

Basic information	
<p><b>2001/0182(CNS)</b></p> <p>CNS - Consultation procedure Regulation</p>	Procedure completed
<p>Asylum: Member State responsible for examining an application lodged by a third-country national</p> <p>Repealed by <a href="#">2008/0243(COD)</a></p> <p><b>Subject</b></p> <p>7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)</p>	

Key players					
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>	<b>Appointed</b>	
	<b>LIBE</b>	Citizens' Freedoms and Rights, Justice and Home Affairs	MARINHO Luís (PSE)	13/09/2001	
	<b>Committee for opinion</b>		<b>Rapporteur for opinion</b>	<b>Appointed</b>	
	<b>AFET</b>	Foreign Affairs, Human Rights, Common Security, Defense	The committee decided not to give an opinion.		
	<b>JURI</b>	Legal Affairs and Internal Market	The committee decided not to give an opinion.		
	<b>PETI</b>	Petitions	SBARBATI Luciana (ELDR)	13/09/2001	
	Council of the European Union	<b>Council configuration</b>		<b>Meetings</b>	<b>Date</b>
		Economic and Financial Affairs ECOFIN		2485	2003-02-18
Justice and Home Affairs (JHA)		2469	2002-11-28		
Justice and Home Affairs (JHA)		2455	2002-10-14		
Justice and Home Affairs (JHA)		2436	2002-06-13		
European Commission	<b>Commission DG</b>		<b>Commissioner</b>		
	Justice and Consumers				

Key events

Date	Event	Reference	Summary
26/07/2001	Legislative proposal published	COM(2001)0447	Summary
03/09/2001	Committee referral announced in Parliament		
19/03/2002	Vote in committee		Summary
19/03/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0081/2002	
08/04/2002	Debate in Parliament		
09/04/2002	Decision by Parliament	T5-0153/2002	Summary
13/06/2002	Debate in Council		
14/10/2002	Debate in Council		Summary
18/02/2003	Act adopted by Council after consultation of Parliament		
18/02/2003	End of procedure in Parliament		
25/02/2003	Final act published in Official Journal		

Technical information	
Procedure reference	2001/0182(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by <a href="#">2008/0243(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 063
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/15013

Documentation gateway				
<b>European Parliament</b>				
Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0081/2002</a>	19/03/2002	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0153/2002</a> OJ C 127 29.05.2003, p. 0029-0151 E	09/04/2002	Summary
<b>European Commission</b>				
Document type	Reference	Date	Summary	
Document attached to the procedure	SEC(2001)0756 	13/06/2001	Summary	
Legislative proposal	COM(2001)0447 OJ C 304 30.10.2001, p. 0192 E	26/07/2001	Summary	

Follow-up document	 <a href="#">COM(2007)0299</a>	06/06/2007	<a href="#">Summary</a>	
Follow-up document	 <a href="#">SEC(2007)0742</a>	06/06/2007		
<b>Other institutions and bodies</b>				
Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	<a href="#">CES0352/2002</a> <a href="#">OJ C 125 27.05.2002, p. 0028</a>	20/03/2002	
EU	Implementing legislative act	<a href="#">32003R1560</a> <a href="#">OJ L 222 05.09.2003, p. 0003-0023</a>	02/09/2003	<a href="#">Summary</a>

Additional information		
Source	Document	Date
European Commission	<a href="#">EUR-Lex</a>	

Final act
<a href="#">Regulation 2003/0343</a> <a href="#">OJ L 050 25.02.2003, p. 0001-0010</a> <span style="float: right;"><a href="#">Summary</a></span>

## Asylum: Member State responsible for examining an application lodged by a third-country national

2001/0182(CNS) - 26/07/2001 - Legislative proposal

**PURPOSE** : to establish 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. **CONTENT** : a common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice to those who, forced by circumstances, legitimately seek protection in the Community. The conclusions of the Tampere European Council of October 1999 state that a common European asylum system should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application. With this proposal for a Regulation, the Commission has added a block to the construction of a common European asylum system. This proposal, which is designed to replace the Dublin Convention, essentially sets out the Member States' obligations vis-à-vis each other, which must apply to all parties on the same terms. The aim of this proposal is to: - ensure that asylum seekers have effective access to the procedures for determining refugee status; - prevent abuse of asylum procedures; close the loopholes and correct the inaccuracies detected in the Dublin Convention; - adapt the system to the new realities resulting from the progress made as regards the establishment of an area without internal borders; - the Member States responsible to be determined as quickly as possible; - increase the system's efficiency. More specifically, even though this proposal is based on the same principles as the Dublin Convention and its scope is the same, it does however include a number of innovations: - new provisions emphasising each Member States' responsibility vis-à-vis partners in the Union when it allows illegal residents to remain on its territory; - much shorter procedural deadlines consistent with the proposed deadlines for granting and withdrawing refugees status, to ensure that applications for asylum are processed rapidly; - extended deadlines for implementing transfers to the Member State responsible so as to allow for the practical difficulties arising in connection with such transfers and; - new provisions aimed at preserving the unity of asylum seekers' families.

## Asylum: Member State responsible for examining an application lodged by a third-country national

2001/0182(CNS) - 14/10/2002

The Council held a discussion on the proposal for a regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application. The debate focused on the hierarchy of criteria for determining the Member State responsible for examining the application of an asylum seeker who had irregularly crossed the border into a Member State, on the cases where this asylum seeker had been previously living for a certain period in another Member State, and on the difficulties linked to different time limits set out by the regulation with regard to the determination of the competent Member State or the transfer of an asylum seeker to this Member State. Following the discussion, the Council charged the Permanent Representatives Committee with continuing the work to allow agreement to be reached at the next JHA Council on 28 /29 November 2002.

## Asylum: Member State responsible for examining an application lodged by a third-country national

2001/0182(CNS) - 02/09/2003 - Implementing legislative act

PURPOSE : to establish detailed rules for establishing which Member State is responsible for examining an asylum application. LEGISLATIVE ACT : Commission Regulation 1560/2003/EC laying down detailed rules for the application of Council Regulation 343/2003/EC 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. CONTENT : This Commission Regulation establishes a number of specific arrangements for the effective application of Regulation 343/2003 /EC. The arrangements facilitate cooperation between the authorities in the Member States competent for implementing that Regulation as regards: - the transmission and processing of requests for the purposes of taking charge and taking back; and - requests for information and the carrying out of transfers. The Regulation is based on the common principles, lists and forms adopted by the committee set up by the Dublin Convention, together with certain amendments. In addition, the Regulation deals with the following points: - the interaction between Regulation 343/2003/EC and the application of Council Regulation 2725/2000/EC concerning the establishment of "Eurodac"; - a mechanism for finding a solution in cases where Member States differ over the application of the humanitarian clause in Article 15 of Regulation 343/2003/EC. - rules are established relating to the technical standards applicable and the practical arrangements for using the electronic transmission network to facilitate the implementation of Regulation 343/2003/EC. The following points should be noted: - Directive 95/46/EC on the processing of personal data applies to processing carried out under this Regulation; - Denmark is not bound by this Regulation, but it will be applied by Iceland and Norway. ENTRY INTO FORCE : 06/09/2003.

## Asylum: Member State responsible for examining an application lodged by a third-country national

2001/0182(CNS) - 09/04/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Luis MARINHO (PES, Portugal) on the criteria for determining the Member State responsible for examining an asylum application. (Please refer to the document dated 19/03/02.)

## Asylum: Member State responsible for examining an application lodged by a third-country national

2001/0182(CNS) - 06/06/2007 - Follow-up document

The Dublin and EUODAC Regulations require the Commission to report to the European Parliament and to the Council on their application after three years of operation. Since the EUODAC 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 (2<sup>nd</sup> 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 EUODAC 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 EUODAC 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

## **Asylum: Member State responsible for examining an application lodged by a third-country national**

2001/0182(CNS) - 28/11/2002

Following broad agreement on the draft "Dublin II" Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member State by a third-country national or a stateless person, the Presidency decided to launch a silent procedure in order to reach a political agreement on its compromise proposal. The Presidency compromise text regards mainly the time limits which lead to identifying the Member State responsible for examining the asylum application in case of illegal entry. Where it is established that an asylum seeker has irregularly crossed the border into a Member State, this Member State shall be responsible for the application for examining the asylum claim for as long as twelve months after the date of the border crossing. After this period, the responsibility for examining the claim will be incumbent upon that Member State, in which the asylum seeker has been previous living for at least five months.

## **Asylum: Member State responsible for examining an application lodged by a third-country national**

2001/0182(CNS) - 13/06/2001 - Document attached to the procedure

This document comprises of the evaluation of Dublin Convention. The Convention determining the State responsible for examining applications for asylum lodged in one of the Member States in the European Communities was signed in Dublin on 15 June 1990 and came into force on 1 September

1997. The Convention lays down arrangements and deadlines for submitting the requests whereby Member States ask each other to take asylum seekers in charge or to take them back. 655 204 applications for asylum were made during the period 1998-1999. From a statistical point of view, the document underlines the small proportion of asylum applications which gave rise to a request to another Member State to take charge of/take back an applicant. While, in theory, every asylum application is examined, however briefly, in the light of the responsibility criteria in the Convention, only in 6% of cases does the Member State with which the asylum application is lodged request another Member State to take charge of/take back the applicant. The second immediate finding is the high success rate for requests addressed to other Member States under the Convention. Since the rate achieved is close to 70%, it may be concluded that, most of the time, requests are only submitted advisedly and that, generally, Member States examine the requests submitted to them by other Member States in good faith and in a positive frame of mind. The result is that in more than 95% of cases it is the Member State in which the asylum application is lodged which assumes responsibility for examining it. The third finding concerns the gap between the number of cases where a transfer has been agreed and the number of transfers actually carried out or recorded. The transfer of the asylum seeker is attested only in slightly less than 40% of cases; the proportion of "transferable" asylum seekers not transferred is thus 60%. Lastly, it seems that the number of asylum seekers actually transferred accounts for slightly less than 30% of those in respect of whom a request to take charge/take back is made, or for 1.70% of the total applications for asylum lodged in the 15 Member States. The document distinguishes two groups of States, Germany, Austria, Italy and France are clearly the States where the balance, in absolute terms, is the most unfavourable, followed by Spain, Greece, Portugal and Ireland. Belgium's situation is more difficult to determine, since that country records only a small number of transfers, all of them under escort. In the opposite camp, the United Kingdom, the Netherlands, Sweden and Denmark are clearly the Member States with the most favourable results as regards the balance of transfers.

## Asylum: Member State responsible for examining an application lodged by a third-country national

2001/0182(CNS) - 18/02/2003 - Final act

**PURPOSE** : to establish the criteria and mechanism for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national. **COMMUNITY MEASURE** : Council Regulation 343/2003/EC. **CONTENT** : This Regulation is part of the EU's objective to establish a common policy on asylum. It sets out a method for determining the Member State responsible for the examination of an asylum application. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the member states of the European Communities, signed in Dublin on 15 June 1999 (Dublin Convention). The process of determining the Member State responsible starts as soon as an application for asylum is first lodged, and is set out in this regulation. One of the key points is that there is provision for the processing together of the asylum applications of the members of one family by a single Member State. This makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent. Member States are able to derogate from the responsibility criteria so as to make it possible to bring family members together where this is necessary on humanitarian grounds.

**PRINCIPLES** : each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in the Regulation. The process of determining the Member State responsible founder this Regulation shall start as soon as an application for asylum is first lodged with a Member State. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member States concerned. It should be added that the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for asylum of that parent or guardian even if the minor is not individually an asylum seeker.

**HIERARCHY OF CRITERIA** : the criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Regulation and on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State. The Regulation states that : - where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum. - where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire. - if the asylum seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire. - where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum. - where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, unless the visa was issued when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for asylum. - where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision. - where the asylumseeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order: a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date; b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type; c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date. - where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than 6 months previously and which enabled him actually to enter the territory of a Member State shall apply for such time as the applicant has not left the territories of the Member States. - where the asylum seeker is in possession of one or more residence documents which have expired more than 2 years previously or one or more visas which have expired more than 6 months previously and enabled him actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application is lodged shall be responsible. - where it is established, on the basis of proof or circumstantial evidence that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum. This responsibility shall cease 12 months

after the date on which the irregular border crossing took place. - when a Member State cannot or can no longer be held responsible and where it is established, on the basis of proof or circumstantial evidence, that the asylum seeker - who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established - at the time of lodging the application has been previously living for a continuous period of at least 5 months in a Member State, that Member State shall be responsible for examining the application for asylum. If the applicant has been living for periods of time of at least 5 months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application. - where the applicant for asylum is made in an international transit area of an airport of a Member State by a third-country national, that Member State shall be responsible for examining the application. - where several members of a family submit applications for asylum in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to them being separated, the Member State responsible shall be determined on the basis of the following provisions: a) responsibility for examining the applications for asylum of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members; b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them. HUMANITARIAN CLAUSE : any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case that Member State shall, at the request of another Member State, examine the application for Asylum of the person concerned. The persons concerned must consent. TAKING CHARGE : where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it. Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged. ADMINISTRATIVE COOPERATION : each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker is appropriate, relevant and non-excessive for: a) the determination of the Member State responsible for examining the application for asylum; b) examining the application for asylum; c) implementing any obligation arising under this Regulation. The information to be communicated shall cover personal details of the applicant, the members of the family, identity and travel papers, places of residence and routes travelled, finger prints (in accordance with Regulation 2725/2000/EC). Member States shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Regulation and shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. ENTRY INTO FORCE : 17/03/03. A report on the application of this Regulation shall be published on 17 March 2006, proposing amendments if necessary. DATE APPLICABLE : to asylum applications lodged as from 01/09/03. From 01/09/03, this Regulation applies to any request to take charge of or to take back asylum seekers, irrespective of the date on which the application was made. TERRITORIAL APPLICATION : the UK and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation. Denmark, on the other hand, does not wish to participate in the in the adoption of this Regulation and is not bound by it nor subject to its application.