COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING DOCUMENT**

***accompanying the***

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person**

(recast)

# ***Summary of the Impact Assessment***

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## 1. INTRODUCTION

The Commission's Work Programme for 2008[1] included the adoption of a proposal establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person as one of its strategic initiatives (hereafter referred to as proposal amending the Dublin Regulation)[2].

With a view to preparing for the second stage of asylum legislation, as called for by the Hague programme, the Commission started the evaluation process of the results achieved in the first phase of the establishment of the Common European Asylum System (hereafter referred to as the CEAS).

As far as the Dublin Regulation is concerned, the Commission has firstly issued a comprehensive **Evaluation Report** of the Dublin system on 6 June 2007[3] based on a wide range of contributions from different stakeholders. Secondly, the Commission presented on 6 June 2007 a **Green Paper** on the future of the CEAS[4] aiming to identify the possible options for shaping the second phase of the CEAS. While the Evaluation Report served as a **technical assessment** for the Dublin system, the consultation based on the Green Paper served as a **policy evaluation**.

The Commission ordered an external study in order to get support for the preparation of this Impact Assessment. In addition, several **experts' meetings** were organised between October 2007 and July 2008 with Member States, NGOs and UNHCR, lawyers, judges and Members of the European Parliament in order to seek their opinion on the improvements needed to the Dublin Regulation.

The issues raised and the suggestions put forward have provided the basis for the preparation of this Impact Assessment.

## 2. STATE OF PLAY AND PROBLEMS

The following clusters of problems have been identified with regard to the application of the Dublin Regulation:

- Unclear or inadequate operational provisions of the Dublin Regulation are counterproductive for the efficiency of the system and create hardship for asylum-seekers;
- Disputes between Member States concerning the application of the Dublin rules are not tackled in an efficient way;
- Transfers under the Dublin procedure could contribute to further overburden Member States confronted with situations of particular pressure;
- Transfers under the Dublin procedure could, in exceptional circumstances, result in asylum-seekers not benefiting from adequate standards of protection;

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1 COM(2007) 640.

2 CLWP reference No: 2008/JLS/022.

3 Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system - COM(2007) 299, SEC(2007) 742. The "Dublin system" aims to determine which Member State is responsible for examining an asylum application lodged by a third-country national on the territory of one of the Member States. It consists of the Dublin and Eurodac Regulations and their implementing rules.

4 COM(2007) 301.

- Insufficient information and legal safeguards for asylum-seekers;
- Family unity, the interests of the child and of other vulnerable groups are not sufficiently ensured by Member States.

The Impact Assessment then looks into the possible evolution of the situation if no action at EU level was taken and concludes that the existing problems would persist and that there is a strong case for EU action.

## 3. POLICY OBJECTIVES

The **general objectives** of the second phase of the CEAS with regard to the proposal to amend the Dublin Regulation are i) to ensure that the needs of applicants for international protection are comprehensively addressed under the responsibility determination mechanism, and to increase the system's efficiency in order to reduce time and resources spent by Member States and to ii) contribute to better addressing situations of particular pressure on Member States' reception facilities and/or asylum procedural capacities.

The general objectives are to be underpinned in particular by the following **specific objectives**:

I) To ensure the responsibility determination procedure is operating smoothly;

II) To ensure disputes between MS are tackled in an efficient way;

III) To prevent further overburdening of Member States in situations of particular pressure and to ensure that asylum-seekers benefit of adequate standards of protection;

IV) To strengthen the legal safeguards for asylum-seekers and enable them to better defend their rights;

V) To ensure respect for the right to family unity and to improve management of vulnerable groups in order to address their special needs.

A number of indicative operational objectives are also defined.

## 4. POLICY OPTIONS

Taking into consideration the different nature of the above mentioned specific objectives, the Impact Assessment proposes policy sub-options for each of these objectives. The preferred policy option has been constructed by combining the preferred policy sub-options identified for each specific objective.

**Status Quo (this option addresses all identified problems)**

Developments in Member States will continue within the current framework. The existing legal framework would remain unchanged and ongoing activities would continue. The Commission will continue monitoring the implementation of the Dublin Regulation.

### 4.1. Preferred policy option

Given the level of complexity of the proposed policy sub-options, this summary is limited to an enumeration of the main elements composing the preferred policy option. The preferred policy option is made both of **legislative options** and of options focused on **fostering practical cooperation** between Member States.

**With regard to:**

**I) ensuring the smooth operation of the procedure,** the preferred legislative policy sub-options foresee:

– Introducing adequate time-limits for submitting take back requests and for replying to requests on humanitarian grounds and diminishing the deadline for replying to requests of information ;

– Setting-up the obligation for Member States to carry out a specific Dublin interview with asylum-seekers subject to the Dublin procedure;

– Setting-up rules with regard to costs entailed by the Dublin transfers and clarifying the consequences in case of an erroneous transfer and in case of an overruled decision on appeal after a person has been already transferred;

– Clarifying the circumstances and procedures for applying several clauses of the Regulation (the cessation of responsibility clauses, the sovereignty and the humanitarian clauses).

The preferred practical cooperation options which complement the preferred legislative ones propose:

– Identifying and disseminating via experts meetings, best practices in performing transfers of asylum-seekers;

– Creating a handbook on the application of the Dublin Regulations, containing answers to questions raised by Member States' experts on the application of the Regulations in concrete cases and which should be used as reference for similar cases.

**II) ensuring disputes between Member States are tackled effectively,** the preferred legislative policy sub-option provides for a conciliation mechanism for all matters of dispute on the application of the Dublin Regulation;

The preferred practical cooperation option which complements the preferred legislative one refer to the creation of a handbook on the application of the Dublin Regulations (the same as in point I).

**III) preventing further overburdening of Member States in situations of particular pressure** and ensuring that asylum-seekers benefit from adequate standards of protection in the responsible Member State, the preferred policy sub-option provides for the possibility to take a decision at EU level to suspend transfers/returns towards the Member State responsible in limited and well-defined circumstances;

The creation of asylum expert teams coordinated at EU level to assist Member States that would be overburdened because of the high number of Dublin transfers, is the preferred practical cooperation option, partially alternative to the preferred legislative option (it should be applied when there was no decision to freeze the returns (according to the legislative measure) or in case such a decision was taken, for a temporary period until the situation is stable in the affected Member States).

**IV) strengthening the legal safeguards for asylum-seekers and enabling them to better defend their rights,** the preferred legislative policy sub-options propose:

– Inserting an obligation for Member States to provide asylum-seekers with extended information about the Dublin procedure and their rights within it. The need to adopt a standard EU-wide multilingual leaflet about the Dublin procedure under the applicable comitology rules is also laid down;

– Introducing the right to appeal against a transfer decision, and the obligation for the courts or tribunals to examine ex-officio the necessity of temporarily suspending the enforcement of a transfer decision;

– Defining limited conditions for detention of asylum-seekers under the Dublin procedure. In particular, such detention should be a measure of last resort, after the transfer decision has been notified to the asylum-seeker and when all other non custodial measures are not expected to bring satisfactory results because there are objective reasons to believe that there is a risk of the asylum-seeker absconding;

– Clarifying that an asylum-seeker has in all circumstances access to the asylum procedure, pursuant to the rules laid down in the Asylum Procedures Directive;

– Retaining the right of Member States to send an asylum-seeker to a third country, but only after a careful examination of the safe third country criteria set in the Asylum Procedures Directive.

**V) ensuring respect for family unity and improving the management of vulnerable groups,** the preferred policy sub-options propose**:**

– Strengthening the safeguards in relation to unaccompanied minors, for example: the right for an unaccompanied minor to reunify with relatives who can take care of him/her will be made compulsory; rules on the representation of unaccompanied minors throughout the procedure will be inserted; the applicability of the principle of the best interests of the child in the context of determining the Member State responsible will be clarified;

– Introducing a new provision obliging Member States to exchange relevant information (in particular medical information) between them before performing the Dublin transfers, with the primary aim of ensuring continuity in the protection offered to asylum-seekers ;

– Extending the right to family reunification by including applicants and beneficiaries of subsidiary protection into the scope of the Regulation and clarifying that the application of the sovereignty clause should not prevent an asylum-seeker to reunify with a member of his/her family. The right to reunification with dependent relatives will be made compulsory and the definition of 'family member' will be enlarged in order to ensure better compliance with the principle of best interests of the child. Moreover, the application of the humanitarian clause will be extended to relatives who are not necessarily dependent on one another in a strict humanitarian sense (such as major siblings could be).

The preferred practical cooperation options which complement the preferred legislative ones concern:

– The need for Member States to provide staff involved in the procedure of determining responsibility with appropriate trainings, in particular to allow them to appropriately handle the cases involving vulnerable groups;

– The setting- up of a network of Member States experts dealing with minors.

The **main advantages** of the preferred policy option are:

- **The efficiency and coherence** of the responsibility determination procedure will be increased through, for example, the setting up of adequate time-limits, the clarification of the circumstances and procedures for the application of several provisions as well as through practical cooperation measures, such as the creation of a handbook on the application of the Dublin Regulation;

- **The level of protection** afforded to asylum-seekers falling under the Dublin system will be substantially increased through, for example, clarifying the conditions of detention and strengthening the legal safeguards related to Dublin transfer decisions.
- The needs of Member States confronted with exceptional **situations of particular pressure** will be adequately addressed under the Dublin procedure and the rights of asylum-seekers in this type of situations would be better guaranteed.

As far as the **main impacts** are concerned:

- It has an overall high positive impact on fundamental rights of people under the Dublin procedure, such as: the fact that the right to family unity would be considerably reinforced by enlarging the scope of family reunification; that the best interests of unaccompanied minors would be better taken into account; that the right to liberty and free movement would be reinforced by the limitation of detention etc;
- By ensuring a smother and quicker operation of the system, and by better informing asylum seekers about the rules of the Dublin mechanism and their rights within it, the incentive to turn to irregular secondary movements will be reduced, with a final positive impact on their social acceptance and integration in the receiving societies;

As far as the **financial feasibility** is concerned, financial and administrative costs would generally increase, but in some cases long-term cost-reductions or savings could occur as well:

- Additional costs would be required to comply with the new time-limits proposed, but some economies of scale could be reached in the medium term because of a more efficient procedure;
- Some Member States would have to support further costs when they will suspend their outgoing transfers due to situations of particular pressure in the responsible Member State, as they will have to temporarily provide an adequate status for those people not transferred;
- Costs would rise given that Member State would have to adapt their existing information to the requirements of this policy option. Savings could occur if the information provided fosters a more collaborative and compliant behavior of applicants with the Dublin procedure;
- If granted, the suspensive effect of an appeal to a transfer decision could bring costs for the Member State on whose territory the applicant will remain temporarily. However, savings could occur as well, due to the fact that the costs of possible transfers back due to overruled decisions would be avoided.
- Reducing the occasions under which Dublin cases can be detained, should in principle lead to savings, as no strain would be put anymore on Member States' detention facilities and the considerable costs detention implies would be reduced.
- Costs would rise to deal with unaccompanied minors (i.e. representation) and to exchange information regarding vulnerable transferees. Costs could increase for practical cooperation measures, such as staff training and setting up of an expert network. However, many of them could be also co-financed by submitting projects under the European Refugee Fund.

## 5. MONITORING AND EVALUATION

The monitoring and evaluation of the implementation of the preferred policy option will be an important element to ensure the effectiveness of the revised Dublin Regulation. In this respect,

the Commission will regularly evaluate and report on the application of the revised Regulation by Member States. Regular expert meetings will continue to take place in view of discussing implementation problems and exchange best practices between Member States.

The entry into force of the Regulation on Community statistics on migration and international protection[5], which includes specific references to Dublin related statistical data, will contribute to ensuring an adequate monitoring and evaluation process.

Moreover, as announced in the Policy Plan, besides an evaluation done at regular intervals, the Commission is committed to re-evaluate the principle on which the Dublin system is based, once the second stage of the CEAS is in place.

As for indicators to assess progress and effectiveness of the preferred policy option in achieving the policy objectives, the following can be taken into consideration, among others:

- Implementation by MS of the amendments proposed to the Dublin Regulation
- Resources dedicated to the implementation of the amendments proposed to the Dublin Regulation
- Number of effected transfers of asylum seekers in comparison with the number of accepted requests of transfers
- Number of disputes settled under the dispute settlement mechanism
- Number of cases in which the sovereignty and humanitarian clauses are applied
- Resources used for informing and providing legal assistance to applicants for international protection under the Dublin procedure
- Number of applicants subject to Dublin procedure
- Transfers suspended in situations of particular pressure
- (Distribution of) Applications for international protection relative to population size (per 1000 of inhabitants) per MS
- Number of asylum experts teams created and sent to Member States under particular pressure

[5] Regulation (EC) No 862/2007 (OJ L 199, 31.7.2007).