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) - 26/06/2013 - Final act

PURPOSE: to recast the so-called “Dublin Regulation” for determining the Member State responsible for examining an application lodged by a third-country national or a stateless person.

LEGISLATIVE ACT: Regulation (EU) 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)

CONTENT: the European Parliament and the Council adopted a Regulation recasting the so-called 2001 “Dublin Regulation” with a view to 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, thus completing another step towards the establishment of a **common asylum procedure in the Union.**

The recasting of the Regulation is an integral part of the revision of the Community *acquis* in the area of asylum policy and the setting in place of a Common European Asylum System.

The main points covered by this revision may be summarised as follows:

Objective: the recast of the Regulation mainly seeks to improve the effective of the operation of the previous Regulation and lay down higher standards of protection in favour of applicants with respect to the procedure for determining the responsibility, in applying the Regulation’s legal framework.

Scope: the Regulation applies to applicants for international protection as well as applicants for subsidiary protection.

Principles and safeguards for applicants:

- right to information: the revised Regulation provides that the applicant shall have the right to receive in writing (or orally, if applicable) and in a language he/she understands detailed information on the content of the Dublin Regulation upon submission of the application. To this effect, provision is made for a common leaflet (as well as a specific leaflet for unaccompanied minors) to be drawn up by the Commission in accordance with its implementing powers;

- individual interview: the Regulation makes provision for the organisation of an individual interview (and by means of an interpreter, if necessary) with the applicant in due course and in an appropriate manner in order to facilitate the process of determining the Member State responsible. The Member State

omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant;

- guarantees for minors: the principle of the best interests of the child underlies the relevant provisions of the Regulation. Member States shall be required to ensure that there is appropriate representation for minors and to take, as soon as possible, appropriate action to identify the family members or relatives of the unaccompanied minor on the territory of another Member State. Member States may call for the assistance of appropriate international organisations for this purpose. Staff dealing with minors shall have (and continue to receive) appropriate training.

Criteria for determining the Member State responsible: the hierarchy of criteria for determining the Member State responsible remains the same. However, the new regulation provides for the following new standards:

- unaccompanied minors and definition of relatives: the revised Regulation lays down the legal framework which governs the reunification of the unaccompanied minor (the case of married minors, where the spouse is not legally on the territory of a Member State is also covered) with members of his /her family, brothers and sisters or relatives, as well as the conditions applicable for each provision with a view to **making the Member State in which the reunification will take place responsible for examining the application**. The primary consideration to be applied in all cases is that **any reunification is in the best interests of the minor**.

The requirement concerning the best interests of the minor also applies **in the absence of a family member, sibling or relative**, in which case the Member State responsible is that in which the unaccompanied minor lodged his or her application. The Commission shall be empowered to adopt delegated acts in this context. Moreover, in the annex, there is a statement by the European Parliament, the Council and the Commission inviting the Commission to consider a possible revision in the future of this provision.

The Regulation also seeks to counter abuses of the asylum procedures. In this context, for the purposes of family reunification, the **definition of "relative"** now specifically covers the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State.

- revision of the definition of unaccompanied minor: the revised Regulation provides that the unaccompanied minor may or may not be married.

Dependent persons and discretionary clauses:

- dependent persons: the Regulation lays down the framework for the handing over of asylum applicants who, because of their particular vulnerability, are dependents. Thus, and in order to ensure that the principles of family unity and the best interests of the child are respected, the existence of a relationship of dependence between the applicant and his/her child, brother or sister or father or mother, on account of pregnancy, a new-born child, serious illness, sever disability or old age, shall constitute a binding responsibility criterion. Likewise, when an applicant is an unaccompanied minor, the presence in the territory of another Member State of another member of his/her family or of another relative who could take responsibility for him/her, shall also constitute a binding responsibility criterion.

- discretionary clauses: under the previous Regulation, a Member State can always decide to examine an application for international protection that is lodged with it, even if such examination is not its responsibility under the criteria normally applied (discretionary clause). The scope of this provision has,

however, been revised so that the **reference to "humanitarian grounds"** is more strictly defined in order to bring together any family relations on humanitarian grounds based in particular on **family or cultural considerations**.

Obligations of the Member State responsible: in the context of the chapter that lays down the obligations of the Member State responsible, the Regulation makes provision for strengthened requirements at legal and procedural level designed to safeguard applicants' rights and to render cooperation between the Member States concerned more efficient in practice.

More specifically, these concern:

- rules for the taking charge and taking back charge of an applicant;
- basic procedural guarantees;
- remedies.

Transfer to another Member State and means of recourse: as under the old Regulation, when an applicant is to be transferred to another Member State in accordance with the Dublin principle, the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible for examining his or her application for international protection. The new Regulation introduces the right of the person concerned to appeal, **emphasising their right to an effective remedy, in fact and in law, against a transfer decision,** before a court or tribunal. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy.

The revised Regulation also lays down the rules under which the person concerned shall have the right to free legal assistance, where applicable, in order to effectively exercise his/her right to effective remedy to avoid a transfer. Member States may, however, provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

As a corollary to these measures, a new provision has been added which governs the determination of the Member State responsible for the examination of the application **where the transfer of the person concerned is impossible due to a real risk of that person's fundamental rights being violated in a Member State** . In this case, the determining Member State shall become the Member State responsible.

Holding in detention: the Regulation provides a comprehensive framework in which the conditions whereby a person concerned may be placed in detention may be applied on the basis of Dublin "reasons". When there is a **significant risk of absconding**, Member States may detain the person concerned in order to secure transfer procedures, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively. Detention shall be for **as short a period as possible** and shall be for no longer than the time reasonably necessary.

Early warning, preparedness and management of asylum crises: the Regulation provides for a process to allow the Union to promote preventive measures at an early stage and pay the appropriate attention to situations in which the application of the Dublin Regulation might be jeopardised (with direct effects for applicants who find themselves in the Member State concerned) due to particular pressure on the asylum system of a Member State or problems in its operation. It seeks to provide for effective cooperation and to **strengthen mutual trust and solidarity between Member States** by preventing a crisis in the asylum system of one or several Member States. The Member State that finds itself under particular pressure shall be called upon to prepare a plan of preventive action and provisions for measures aimed at addressing a particular pressure, including for example, a specific crisis management mechanism.

Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council shall closely monitor the situation.

The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate.

All the parties concerned (the Member State that is experiencing particular pressure, the European Asylum Support Office, the Council and the European Parliament) shall be duly kept informed and, where considered necessary and appropriate, shall be associated in decisions taken.

Report: by 21 July 2016, the Commission shall report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments.

Territorial provisions: Denmark is not taking part in the adoption of this Regulation and is not bound by it, in accordance with the relevant provisions of the Treaty. The provisions of the Regulation only apply to France's European territory.

DELEGATED ACTS: the Commission is empowered to adopt delegated in respect of:

- the identification of family members, sisters or brothers or relatives of an unaccompanied minor;
- the criteria establishing the existence of family ties;
- the criteria for evaluating the capacity of a relative to look after an unaccompanied minor, including in situations where family members, brothers or sisters or relatives of the unaccompanied minor reside in several Member States;
- aspects permitting the evaluation of a relationship of dependency and criteria for evaluating if a person is capable of taking charge of a minor or aspects to be taken into account to assess the inability to travel for a significant period of time.

In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child

The power to adopt delegated acts will be conferred on the Commission for a period of **five years** from the date of entry into force of the Regulation**.**

A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

ENTRY INTO FORCE: the Regulation enters into force on 19 July 2013. It applies to all applications for international protection introduced as of the first day of the sixth month following its entry into force and shall apply from that date.

Regulation (EC) No 343/2003 is repealed, subject to the application of transitional measures in certain cases.