

Eurodac system for the comparison of the fingerprints of applicants for asylum and certain other aliens for the effective application of the Dublin Convention

1999/0116(CNS) - 06/06/2007 - Follow-up document

Both the Dublin and the EURODAC Regulations require the Commission to prepare reports on the application of these Regulations following their entry into force and to propose, if necessary, amendments. In order to give a complete picture of the overall functioning of the Dublin system and EURODAC the Commission has decided to present a single evaluation that comprises their respective Implementing Regulations. The report has been divided into four parts: introduction; a practical review of the Dublin Regulation; the practical application of the EURODAC Regulation; and the extent to which Dublin flows have affected the overall asylum seekers population in the Member States.

1. Introduction: The report is based on a number of sources. In July 2005, a detailed questionnaire was sent to all the Member States participating in the Dublin system and the EURODAC Regulation. Information was also obtained from experts and other Commission services. Statistical data was also an essential source for the evaluation – though the differing approach to reporting statistics did create some confusion particularly as far as the Dublin Regulation is concerned. Such differences make comparisons and analysis very difficult. For EURODAC the Commission has relied, in the main, on the past three annual reports as well as reports from the European Data Protection Supervisor. As far as statistical data on the practical application of the EURODAC system are concerned, they are fully reliable since this data was provided by automatic reports from the Central Unit.

2. Overview of the Dublin System and the application of the Dublin Regulation: To recall, the main objective of the Dublin Regulation is to have a clear and workable mechanism for determining responsibility for asylum applications lodged in the Member States of the European Union. In other words, addressing the phenomenon of “refugees in orbit” is one of the Dublin systems main objectives. It also seeks to prevent asylum shopping by preventing abuse of asylum procedures in the form of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States. Responsibility for examining an asylum application lies with the Member State which played the greatest part in the applicant’s entry into, or residence on, the territories of the Member States, subject to exceptions designed to protect family unity. The readmission criteria, contained in the Dublin Regulation, provides for arrangements whereby an applicant can be readmitted or “taken back” by the Member State considered most “responsible”.

The general figures and findings given in the report cover the implementation of the Dublin system from September 2003 until December 2005 for the 14 “old” Member States, Iceland and Norway and from May 2004 until December 2005 for the ten “new” Member States. Since the entry into force of the Dublin Regulation in 2003 the Member States report having received nearly 72 300 requests compared to having sent out more than 55 300 requests. Since the introduction of EURODAC, requests based on the fingerprint hits have constituted more than 50% of all incoming and outgoing requests. Nevertheless, it appears that the impact of the new tool on the number of acceptances has been limited, since the level of acceptances, as a share of the total number of requests, has only modestly increased, from 69% of incoming requests under the Convention to 73% under the Regulation.

A substantial increase of transfers as the percentage of the acceptances has been noted – from 27% of outgoing acceptances under the Dublin Convention to 52.28% under the Dublin Regulation and from 25.62% to 40.04% respectively in the case of incoming transfers. The increase is even more apparent in the context of general asylum flows in the EU. Transferred asylum applicants under the Convention amounted to 1.66% (incoming transfers) and 1.67% (outgoing transfers) of the overall number of asylum applications lodged in the given period. Under the Regulation, the proportion has doubled and in the surveyed period it reached 4.05% and 4.28% respectively. Against this background it would appear that the performance of the system in regard to the determination of the responsible Member State has improved since the Dublin Regulation entered into force. Nevertheless, despite the sizeable increase, the rate of transfers remains at a fairly low level. The issue of transfers should therefore be considered as the main problem for the efficient application of the Dublin system

As far as the application of the Dublin Regulation is concerned the Commission reports that it has been applied, with general satisfaction by all the participating Member States as well as by Norway and Iceland. The report devotes a whole section to the most important provisions of the Dublin Regulations. Particular emphasis is put on the problematic issues which have been identified and appropriate solutions are consequently proposed – ranging from simple interpretive guidelines to suggestions for improvement. This section, in summary, makes some of the following suggestions:

- **Scope of the Dublin Regulation:** The Commission intends to extend the scope of the Dublin Regulation to include subsidiary protection.
- **Application of the general principles:** The Commission proposes to better specify the circumstances and procedures for applying the Sovereignty clause, notably to introduce the condition of consent of the asylum seeker concerned by the application of the sovereignty clause.
- **The Humanitarian clause:** The Commission proposes to clarify the circumstances and procedures for the application of the humanitarian clauses. This would include the issue of consent and information transmission between the Member States.
- **Requests for taking back or taking charge of an asylum seeker:** The Commission intends to propose the introduction of time-limits for “take-back” requests.
- **Cessation of responsibility:** The Commission intends to propose: clarifying the circumstances under which the cessation clause should apply; better defining the relevant provisions; and clarifying which Member State bears the burden of proof.
- **Information sharing:** The Commission intends to propose shortening the deadline for replying to request for information to four weeks.
- **Practical arrangements between the Member States:** The Commission proposes allowing Member States to conclude bilateral arrangements concerning “annulment” of the exchange of equal numbers of asylum seekers in well-defined circumstances.

3. Application of the EURODAC Regulations: All Member States have successfully implemented the EURODAC system in their national infrastructure. The accession of ten new Member States did not give rise to any problems – all but two of them began operations on time. Since operations began in 2003, the EURODAC Central Unit has always managed to meet time-limit requirements.

As far as the matter of Member State data transmission is concerned, the Commission urges the Member States to abide by the rules set in the EURODAC Regulation. Systematic non compliance with the obligation to fingerprint illegal entrants could be taken into account by the Commission when reviewing the implementation of the “Solidarity and Management Migration Flows Framework Programme” in 2010 – and in particular the relevant distribution criteria applicable for the different funds. In addition, the Commission urges the Member States to send their data promptly to the EURODAC Central Unit in accordance with Article 4 and 8 of the EURODAC Regulation. Within this context the Commission proposes to set a clearer deadline for transmitting data to the EURODAC Central Unit.

- **Category 1 against Category 1:** The annual reports on the activities of the EURODAC Central Unit give an indication of the secondary movements of asylum seekers through the EU. Such flows primarily occur between neighbouring states. One striking finding is that during the whole reference period, in Member States such as Italy and Cyprus, asylum seekers tend to apply a second time more in the same State rather than applying in another Member State.
- **Multiple applications:** The number of multiple applications – i.e. the number of cases where an asylum applicant has at least applied once before, in the same or in another Member State, is constantly increasing – from 7% of the asylum applications in 2003 to 16% in 2005. In 2005, for example, four persons lodged an asylum application eleven times. This increasing trend is not unusual given that the Central database began empty. It is, however, a clear indication that an important number of asylum seekers try to have their asylum claim examined in more than one Member State or more than once by the same Member State.
- **Category 1 against Category 2:** In the first year of application, it was impossible to draw any conclusions due to the low number of category 2 transactions registered. From 2004 on, however, there is clear evidence that most hits of category 1 transactions against category 2 transactions occurred against data sent previously by Spain, Italy and Greece. In those three Member States, a large part of the hits were “local”, which means that persons apprehended in connections with the irregular crossing of their external border subsequently applied for asylum in the same Member State they entered. In Italy this was the case for as much as 73% of the cases recorded.
- **Category 3 against Category 1:** Category 3 transactions are not obligatory and as a result not all of the Member States use the possibility of using this check. Noteworthy is the fact that in a number of Member States, aliens whose claim for asylum has been rejected, do not move to another Member State later. This is particularly the case in Poland and the Slovak Republic. In four Member States with the highest record of category 3 transactions (namely Germany, the Netherlands, Norway and the Czech Republic) around 19% of persons apprehended when illegally staying on their territory had previously lodged an asylum claim.
- On the question of “deleting” i.e. instructing the Central Unit to delete data on an asylum seeker as soon as they have acquired citizenship or as soon as they have been issued with a residence permit, the report notes that the introduction of a specific code for each type of deletion would help assessing if the obligation of advance erasure is fully respected.

4. Analysis of Dublin Flows: In order to give a more comprehensive picture of the extent to which Dublin flows have affected the overall asylum seekers population of the Member States, the Commission has looked at both the real number of Dublin transfers – i.e. taking into account the transfers which actually took place, as well as the potential number of transfers – i.e. the situation if all accepted transfers were effected. The Dublin flows were compared first in absolute terms (the number representing net volumes of acceptances and transfers) and in relative terms (as a share of the overall number of asylum applications in a given Member State).

Of the respective total numbers of sent and received requests, *outgoing* “take back” requests amounted to nearly 75% and *incoming* “take back” requests to more than 70%. Given that “take back” requests are usually based on strong evidence produced by EURODAC it can be assumed that the total level of acceptance of such request is high. It can also be assumed that a high proportion of transfers will be based on take back requests.

The report also finds that, contrary to the 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 countries is actually fairly balanced. In 2005, the number of all incoming transfers to EU external border countries was 3055, while there were 5161 incoming transfers to Member States without an EU external border.

It can also be concluded that, in real terms, the Dublin mechanism 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%.