more than 5% in most Member States. However, in the case of Poland, the increase was around 20% and in the case of Slovakia, Lithuania, Latvia, Hungary and Portugal, around 10%. On the other hand, in the case of Luxembourg and Iceland the number of asylum seekers decreased by around 20%.

4.8. Dublin flows in potential terms

Despite the methodological difficulties, it is worth looking also at the extent to which the Dublin system would influence the numbers of asylum applications, by measuring the number of net accepted requests. Since in the majority of Member States the number of transfers does not match with numbers of accepted requests, it may be considered that the Dublin system would have a greater impact if all accepted requests would be followed by transfers.

As Table 8 shows, three groups of Member States can again be identified. If all accepted Dublin transfers were effectively carried out, this would significantly increase the number of asylum applications in Hungary, Slovakia and Poland and to a lesser extent in Portugal, Latvia, Slovenia, Greece, Malta, Italy, Spain and Sweden.

On the contrary, the number of asylum applications would decrease significantly in Iceland, Luxembourg and Austria, and to a lesser extent in the United Kingdom and Ireland.

Finally, it appears that there would be close to no impact in Germany, the Netherlands, Cyprus and the Czech Republic, since the volume of incoming and outgoing accepted requests was almost equal.

The Dublin mechanism would potentially result in a significant increase of asylum applications in a number of EU border States, notably in Hungary, Slovakia and Poland, whereas it would result in a noticeable decrease in Luxembourg.

Nevertheless, if all accepted transfers would be carried out, there would be 7829 transfers to the EU border States and 13968 transfers to non border countries.

However, it should be once again reminded that the majority of effected transfers and potential transfers should be considered as take back cases,[46] which, for the most part, do not entail additional asylum applications to be examined for the destination countries since the applications have been already registered in the asylum statistics.

[46] See Table 2.

Table 8. Dublin transfers vs. asylum applications in 2005 (potential terms)

ABSOLUTE NUMBERS						RELATIVE NUMBERS		
		net Dublin acceptances (incoming - outgoing acceptances)	**incoming Dublin acceptances**	**outgoing Dublin acceptances**				**net Dublin acceptances/ asylum applications (%)**
1.	Poland	**2308**	2395	87		1.	Hungary	**46,64**
2.	Slovakia	**1565**	1768	203		2.	Slovakia	**44,84**
3.	Sweden	**1334**	2802	1468		3.	Poland	**42,46**
4.	Greece	**978**	992	14		4.	Portugal	**20**
5.	Hungary	**751**	763	12		5.	Latvia	**20**
6.	Italy	**739**	842	103		6.	Lithuania	**19**
7.	Spain	**395**	583	188		7.	Slovenia	**16,83**
8.	Slovenia	**261**	273	12		8.	Greece	**11,8**
9.	Malta	**106**	106	0		9.	Malta	**10,24**
10.	Norway	**98**	1269	1171		10.	Italy	**8,2**
11.	Czech Rep.	**45**	401	356		11.	Spain	**7,82**
12.	Cyprus	**31**	32	1		12.	Sweden	**7,59**
13.	Portugal	**23**	47	24		13.	Norway	**1,84**
14.	Lithuania	**19**	23	4		14.	Czech Rep.	**1,25**
15.	Latvia	**4**	4	0		15.	Cyprus	**0,4**
16.	Estonia	**0**	1	1		16.	Estonia	**0**
17.	Netherlands	**-9**	1166	1175		17.	Netherlands	**-0,07**
18.	Iceland	**-18**	1	19		18.	Germany	**-0,2**
19.	Germany	**-66**	4464	4530		19.	Belgium	**-3,93**
20.	Luxembourg	**-188**	116	304		20.	UK	**-4,14**
21.	Ireland	**-224**	77	301		21.	Ireland	**-5,18**
22.	Belgium	**-605**	1059	1664		22.	Austria	**- 10,57**
23.	Finland	**-636**	292	928		23.	Finland	**-17,7**
24.	UK	**-1263**	519	1782		24.	Iceland	**-20**
25.	Austria	**-2375**	1802	4177		25.	Luxembourg	**-23,5**
26.	France	**N/A**	N/A	N/A		26.	France	**N/A**