

Please cite as: EUAA, 'Overview of developments in the Dublin procedure 2022' in *Asylum Report 2023*, Mai 2023.

Overview of developments in the Dublin procedure 2022

Overview

Developments towards a new solidarity mechanism to complement the Dublin system continued at the EU level in 2022. The Solidarity Declaration was signed by 18 Member States and 3 associated countries under the French Presidency of the Council of the EU in June 2022, establishing a one-year Voluntary Solidarity Mechanism coordinated by the European Commission. The agreement would ensure adequate support to Member States of first entry along the Mediterranean and Atlantic routes and take into account the pressure on all Member States due to increased arrivals as a result of Russia's invasion of Ukraine.319

This temporary mechanism is also seen as an opportunity to pave the way for discussions for a more permanent solution under the proposed Asylum and Migration Management Regulation. 320 Member States underlined their commitment to tackle the secondary movement of persons seeking protection by increasing the implementation of Dublin transfers.321 In addition, the Council adopted the negotiating mandate on the proposed Eurodac and Screening Regulations, which helps to better follow the paths of applicants for international protection and persons in irregular situations *(see Section 2)*.

Under the current EU legal framework, Member States, the European Commission and the EUAA developed a roadmap in 2022 to improve the implementation of transfers under the Dublin III Regulation, and Member States started to apply the practical solutions defined in the roadmap to overcome the main obstacles in executing transfers in 2023.322

At the national level, Member States continued with their efforts to carry out Dublin transfers more efficiently. One of the main issues for Dublin units in 2022 was the lack of staff and high turnover rates, making it more challenging to address the increasing workload. While COVID-19 restrictions were gradually lifted in 2022 (with Member States no longer requiring a negative PCR test or proof of vaccination prior to a Dublin transfer), the impact of the pandemic lingered on. Organising transfers continued to be challenging with fewer flights and frequent last-minute cancellations of flights.

The war in Ukraine impacted national Dublin units in various manners. For example, Dublin case officers were re-assigned to support the arrival of persons in need of temporary protection. The lack of resources in terms of staff or reception places led to situations where certain countries did not temporarily accept incoming Dublin transfers. The interlinkage between the Dublin III

Regulation and the activation of the Temporary Protection Directive needed to be clarified, and it was established that persons with temporary protection should not be considered as applicants for international protection in this context and their data should not be registered in Eurodac.

Courts continued to assess the possibility of implementing Dublin transfers in individual cases and were faced with questions on the scope and limits of mutual trust between EU+ countries, the impact of differences in asylum policies, concerns around accessing the asylum procedure for applicants transferred under the Dublin III Regulation to the responsible Member State and their reception conditions, as well as the use of detention in the context of the asylum procedure.

The CJEU delivered several preliminary rulings on the interpretation of the Dublin III Regulation, requiring Member States to adapt their legislation and policies accordingly. This was seen, for example, in case C-19/21 in which the court clarified that unaccompanied minors have the right to appeal a rejected take charge request.

- 319French Presidency of the Council of the European Union. (2022, June 22). First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism. https://wayback.archive-it.org/12090/20221120105510/https://presidence-francaise.consilium.europa.eu/en/news/first-step-in-the-gradual-implementation-of-the-european-pact-on-migration-and-asylum-modus-operandi-of-a-voluntary-solidarity-mechanism-1/
- 320European Commission. (2023, January 12). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum. https://commission.europa.eu/system/files/2023-01/report-migration-asylum-2022.pdf
- 321French Presidency of the Council of the European Union. (2022, June 22). First step in the gradual implementation of the European Pact on Migration and Asylum: modus operandi of a voluntary solidarity mechanism. https://wayback.archive-it.org/12090/20221120105510/https://presidence-francaise.consilium.europa.eu/en/news/first-step-in-the-gradual-implementation-of-the-european-pact-on-migration-and-asylum-modus-operandi-of-a-voluntary-solidarity-mechanism-1/
- 322European Commission. (2023, January 12). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum. https://commission.europa.eu/system/files/2023-01/report-migration-asylum-2022.pdf

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