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# 5.1 Developments in legislation, policy, practice and jurisprudence

Most of the reported legislative and policy developments concerning the Dublin procedure in 2019 were related to institutional and organisational changes. Examples include:

- **Croatia:** The Ministry of the Interior in Croatia underwent a major re-organisation, as a result of which a separate Department for Dublin Procedures was established under the new Service for International Protection.
- **Denmark:** Some of the responsibilities, including tasks related to Dublin transfers that do not include the use of force, will be transferred to the Ministry of Immigration and Integration from the Ministry of Justice and consequently to a new government agency (to be established by August 2020) from the Danish Police.
- **Germany:** The Dublin Unit within BAMF (Bundesamt für Migration und Flüchtlinge) became responsible for admissibility decisions on applications from beneficiaries of international protection from another Dublin state. In parallel, the maintenance of DubliNet was also centralised to the same unit at BAMF's headquarters.
- **France:** Regional Dublin Procedural Hubs became operational,177 and a decree (FR LEG 01) and circular (FR LEG 02) further defined the role and tasks of the *préfectures*. Only the préfectures at the regional level are now responsible for the implementation of Dublin procedures. The Ministry of the Interior advised that material reception conditions should be offered near the competent *préfecture* for Dublin applicants, and the Council of State clarified that the travel costs must be covered by the *préfectures* as well.
- **Lithuania:** The transfer of asylum applicants to the responsible Dublin state became the task of the State Border Guard Service, which previously shared this responsibility with the police.
- **Luxembourg:** The Dublin Unit of the Directorate of Immigration was moved from the Return Unit to the Asylum Unit.
- **United Kingdom:** Three teams from the Home Office, UK Visas and Immigration, Third Country Unit in London were transferred to Glasgow under the newly-established Home Office Immigration Enforcement Third Country Unit, taking over responsibility for Dublin out cases. The fourth team remained in London and became the Dublin Cessation Team, continuing to process cases of applicants who cross to the United Kingdom from France by boat.

Dublin procedures are generally conducted by specialised officers. Significant staff changes were only reported from Belgium, where the Immigration Office increased its staff and managed to eliminate its backlog of information-sharing requests by the end of 2019.

In an effort to reduce its backlog, the Dublin Unit of the Office of the Refugee Commissioner in Malta received support from EASO in the framework of the 2019 Operational and Technical

Assistance Plan agreed by EASO and Malta.[178]

EU+ countries undertook several changes in 2019 to increase the efficiency of Dublin procedures. The Swedish Migration Agency revised its Dublin tracks based on the estimated handling time for each case. Furthermore, the Agency is now able to send information to Eurodac on the actual date of an incoming transfer due to updates in its IT system.

Bulgaria piloted a new software to store files of applicants who are subject to incoming Dublin requests from other states.

Following the CJEU judgement in Jawo, the Norwegian Directorate of Immigration adjusted its written procedures to present more information on the assessment, the reasons for a decision and on the situation in another Dublin state to provide clarity on why a transfer can take place.

Germany concluded new administrative arrangements with Luxembourg (which entered into force on
11 April 2019) and with the Netherlands (which entered into force on 10 January 2020) to facilitate the implementation of Dublin procedures.

Specific developments concerning information provision in the Dublin procedure were noted only by Luxembourg, where the Dublin information leaflets for applicants and for unaccompanied minors were revised and were distributed since the beginning of 2019.

The Netherlands reported several significant legislative and policy changes related in part to the changing profile of Dublin applicants. Following a ruling by the Council of State, the Dutch Aliens Act (Vw, *Vreemdelingenwet*) was amended (Article 50a) to permit applicants or Dublin claimants residing legally after the decision on the asylum application and awaiting a transfer to be stopped, transferred to a place to be questioned, questioned and kept in custody for a maximum of six hours to assess whether detention is necessary in the framework of the Dublin procedure (decision on the responsible state and implementation of the Dublin transfer) (NL LEG 01). Previously this was only possible when there was a reasonable suspicion of irregular stay.

The Dutch State Secretary for Justice and Security sent a letter to the House of Representatives detailing possible measures to handle disruptive applicants in reception facilities, and the possibility to reduce material reception conditions for Dublin applicants was examined.[179] Under a pilot project launched by the Repatriation and Departure Service (DT&V), disruptive applicants under the Dublin procedure can be placed in detention during the appeal stage.

Major changes were implemented in the Netherlands for applicants in the Dublin procedure who claimed to be victims of human trafficking *(see Section 6)* and for Moldovan nationals under the Dublin procedure returning voluntarily to Moldova *(see Section 7.5.6).* For Moldovan applicants, a policy decision was made to no longer process their applications under the Dublin regime and the IND would take responsibility for their applications, after which typically return to Moldova was initiated. Issues around the determination of the best interests of the child are currently in front of the Council of State and are pending judgement, following a hearing in October 2019.[180]

Finally, take back requests were initiated again, based on Dublin III Regulation, Article 20(5), and following the CJEU judgement in Joined Cases C-582/17 and C-583/17, regarding effective

remedy in take back procedures. The Dutch Council of State also delivered its ruling on the cases that gave rise to the request for a preliminary ruling related to implicit withdrawal of an asylum application submitted in a Member State while the procedure to establish the responsible Member State was not yet concluded. The Council of State determined that, if the third country national has provided clear evidence that the Minister for Migration is responsible for handling the application for international protection based on Chapter III criterion, it will not be able to submit a valid readmission request to another Member State.

Following the CJEU ruling in Joined Cases C-47/17 and C-48/17 related to the time limit for Member States to respond to requests for taking back and taking charge under the Dublin III Regulation, Chapter VI, the Federal Administrative Court in Switzerland ruled that a new request for taking charge or taking back must be addressed to a Member State other than the one which rejected the first request and which also rejected the subsequent request for remonstration or failed to reply to it within the mandatory time limits of the Dublin III Regulation.

The same court also ruled on an exception to the principle of family unity in the case of two separate asylum applications submitted by family. If a Member State agrees to examine an application based on the first asylum application made by the applicant, Switzerland does not need to scrutinise all the criteria for determining the Member State responsible as stated in the Dublin III Regulation. Consequently, this means that the family can be separated, as was the case in the ruling. The Swiss Court gave two possibilities to one of the applicants, to stay or be transferred alone to Germany.

The Council of State in Belgium ruled that the decision of the Immigration Office to extend the transfer time limit must be motivated, notified in writing to the applicant and can be separately appealed.

German national courts have extensively ruled on the time limit for a Dublin transfer and on the interpretation of the Dublin III Regulation, Article 29. For instance, the German Regional Administrative Court confirmed that an applicant absconding was a prerequisite for an extension of a transfer in accordance with Article 29.1.

The link between national law and the time limit to carry out a Dublin transfer was analysed by several Higher Administrative Courts of different German states (for example, Lower Saxony) in cases in which applicants requested so-called ‘church asylum’. The courts interpreted the second part of Article 29.2 and determined that the fact that an applicant is staying in the church asylum is not enough to extend the time limit for carrying out a Dublin transfer to 18 months. A final decision by the Supreme Federal Administrative Court on the matter of applying the 18-month time limit to applicants who are staying in church asylum is still pending.

Section 7.8 details developments related to detention and the criteria allowing its use in asylum procedures, but Belgium noted that the use of detention in the Dublin procedure had increased after amendments to its Immigration Act entered into force in March 2018.[181]

The government in Luxembourg plans to replace the Kirchberg Emergency Shelter Structure, which is temporary, with a new permanent semi-open structure to serve as an alternative to the detention center and which would take into account the needs of different groups of persons.[182]

In terms of detention pending a transfer, the Court of Cassation in France determined that a foreigner can only be placed or kept in detention for only the time necessary until his/her departure and the administration must exercise all due diligence with this aim. Any delay must be justified by unforeseeable, insurmountable or external circumstances preventing the administrative authority from acting. If not, the detained person must be released.

The Slovenian Supreme Court stated the need to transpose in its national law the risk of absconding as a criterion to detain an applicant while waiting for a Dublin transfer, as foreseen in the Dublin III Regulation.

Transfers to other countries were not systematically suspended to any one Member State based on the Dublin III Regulation, Article 3(2). However, the practices in Member States varied greatly in suspending transfers to other specific Member States. Most Dublin states resumed transfers to Greece, but many countries noted that their requests were not accepted. Therefore, for example, the Department for Dublin Procedures in Croatia did not send requests for re-examination to Greece when the applicant was from a safe country of origin and the chances of a positive decision were deemed to be unlikely.

Germany continued to suspend transfers to Hungary, while Belgium continued to suspend all transfers to Bulgaria and Hungary, following several decisions of the Council for Alien Law Litigation (CALL).

In the absence of an agreement on the reform of the Dublin system at the European level, the CJEU *(see Section 2.7)* and national courts continued to deliver guidance on individual cases. The Dutch Council of State ruled that the Minister for Migration first must examine if the Greek authorities will assign legal aid before transferring applicants back to Greece. In contrast, the Administrative Court of Munich ruled in the transfer of a Syrian applicant to Greece in January 2019. In its decision, the court held that the application would not specifically and individually be affected by systematic weaknesses in Greece and ruled against the applicant's possible return to Germany. In its reasoning, the court noted that transfers to Greece were reinitiated since the European Commission Communication of December 2016, which recognised the improvement of the Greek asylum system.

The adoption of the Immigration and Security Decree in Italy at the end of 2018 reshaped the reception system. This drove developments in Member States concerning Dublin transfers to Italy. For example, the Danish Immigration Service resumed issuing transfer decisions to Italy for families in March 2019 after evaluating the Italian Circular Letter of 8 January 2019.[183] These decisions were appealed, and the Danish Refugee Appeals Board upheld a number of decisions regarding transfers to Italy in August 2019. Likewise, the Swedish Migration Agency issued legal guidance stating that the Italian Circular Letter provided new general guarantees on the reception of families with children and considered this to be sufficient for transfers, without individual guarantees to be sought.[184] However, the German Federal Constitutional Court, for example, found that the conditions in Italy cannot be assumed to be adequate for families with children following the new legal amendments.

The Court of the Hague in the Netherlands addressed the issue in several judgements and found for example in one case that the transfer to Italy can take place, while underlined the need to further investigate the situation in another. The Swiss Refugee Council continued the Dublin

Returnees Monitoring Project in 2019, focusing on the impact of the Italian legislative changes for persons transferred under the Dublin III Regulation.[185]

The German court ruled on the suspension of Dublin transfers based on the risk of chain refoulement to Turkey if an applicant is returned to Greece. Similarly, the Greek Administrative Courts of Appeal granted interim measures and temporarily suspended the execution of a Dublin transfer to Bulgaria based on the applicant's possible refoulement to Afghanistan .

The Swiss Federal Administrative Court annulled a transfer to Croatia due to summary returns at the border with Bosnia and Herzegovina. Other cases with annulled transfers included the Irish Court of Appeal suspending the transfer of a Pakistani family to the United Kingdom and the Dutch Council of State cancelling the transfer of a minor applicant to Hungary based on the best interests of the child.

In the context of human trafficking investigations, the Court of the Hague in the Netherlands ruled that the Dublin III Regulation, Article 17(1) was insufficiently motivated in the Dublin decision of an applicant who claimed to be victim of human trafficking in another Member State.

The Slovenian Supreme Court ruled on the discretionary clause and stated that it is the right of a country based on its sovereignty to decide to examine an application, even if it is not its obligation under the provisions of the Dublin III Regulation.

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