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Section 4.2 The Dublin procedure



The Dublin III Regulation is the cornerstone of CEAS with the goal of defining a clear and workable method to determine which Member State is responsible for the examination of each application for international protection. Its objective is to guarantee that a person has effective access to the procedure for granting international protection to prevent a situation where no Member State is willing to accept responsibility for examining the application. It also aspires to prevent the misuse of the asylum system so that the same person does not submit multiple applications in several Member States with the sole purpose of extending their stay in an EU+ country.

To achieve these objectives, the Dublin III Regulation establishes a set of hierarchical criteria under Chapter III to determine the Member State which is responsible for the examination of an asylum application. These include:

- Family considerations (protection of unaccompanied minors and family unity);
- The possession of a visa or residence permit in a Member State;
- Irregular entry into or stay in the EU territory;
- Entry into the territory of a Member State in which the need for a visa is waived for the applicant; and
- Applications made in the international transit area of an airport.

Member States may also assume responsibility based on the clause linked to dependent persons or the discretionary clauses of the regulation.

The Dublin III Regulation is applied by all EU Member States and four associated countries (Iceland, Lichtenstein, Norway and Switzerland). Throughout this section, the term Member States covers the associated countries as well.

Data presented in this section are exchanged by EU+ countries with EASO to provide timely information but they are provisional and not validated. The official statistics on the Dublin procedure are collected by Eurostat on an annual basis.[xv] As EU regulations foresee a three-month time limit for data transmission, the Eurostat data were incomplete at the time of writing to adequately describe developments in 2020. Therefore, EASO data were used in this section, but they may differ from validated data subsequently submitted to Eurostat.[xvi] The conclusions drawn from the dataset can also be considered partial, as EASO data cover only three Dublin indicators: decisions received in response to outgoing Dublin requests, decisions to apply the discretionary clause based on Article 17(1)[xvii] and implemented outgoing transfers. Note that reporting by the

United Kingdom is not included. However, data reported by EU+ countries on cases with the United Kingdom as a partner are considered.

COVID-19

The pandemic had a transversal impact on every aspect of the Dublin procedure, prompting Member States to find solutions while respecting the legislative framework of the Dublin system.

Fewer asylum applicants were channelled into the Dublin procedure and transferred to the responsible Member State during 2020 as a direct result of COVID-19 measures: i) travel restrictions and border closures meant that a lower number of asylum seekers reached Europe; ii) registration was temporarily halted in many places so fewer applicants were identified to fall under the responsibility of another Member State; and iii) lockdowns, confinement measures and health measures such as COVID-19 test requirements limited the possibility of movement and travel for applicants. Case law suggests that pressure on health systems became an additional factor to consider when determining the Member State responsible for an asylum application.

Remote working arrangements created temporary difficulties at the beginning of the pandemic for some countries to access the electronic systems that support the identification of Dublin cases or are used for communication among Member States. In addition, working in shifts within Dublin units decreased the number of staff available and affected the efficiency of the process.

The process of implementing transfers had to be adjusted to adhere to strict health requirements, often different from one Member State to another. Border closures meant that transfers were de facto suspended in the spring and early summer. Once international travel re-opened, frequent flight cancellations and the overall decrease in the number of available flights meant that Dublin units had difficulties in carrying out transfers. This was coupled with police officers and border guards working in shifts, so they were not as readily available to support the implementation of transfers and needed to carefully assess and prepare arrangements for transfers due to the risk of physical contact.

The European Commission provided guidance to address some of these concerns and underlined that the transfer time limit is strict and the regulation does not allow for any derogation.[344] In addition, national courts delivered several – sometimes at first diverging – judgments related to the impact of the COVID-19 pandemic on the determination of the responsible Member State for an individual applicant and on transfer time limits.

Digitalisation

The COVID-19 pandemic was not a catalyst for further digitalisation of the Dublin procedure. Support for the identification of some potential Dublin cases has already been considerably digitalised, for example through the use of Eurodac, the Visa Information System (VIS) and the Schengen Information System (SIS). In addition,

communication between Member States was already done electronically through DubliNet.

While these electronic systems had already been in place, some Member States faced connectivity issues in accessing the databases when staff were teleworking, thus efforts were focused on troubleshooting.

Nonetheless, advances in digitalising other parts of the asylum procedure, notably registration, lodging an application, personal interviews and appeals, shaped the implementation of the Dublin procedure in 2020. While these steps had an impact, the greatest challenge remained the actual implementation of a transfer, a step which inherently relies on the applicant being physically present to travel from one country to another.

The legal framework for Eurodac and VIS was revised in 2020 *(see Section 2)* and three additional large-scale IT systems would be launched in 2022: the Entry/Exit System (EES) created in 2017,[345] the European Travel Authorisation and Information System (ETIAS) created in 2018 [346] and the European Criminal Records Information System on Third-Country Nationals (ECRIS-TCN).[347]



The potential future of the Dublin procedure was highlighted in 2020 with the presentation of the European Commission's new Pact on Migration and Asylum and the Proposal for a Regulation on Asylum and Migration Management. The pact aims to replace the Dublin system "through the establishment of a common framework that contributes to the comprehensive approach to migration management through integrated policy-making in the field of asylum and migration management, including both its internal and external components" [348] and it includes a new comprehensive mechanism for continued solidarity and streamlined criteria, in addition to effective mechanisms for determining the Member State responsible for an asylum application *(see Section 2)* .

Members of the European Parliament's LIBE Committee expressed concern that the rule of first entry to the EU would remain dominant under the new proposal and that the flexibility element in the burden-sharing mechanism would undermine cooperation.[349] This element was also questioned, for example, by CEPS,[350] ECRE,[351] the Migration Policy Institute (MPI),[352] several entries on the EU Immigration and Asylum Law and Policy blog[353], [354] and a joint statement signed by many civil society organisations from different EU Member States.[355]

Among other significant developments at the European level, the discretionary clause in the Dublin III Regulation,
Article 17(2) was the basis of the relocation scheme for 1,600 unaccompanied children and children with severe medical conditions and other vulnerabilities with their families from Greece to other Member States *(see Section 2)*. This scheme is part of the Action Plan for immediate measures to support Greece,[356] launched in March 2020, with EASO facilitating its implementation by matching children to pledging Member States and supporting Greek authorities, along with UNHCR, in the process of assessing best interests of the children.[357] In addition, the Dublin III Regulation is the basis of the continued relocation efforts following ad hoc disembarkations in Italy and Malta *(see Sections 2 and 4.1)*. For example, a total of 889 persons (420 from Italy and 469 from Malta) have

been relocated to Germany within this context between 2018 and April 2021, with a total of 344 persons (219 from Italy and 125 from Malta) in 2020.

xv Based on Article 4.4 of Regulation (EC) 862/2007 of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers.

xvi Iceland and Liechtenstein do not participate in EASO data exchange.

xviiThrough the discretionary clauses, Member States can derogate the criteria set out in the Dublin III Regulation. According to Article 17(1) – the 'sovereignty clause' – any Member State with which an asylum application is lodged can decide to examine it by derogation from the responsibility criteria. According to Article 17(2) – the 'humanitarian clause' – a Member State can ask another Member State which is not responsible to take charge of the examination of the application in order to unite family relations.

[344] European Commission. (2020, April 17). COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0417(07)&from=EN

[345] Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011. https://eur-lex.europa.eu/eli/reg/2017/2226/2019-06-11

[346] Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA. https://eur-lex.europa.eu/eli/reg/2019/817/2019-05-22

[347] Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726. http://data.europa.eu/eli/reg/2019/816/2019-06-11

[348] Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU) XXX/XXX [Asylum and Migration Fund] COM/2020/610 final, September 23, 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601291110635&uri=COM:2020:610:FIN

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[351] European Council on Refugees and Exiles. (2020, September 25). *Editorial: The Pact on Migration and Asylum: it's never enough, never, never*. https://www.ecre.org/the-pact-on-migration-and-asylum-its-never-enough-never-never/

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[353] Thym, D. (2020, September 28). European Realpolitik: Legislative Uncertainties und Operational Pitfalls of the 'New' Pact on Migration and Asylum. *EU Immigration and Asylum Law and Policy*. http://eumigrationlawblog.eu/european-realpolitik-legislative-uncertainties-und-operational-pitfalls-of-the-new-pact-on-migration-and-asylum/

[354] Maiani, F. (2020, October 20). A "Fresh Start" or One More Clunker? Dublin and Solidarity in the New Pact. *EU Immigration and Asylum Law and Policy*. http://eumigrationlawblog.eu/a-fresh-start-or-one-more-clunker-dublin-and-solidarity-in-the-new-pact/

[355] Greek Council for Refugees | ???????? ????????? ??? ???? ????????? (GCR | ???) et al. (2020). *Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded*. https://www.gcr.gr/en/news/press-releases-announcements/item/1541-joint-statement-the-pact-on-migration-and-asylum-to-provide-a-fresh-start-and-avoid-past-mistakes-risky-elements-need-to-be-addressed-and-positive-aspects-need-to-be-expanded

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