Report from the Commission on the evaluation of the Dublin system

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PURPOSE: to present a report on the evaluation of the “Dublin system”.

BACKGROUND: 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 of the EU, Norway and Iceland (t he territorial scope of the Dublin system has been extended to Switzerland, through an international agreement, which is until now only provisionally applicable). It comprises Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (the Dublin Regulation)and its Implementing Regulationand Council Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (the EURODAC Regulation)and its Implementing Regulation.

CONTENT: the Dublin and EURODAC Regulations require the Commission to report to the European Parliament and to the Council on their application after three years of operation. Since the EURODAC Regulation establishes a tool for the efficient application of the Dublin Regulation, it was decided to merge the two evaluations in one comprehensive report. This report aims to assess the application of both Regulations, from their respective entry into force until the end of 2005 (the reference period.) It further seeks to measure Dublin flows in comparison to the overall asylum seekers' population in the Member States.

Application of the Dublin system: the report warns that the analysis of the statistics provided by the Member States proved extremely difficult. Using only the outgoing data, according to Member States, more than 55 300 requests for transfer were sent out. Of the requests, 72% were accepted; in other words, in 40 180 cases another Member State accepted to take responsibility for an asylum applicant. However, only 16 842 asylum applicants were actually transferred by the Member States The issue of transfers of asylum seekers could, therefore, be regarded as one of the main problems for the efficient application of the Dublin system. As far as EURODAC is concerned, the statistics are much more reliable. In the reference period, data on 657 753 asylum applicants ("category 1 transactions") were successfully sent. The number of such transactions has consistently decreased. This decrease is even more significant when one considers that as of 1 May 2004, 10 new Member States started applying the EURODAC Regulation and that these numbers do not include only "new" asylum applications (multiple applications are also included). This reflects the general drop of asylum applications observed in the EU for some years.

In 2005, a comparison of new asylum applicant data with stored asylum applicant data, showed that 16% of the cases were "multiple applications", i.e. an asylum applicant had previously lodged an asylum application either in the same or another Member State .

In the same reference period, data on 48 657 third-country nationals apprehended in connection with the irregular crossing of an external border ("category 2 transactions") were registered in the Central database. The number of such transactions has been considerably increasing each year, but it is still surprisingly low when one considers the strong irregular migratory pressures at the external borders of the EU. Again for the reference period, data on 101,884 third-country nationals found illegally present on the territory of a Member State ("category 3 transactions") were registered. This figure has been increasing each year. The evaluation has shown that the Dublin Regulation is in general being applied in a satisfactory manner and

that it does provide a workable system for determining responsibility for the examination of asylum applications. However, the report identifies certain issues in its application, inter alia:

- uniform application of the rules and criteria established by the Dublin Regulation is not always applied;

- the evidence required for taking charge of an asylum seeker is often difficult to provide. This has had particularly negative effects on the application of the family unity criteria, thus undermining the practical implementation of one of the most important provisions of the Dublin Regulation. A similar difficulty has been observed regarding the application of the criterion of illegal entry to the EU territory, where only EURODAC evidence tends to be accepted. While understanding the importance of clear evidence in order to avoid abuse of the system, the Commission considers that Member States should apply the Dublin Regulation and its Implementing Rules in their entirety, using all means of proofs foreseen, including credible and verifiable statements of the asylum seeker;

- Member States increasingly introduce custodial measures for persons subject to a transfer decision in order to prevent them from absconding before the transfer is carried out. The Commission recalls that while recognising the need to find ways of improving the effectiveness of transfers, custodial measures should be only used as a last resort, when all other non-custodial measures are not expected to bring satisfactory results and because there are objective reasons to believe that there is a high risk of the asylum seeker absconding. In any event, due account should always be taken of the situation of families, persons with medical needs, women and unaccompanied minors.

As far as the EURODAC Regulation is concerned, while all Member States apply it in a generally satisfactory manner, the practical application of some provisions remains problematic. The Commission discusses the following: the need for a clear deadline for transmitting data to the EURODAC Central Unit; systematic non compliance with the obligation to fingerprint illegal entrants; the need to improve the quality of the data sent to the EURODAC Central Unit; the need to respect the obligation to delete certain data e.g. in cases where an asylum seeker acquires citizenship; and data protection. It adds that it will propose the storage of data of persons apprehended when illegally staying on the EU territory.

Analysis of Dublin flows: contrary to a widely shared supposition that the majority of transfers are directed towards the Member States located at an external border, it appears that the overall allocation between border and non-border Member States is actually balanced. In 2005, the total number of all transfers to EU external border Member States was 3 055, while there were 5 161 transfers to non-border Member States. The Commission’s working document contains a detailed analysis attempting to determine to what extent these Dublin flows have affected the overall asylum seeker population in the Member States. In brief, it appears that Dublin transfers did not increase or decrease the total number of asylum seekers by more than 5% in most Member States. However, in the case of Poland, the increase was around 20% and in the case of Slovakia, Lithuania, Latvia, Hungary and Portugal, around 10%. On the other hand, in the case of Luxembourg and Iceland, the number of asylum seekers decreased by around 20%. The majority of transfers correspond to "take back" cases, which, for the most part, do not correspond to new asylum applications for the destination Member States, since the applications were already registered in the asylum statistics and the examination of the application had already started.

It is worth noting also that results of searches of "category 1 transactions" against "category 2 transactions" show that those asylum seekers who had entered EU territory illegally before lodging their application, transited mainly via Spain, Italy and Greece. However, most persons apprehended at the border of these Member States subsequently applied for asylum in the same state they entered irregularly. On the other hand, those who did not apply for asylum and travelled further, headed mainly for the UK and France.

Lastly, the Commission states that, owing to the lack of precise data, it was not possible to evaluate one important element of the Dublin system, namely its cost. However, Member States consider the fulfilling of the political objectives of the system as very important, regardless of its financial implications.