

# International protection: criteria and mechanisms for determining the Member State responsible for examining an application lodged by a third-country national or a stateless person.

## Recast

2008/0243(COD) - 03/12/2008 - Legislative proposal

**PURPOSE:** to recast Regulation 343/2003/EC ("the Dublin Regulation") on 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.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**BACKGROUND :** the Commission's Evaluation Report of the Dublin system (please see the supplementary document under procedure [CNS/2001/0182](#) dated 06/06/2007) has identified a number of deficiencies related mainly to the efficiency of the system put in place by the current legislative provisions and the level of protection afforded to applicants for international protection, which are subject to the Dublin procedure. The Commission therefore wishes to amend the Dublin Regulation in order, on the one hand, to enhance the system's efficiency and, on the other, to ensure that the needs of applicants for international protection are comprehensively addressed under the responsibility determination procedure. This proposal is part of a first package of proposals which aim to ensure a higher degree of harmonisation and better standards of protection for the Common European Asylum System ("CEAS")

**CONTENT:** the main aim of the proposal is to increase the system's efficiency and to ensure higher standards of protection for persons falling under the "Dublin procedure". At the same time, the proposal aims to contribute to better addressing situations of particular pressure on Member States' reception facilities and asylum systems. The main points are as follows:

**Scope of the Regulation:** the proposal extends the scope of the application of the Regulation in order to include applicants for (and beneficiaries of) subsidiary protection.

**Efficiency of the system:** several modifications are proposed, in particular:

- deadlines for submitting take back requests are established and the deadline for replying to requests for information is reduced. A deadline for replying to requests on humanitarian grounds is introduced and it is clarified that requests on humanitarian grounds can be made at any time;
- the cessation of responsibility clauses have been clarified as regards the circumstances under which the cessation clauses should apply, the Member State which bears the burden of proof and the consequences of the cessation of responsibility. These clarifications aim to diminish divergences of interpretation by Member States;
- the circumstances and procedures for applying the discretionary clauses (humanitarian and sovereignty) have been clarified;
- rules on transfers have been added, i.e. on erroneous transfers and costs for transfers. A new provision on the sharing of relevant information before transfers are carried out is added to facilitate cooperation between Member States on practical arrangements for transfers;

- the existing dispute settlement mechanism, provided currently by the Dublin Implementing Regulation only for divergences between Member States in the application of the humanitarian clause, has been extended in order to cover matters of dispute on the application of the entire Regulation;
- a provision on the organisation of a compulsory interview is inserted.

**Legal safeguards:** the proposal introduces a number of modifications:

- the content, form and the timing for providing information to applicants for international protection are specified in greater detail in the Regulation. Moreover, the proposal envisages the adoption of a common information leaflet to be used across the Member States;
- the right to appeal against a transfer decision, together with the obligation for the competent authorities to decide whether or not its enforcement should be suspended and to allow the person concerned to remain on the territory pending such a decision, are laid down. Moreover, the right to legal assistance, and to linguistic assistance, is clarified and the notification process is further clarified in order to ensure a more effective right to seek a remedy;
- a new provision recalling the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection is included. Moreover, in order to ensure that detention of asylum-seekers under the Dublin procedure is not arbitrary, limited specific grounds for such detention are proposed. Specific rules are laid down for the special situation of minors and that of unaccompanied minors.

**Family unity:** it is proposed to:

- extend the right to family reunification to include family members who are beneficiaries of subsidiary protection and who reside in another Member State ;
- make compulsory the reunification of dependent relatives (i.e. either a relative which is dependant on an applicant or an applicant which is dependant on a relative) and of unaccompanied minors with relatives who can take care of them;
- extend the definition of "family members" as far as minors are concerned, in order to ensure better protection of the "best interests of the child";
- exclude the possibility of sending back an applicant for whom one of the family unity criteria can be applied at the time of the most recent application, on condition that the Member State where the first application was lodged has not already taken a first decision regarding the substance.

**Unaccompanied minors and other vulnerable groups:** a new provision dealing with guarantees for minors is added, and the protection afforded to unaccompanied minors is enlarged to allow for reunification not only with the nuclear family but also with other relatives present in another Member State who can take care of them. In the absence of a family member or another relative, the Member State responsible is the one where the applicant lodged his/her most recent application, provided this is in his /her best interests.

**Particular pressure or inadequate level of protection:** where there is particular pressure on certain Member States with limited reception and absorption capacities, Dublin transfers add to the burden on those Member States. A new procedure is inserted allowing for the suspension of Dublin transfers towards the responsible Member State. Such a procedure can also be used in cases where there are concerns that Dublin transfers could result in applicants not benefiting from adequate standards of protection in the responsible Member State, in particular in terms of reception conditions and access to the asylum procedure.