

ILPA information sheet

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Dublin II Regulation

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The Dublin Regulation, the European Union law that determines which Member State is responsible for deciding an application for asylum or humanitarian protection, has been changed ('recast'). The latest version of the Regulation ('Dublin III') became applicable on 1 January 2014 and seeks to improve conditions for persons seeking protection in Europe. The UK has opted out of signing the other recast EU laws, the Procedures and Reception Condition Directives, despite these forming part of the bedrock of the Common European Asylum System. Dublin III, however, contains internal references to both of these new Directives and as a result some of their influence could still be felt.

Background

The Dublin Regulation deals with the situation where an applicant for protection makes a claim in one European Union (EU) member State, but has previously made a claim in (or been present in) another. In such cases, the person may be transferred back to the first EU State, which in general will be deemed to hold the responsibility for determining their claim. There are some exceptions, and each State retains its discretion – 'the sovereignty clause'¹ – to decide the application itself, however in practise many States attempt to transfer applicants out of their jurisdiction using the Dublin Regulation wherever possible.

The stated purpose of the Regulation is to deter the making of multiple asylum claims or 'forum shopping' within the European Union. It aims quickly to identify the Member State with responsibility for the examination of an asylum application. This will often be the first EU State that the person entered. The Regulation is based on the assumption of similar procedures and conditions in all Member States – more of an aspiration than a reality.

Problems with the Dublin system

The previous framework, under the Dublin II Regulation, attracted heavy criticism. It resulted in greater pressures being placed on States at the geographical fringes of the EU. Ultimately, Greece's asylum system broke down to such an extent that both the European Court of Human Rights and European Court of Justice gave rulings to the effect that States should no longer transfer any applicants to Greece. These cases took many years to be come to fruition and highlighted the lack of any mechanism in Dublin II to cope with this kind of situation. They also

¹ Article 3(2) of Dublin II: Council Regulation (EC) No 343/2003

shone a spotlight on the underlying fiction of the Regulation – that all Member States were equal when it came to procedures and reception conditions. While under the letter of EU law all States must abide by similar strictures, the reality on the ground was (and is) that different practices and policies operate across the EU.

In recent times States have suspended transfers to Italy, Hungary, Poland and Malta as well as Greece. On 2 January 2014 UNHCR called for a suspension of all transfers to Bulgaria, due to the deteriorating situation there, brought on by a recent influx of refugees from Syria. UNHCR is urging the EU member states to enforce the new provisions in Dublin III to ensure that transfers are stopped. It is to be hoped that the new system will facilitate more rapid reactions by States to a situation of crisis, such as that in Bulgaria.

Changes under the new Regulation

The new Regulation overall provides enhanced safeguards for applicants for international protection in Europe, including:

- Provision that while waiting for a decision on their appeal the individual has the right to remain in the country (a “**suspensive right of appeal**”).
- A clause designed to avoid **human rights** breaches (Article 3.2), whereby a State will not be permitted to transfer a person if there is a risk that s/he will be subjected to inhuman and degrading treatment in another Member State. This means that from now on States will be obliged to undertake their own assessment of the situation, rather than continuing to apply the Dublin Regulation until the European Courts give a decision to the contrary.
- A new system to monitor whether Member States are correctly implementing EU asylum laws: the ‘**early warning mechanism**’. This aims to make it easier to detect problems in a member state’s asylum system so that early assistance can be provided by the EU Commission and the European Asylum Support Office (EASO) before a situation degenerates as far as it did in Greece. The current situation in Bulgaria will be the first test of this new early warning mechanism.
- A focus on respect for **family life**. The Regulation contains a renewed emphasis on family life, with the aim that transfers under Dublin III facilitate family unity as much as possible. The definition of the family has also been widened to benefit **unaccompanied minors** – they can now be reunited with grandparents, uncles or aunts who are living in one of the Member States.
- The right to a **personal interview**, at which the applicant must be informed that they may provide information about family members in other EU States, which will then be taken into account in the determination as to which State is responsible.
- A common **information leaflet** and a specific leaflet for unaccompanied minors.

It remains to be seen how effective Dublin III will be at addressing the problems and protection gaps that existed under the previous framework, however the recast Regulation is certainly an improvement. How well it works in practise is now largely in the hands of the Member States.

Further information about the operation of Dublin Regulation can be found here: <http://www.dublin-project.eu>