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Impacts of the COVID-19 pandemic

While the direct impact of the COVID-19 pandemic became less significant, there were still less flights available in general, making it more difficult to organise transfers. At times, the delays resulted in the courts stepping in to assess practices and their alignment with legislation. In 2022, the CJEU settled that the suspension of a Dublin transfer decision due to the COVID-19 pandemic does not interrupt the 6-month time limit to transfer an applicant to the responsible Member State *(see Section 2.6)*.

COVID-19 testing requirements for Dublin transfers remained in some countries at the beginning of 2022, but were typically lifted afterwards. As in 2020 and 2021, EU+ countries faced situations when applicants waiting to be transferred refused to undergo the required COVID-19 testing. In line with Swiss and Danish legislative changes in 2021, the Dutch government proposed a bill creating the legal basis for enforced COVID-19 testing at the beginning of 2022. 332 The Repatriation and Departure Service (DT&V) noted that lifting COVID-19 restrictions over the late spring and summer of 2022 made the implementation of transfers easier, but unrestricted access also meant that applicants could abscond more easily to avoid a transfer. 333

Overall length of the Dublin procedure

The overall length of Dublin procedures in 2022 remained of concern, for example in Italy where ASGI reported that a procedure may take up to 1 year,334 or in the Netherlands, where the Dutch Refugee Council observed that the processing time under the Dublin procedure doubled since 2019.335

In Bulgaria, the AIDA report noted that when another Member State accepts responsibility, the outgoing transfer was usually implemented within 5 months on average in practice, and in 2022, the State Agency for Refugees reported to have reduced the period to 1 month. If an incoming transfer was being organised, however, the duration of the actual implementation varied, reaching in the past up to 15 months. In 2022, some reorganisations which were undertaken by the State Agency for Refugees decreased the implementation of incoming transfers to 4 months on average.336

Delays in processing and their impact

The arrival of persons in need of temporary protection from Ukraine had a major impact on the Dublin system. Next to staff re-allocations affecting the capacity of Dublin units *(see Section 4.2.1)*, several EU+ countries temporarily suspended receiving incoming transfers, either all of them or of certain profiles (for example families). In some cases, this led to the expiration of transfer time limits and, thus, to a shift in the Member State responsible for the asylum application.

The Dublin unit in Bulgaria faced significant IT challenges in spring 2022. In addition to other Bulgarian public institutions, the State Agency for Refugees experienced a major cyberattack and the agency's information systems – including DubliNet – were suspended for several days. While the systems' security was not affected and no data were leaked, communication was not possible through DubliNet, resulting in a provisional backlog. The work processes were soon recovered, and the backlog was swiftly cleared.

The Swiss Federal Administrative Court (FAC) looked into the consequences of a canton not executing a transfer decision by the State Secretariat for Migration (SEM) in two appeal cases. It confirmed that SEM can remove the lump sum subsidy given to a canton for an applicant in the Dublin procedure when the canton does not implement the transfer without giving any objective reasons. The court underlined that the cantons do not have the power to re-discuss a decision or a judgment in force outside of the procedural framework.

On 2 September 2022, the Civil Court of Rome accepted the urgent appeal submitted by an asylum seeker whose appeal against a Dublin transfer to Austria had been accepted in 2021 and who, after 1.5 years, was still waiting for Italy's declaration of having competence to examine his asylum request. The appeal brought before the Court of Cassation did not have a suspensive effect and the law does not expressly provide for the possibility of requesting such a suspension. The Civil Court rejected the arguments presented by the Dublin unit, according to which the submission of an appeal before the Court of Cassation in the Dublin procedure would entail the automatic suspension of the procedure itself.

Time limits

The CJEU delivered preliminary rulings in cases of applicants applying for international protection in more than two Member States. It ruled on the calculation of the transfer time limit and in which Member State the applicant has access to an effective remedy *(see Section 2.6)*. The ruling concerned the application of the 'chain rule', which is an informal, practical solution agreed by most (but not all) Member States to facilitate the determination of responsibility in such cases. In Germany, the Regional Administrative Court of Düsseldorf clarified the time limit for sending a take back request and confirmed that it is not possible to send the request more than 3 months after the lodging of the application for international protection, even though this is done within the 2-month deadline for a Eurodac hit.

The Irish High Court examined the Member State responsible for an applicant who arrived to Ireland through Belgium, Sweden and the UK. Noting the time limits for take back requests and for implementing a transfer, the court underlined that at the latest by the end of 2016, Sweden

was responsible for the asylum application and not Belgium, as stated by the applicant.

Effect of an inadmissibility decision when the transfer time limit has expired

The Supreme Administrative Court in Austria ruled in 2021 (published and commented on in 2022337) on the expiration of the transfer time limit. It addressed the transfer of responsibility for an asylum application to Austria and its impact on the inadmissibility decision that was taken earlier in the case, when the authorities concluded that another Member State should be responsible for the application. The court confirmed that the applicant did not have to submit a new application. The inadmissibility decision automatically ceases its effect as soon as the transfer period expires.

CJEU rulings related to children in the Dublin system

The CJEU delivered two preliminary rulings related to children in the Dublin procedure. C-720/20 concerned a child born in Germany, whose parents received international protection in another Member State before the birth of the child. The ruling specified that Article 20(3) of the Dublin III Regulation cannot be applied to the child since the parents were granted international protection by another Member State. This situation is governed by Article 9 of the Dublin III Regulation, which requires the submission of a take charge request and the explicit written consent of both parties involved. Since written consent had not been submitted, Article 9 could not be applied, therefore, the responsible Member State must be determined according to Article 3(2) of the Dublin III Regulation (first country where the person lodged the request for international protection) *(see Sections 2.6 and 4.3.3)*.

In C-19/21, the court concluded that an unaccompanied minor should be granted the right to appeal if the requested Member State refused to take charge of examining the application when the request was sent on the grounds of Article 8(2) (reuniting an unaccompanied minor with a relative residing in another Member State) *(see Section 2.6)*. However, the relative of the child did not have this right to appeal.

As a result, many Member States noted that their, policies or practices needed to be adjusted following the ruling. For example, amendments are needed in several countries to ensure that the refusal of a take charge request is considered an administrative decision. The practical modalities of lodging an appeal when the person is not present in the country where the appeal is lodged needed to be formalised as well. To this end, several countries foresee changes so that information on the right to appeal is included in the refusal decision. The role of a legal guardian or representative in lodging an appeal against a refusal to take charge also needed to be clarified.

Age determination

The Dutch Council of State reviewed the determination of an applicant's age for the Dublin procedure in the case of a person who was registered as minor in the Netherlands. As doubts remained about the applicant's age after the age inspections (*leeftijdsschouw*, undertaken by three officers from the Dutch Immigration and Naturalisation Service (IND), the Royal Military Police (KMar) and the Aliens Police, Identification and Human Trafficking Department (AVIM) who spoke separately with the applicant), the council confirmed that the Dublin unit may rely on the

principle of mutual trust and assume that the registration of the age took place with due care in other Member States. Thus, the applicant can be considered as an adult when the person has been registered in several Member States with different ages. In addition, the authorities should consult the source documents in the original registration to conclude the age when possible.

Assessment of sufficient protection for victims of domestic violence

When assessing the availability of sufficient protection in the country responsible for the asylum application for a victim of domestic violence, the Swiss Federal Administrative Court found that it is not relevant whether that country has ratified the Istanbul Convention. The court examined whether in practice the authorities can and are willing to offer sufficient protection against the threats of the former husband.

Procedural safeguards

The issue of effective remedy in the Dublin procedure has been the subject of several CJEU rulings in recent years, and national courts continued to approach the EU court for more guidance. For example, the Tribunal of Bologna sent two requests to the CJEU for a preliminary ruling, inquiring about the right to information and a Member State's duty to hold a personal interview in light of the right to an effective remedy.

In C-217/22, the court inquired if the applicant can invoke before the courts of the requesting state the infringement of the duty to provide information and arrange a personal interview in the Dublin procedure by the requested state.

In C-80/22, the court sought clarity on the consequences of failing to provide the required information leaflet (according to Article 4(2) of the Dublin III Regulation) or conducting a personal interview (according to Article 4(2) of the Dublin III Regulation). It questioned if this failure would render the transfer decision irremediably unlawful or should the applicant prove that the outcome of the transfer decision would have had been different if the requesting Member State provided the information and held the interview. In relation to the interpretation of Article 27(1) does the provision of information and the personal interview form part of the effective remedy, and if so, can a court re-examine the substance of the transfer decision, even when the requested Member State has accepted its responsibility for the asylum application?

The French Council of State ruled that an appeal against a refusal to requalify was admissible only if the person is able to establish that the transfer period had expired or that another new circumstance had developed.

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