



# Procedure file

| Basic information  |                     |
|--|---------------------|
| INI - Own-initiative procedure   | 2007/2262(INI)      |
| Report from the Commission on the evaluation of the Dublin system                          | Procedure completed |
| Subject  |                     |
| 7.10 Free movement and integration of third-country nationals                              |                     |
| 7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF) |                     |
| 7.10.08 Migration policy   |                     |

| Key players         |   |                                       |            |
|---------------------|---|---------------------------------------|------------|
| European Parliament | Committee responsible                                 | Rapporteur                            | Appointed  |
|                     | <b>LIBE</b> Civil Liberties, Justice and Home Affairs |                                       | 17/12/2007 |
|                     |   | Vers/ALE <a href="#">LAMBERT Jean</a> |            |
| European Commission | Commission DG   | Commissioner                          |            |
|                     | <a href="#">Justice and Consumers</a>                 | BARROT Jacques                        |            |

| Key events |  |   |         |
|------------|--|---|---------|
| 05/06/2007 | Non-legislative basic document published   | <a href="#">COM(2007)0299</a>   | Summary |
| 29/11/2007 | Committee referral announced in Parliament |   |         |
| 25/06/2008 | Vote in committee                          |   | Summary |
| 02/07/2008 | Committee report tabled for plenary        | <a href="#">A6-0287/2008</a>  |         |
| 01/09/2008 | Debate in Parliament                       |  |         |
| 02/09/2008 | Results of vote in Parliament              |  |         |
| 02/09/2008 | Decision by Parliament                     | <a href="#">T6-0385/2008</a>  | Summary |
| 02/09/2008 | End of procedure in Parliament             |   |         |

| Technical information      |                                |
|----------------------------|--------------------------------|
| Procedure reference        | 2007/2262(INI)                 |
| Procedure type             | INI - Own-initiative procedure |
| Procedure subtype          | Initiative                     |
| Legal basis                | Rules of Procedure EP 54       |
| Stage reached in procedure | Procedure completed            |
| Committee dossier          | LIBE/6/56531                   |

| Documentation gateway          |  |                               |            |    |         |
|--------------------------------|--|-------------------------------|------------|----|---------|
| Non-legislative basic document |  | <a href="#">COM(2007)0299</a> | 06/06/2007 | EC | Summary |

|   |                               |            |    |         |
|---|-------------------------------|------------|----|---------|
| Document attached to the procedure                  | <a href="#">SEC(2007)0742</a> | 06/06/2007 | EC |         |
| Committee draft report                              | <a href="#">PE404.629</a>     | 13/05/2008 | EP |         |
| Amendments tabled in committee                      | <a href="#">PE407.811</a>     | 09/06/2008 | EP |         |
| Committee report tabled for plenary, single reading | <a href="#">A6-0287/2008</a>  | 02/07/2008 | EP |         |
| Text adopted by Parliament, single reading          | <a href="#">T6-0385/2008</a>  | 02/09/2008 | EP | Summary |
| Commission response to text adopted in plenary      | SP(2008)6073                  | 17/10/2008 | EC |         |
| Commission response to text adopted in plenary      | <a href="#">SP(2008)6486</a>  | 17/12/2008 | EC |         |

## Report from the Commission on the evaluation of the Dublin system

**PURPOSE:** to present a report on the evaluation of the 'Dublin system'.

**BACKGROUND:** the 'Dublin system' aims to determine which Member State is responsible for examining an asylum application lodged by a third-country national on the territory of one of the Member States of the EU, Norway and Iceland (the territorial scope of the Dublin system has been extended to Switzerland, through an international agreement, which is until now only provisionally applicable). It comprises Council Regulation (EC) No 343/2003 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 (the Dublin Regulation) and its Implementing Regulation and Council Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (the EURODAC Regulation) and its Implementing Regulation.

**CONTENT:** the Dublin and EURODAC Regulations require the Commission to report to the European Parliament and to the Council on their application after three years of operation. Since the EURODAC 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 (the 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 EURODAC 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 EURODAC 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.

## Report from the Commission on the evaluation of the Dublin system

---

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Jean LAMBERT (Greens/EFA, UK) studying the Commission's evaluation of the Dublin system and stressing that this system remains largely inadequate from both the technical and the human viewpoints.

Efficiency of the system and responsibility sharing: given that the Dublin system will not produce the desired results, MEPs consider that asylum seekers will continue to have valid reasons for wishing to lodge their application in another Member State. Furthermore, they consider that, in the absence of a genuine common European asylum system and a single procedure, the Dublin system will continue to be unfair both to asylum seekers and to certain Member States. The quality and the consistency of the decision-making process must therefore be improved. In this respect, MEPs consider that a European Asylum Support Office could play a valuable role by providing expert support teams. In this context, MEPs call on the Commission to:

- consider ways of providing UNHCR with direct financing in order to enable it to enhance its monitoring and advisory work in the EU;
- bring forward proposals for burden-sharing mechanisms which could be put in place in order to help alleviate the disproportionate load which could fall on certain Member States, in particular the border Member States, but do not fit into the Dublin system; for the others, MEPs call for the provision of mechanisms other than financial to correct the adverse effects of the implementation of this system for the smaller Member States at the Union's external borders;
- provide for a binding mechanism to stop transfers of asylum applicants to Member States that do not guarantee full and fair treatment of their claims;
- establish meaningful bilateral working relations with third countries such as Libya, in order to facilitate cooperation.

Rights of the claimants: reaffirming the principle of non-refoulement, MEPs call for additional provisions concerning the means by which the persons seeking protection are informed of the implications of the Dublin Regulation. In this context, they suggest drafting a standard leaflet which could be translated into a certain number of languages and be distributed to all Member States. Among the other measures proposed, MEPs ask the Commission to amend Articles 19 and 20 of the Dublin Regulation on 'taking charge and taking back', so as to provide applicants with an automatic suspensory right of appeal against a decision to transfer responsibility to another Member State. They also call on the Commission to assess the possibility for individuals concerned by a transfer to another Member State to be able to be transferred to their country of origin, solely at their express request.

Family reunification and the principle of the best interest of the child: once again, MEPs reaffirm the principle of the best interest of the child and recommend that a set of common guidelines on age-assessment be adopted so that the benefit of the doubt is always given to the child. Unaccompanied minors should never be detained or transferred to another Member State, except for the sake of family reunification. Overall, MEPs welcome the Commission's intention to extend the scope of the Dublin Regulation to include subsidiary protection, as this should enable applicants for subsidiary protection to be reunited with family members.

Detention: in terms of detention, MEPs call on the Commission to add a provision restricting the detention of Dublin claimants to a measure of last resort. Furthermore, MEPs consider that Dublin claimants should be entitled to the same reception conditions as other asylum seekers, particularly regarding material reception conditions, health care, freedom of movement and the schooling of minors.

Humanitarian and Sovereignty Clauses: overall, MEPs are satisfied with the humanitarian clause contained in the Dublin Regulation but consider that it should be applied more widely. They specify that in cases where an asylum seeker is in a particularly vulnerable state owing to a serious illness, a severe disability, etc.,...and they are dependent on the assistance of a relative present in the territory of a Member State other than the one in charge of the examination of the application, they should be reunited with that relative. MEPs therefore call for the relevant provisions of the humanitarian clause to be revised in order to make it more flexible. They also welcome the Commission's intention to better specify the circumstances and procedures for applying the Sovereignty clause (which enables any Member State to examine an application for asylum even if this examination is the responsibility of another Member State).

Data-collection and Eurodac: MEPs express their concern at the deficiencies in the collection of data sent to the Eurodac Central Unit, as well as regarding non-compliance with the obligation to delete certain data and with the rules relating to the protection of personal data. These failings call into question the reliability of Eurodac and must be addressed. Lastly, they stress that extending access to the Eurodac database to Member States' police and law-enforcement authorities as well as Europol entails the risk that information may pass to third countries, which could have negative repercussions for asylum seekers.

# Report from the Commission on the evaluation of the Dublin system

---

The European Parliament adopted by 609 votes to 53, with 30 abstentions, a resolution on the Commission's evaluation of the Dublin system and stressed that this system remains largely inadequate from both the technical and the human viewpoints.

The own initiative report had been tabled for consideration in plenary by Jean LAMBERT (Greens/EFA, UK) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

Efficiency of the system and responsibility sharing: the Parliament strongly believes that unless a satisfactory and consistent level of protection is achieved across the European Union, the Dublin system will always produce unsatisfactory results from both the technical and the human viewpoints, and asylum seekers will continue to have valid reasons for wishing to lodge their application in a specific Member State to take advantage of the most favourable national decision-making process. It also strongly believes that in the absence of a genuine common European asylum system and a single procedure the Dublin system will continue to be unfair both to asylum seekers and to certain Member States. The quality and the consistency of the decision-making process must therefore be improved. In this respect, the Parliament considers that a European Asylum Support Office could play a valuable role by providing expert support teams. In this context, the Parliament calls on the Commission to:

- consider ways of providing UNHCR with direct financing in order to enable it to enhance its monitoring and advisory work in the EU;
- bring forward proposals for burden-sharing mechanisms which could be put in place in order to help alleviate the disproportionate load which could fall on certain Member States, in particular the border Member States, but do not fit into the Dublin system; for the others, the Parliament calls for the provision of mechanisms other than financial to correct the adverse effects of the implementation of this system for the smaller Member States at the Union's external borders;
- provide for a binding mechanism to stop transfers of asylum applicants to Member States that do not guarantee full and fair treatment of their claims.

Under an amendment proposed by the PES-GUE/NGL-Greens/EFA groups, the plenary also calls on the Commission to establish meaningful bilateral working relations with third countries (and not just with Libya, as requested by the committee) in order to facilitate cooperation and ensure that such third countries meet their international legal obligations with regard to the Geneva Convention.

Rights of the claimants: the Parliament calls for additional provisions concerning the means by which the persons seeking protection are informed of the implications of the Dublin Regulation. In this context, it suggests drafting a standard leaflet which could be translated into a certain number of languages and be distributed to all Member States. Among the other measures proposed, the Parliament asks the Commission to amend Articles 19 and 20 of the Dublin Regulation on 'taking charge and taking back', so as to provide applicants with an automatic suspensory right of appeal against a decision to transfer responsibility to another Member State. The Parliament also reaffirms that the principle of non-refoulement should remain one of the cornerstones of any common asylum system at European Union level. According to the Parliament, the implementation of the Dublin Regulation should never lead to a claim being closed for procedural reasons and not reopened for a full and fair examination of the original claim after a transfer via the Dublin process. This should be made clear in the Regulation. The Parliament also calls on the Commission to assess the possibility for individuals concerned by a transfer to be able to be transferred to their country of origin, solely at their express request.

Family reunification and the principle of the best interest of the child: once again, the Parliament reaffirms the principle of the best interest of the child and recommends that a set of common guidelines on age-assessment be adopted so that the benefit of the doubt is always given to the child. Unaccompanied minors should never be detained or transferred to another Member State, except for the sake of family reunification. Overall, the Parliament welcomes the Commission's intention to extend the scope of the Dublin Regulation to include subsidiary protection, as this should enable applicants for subsidiary protection to be reunited with family members. Furthermore, the Parliament considers that the definition of a 'family member' under the current Regulation is too restrictive and therefore asks the Commission to extend the present definition to include all close relatives and long-term partners, and adult children unable to care for themselves.

Detention: in terms of detention, the Parliament calls on the Commission to add a provision restricting the detention of Dublin claimants to a measure of last resort. The Commission must specify the grounds on which detention may be employed and the procedural safeguards which should be provided for. Furthermore, the Parliament considers that Dublin claimants should be entitled to the same reception conditions as other asylum seekers, particularly regarding material reception conditions, health care, freedom of movement and the schooling of minors.

Humanitarian and Sovereignty Clauses: overall, the Parliament is satisfied with the humanitarian clause contained in the Dublin Regulation but considers that it should be applied more widely. It specifies that in cases where an asylum seeker is in a particularly vulnerable state owing to a serious illness, a severe disability, etc.,...and they are dependent on the assistance of a relative present in the territory of a Member State other than the one in charge of the examination of the application, they should be reunited with that relative. The Parliament therefore calls for the relevant provisions of the humanitarian clause to be revised in order to make it more flexible. It also welcomes the Commission's intention to better define the circumstances and procedures for applying the Sovereignty clause (which enables any Member State to examine an application for asylum even if this examination is the responsibility of another Member State).

Data-collection and Eurodac: the Parliament expresses its concern at the deficiencies in the collection of data sent to the Eurodac Central Unit, as well as regarding non-compliance with the obligation to delete certain data and with the rules relating to the protection of personal data. These failings call into question the reliability of Eurodac and must be addressed. Lastly, the Parliament stresses that extending access to the Eurodac database to Member States' police and law-enforcement authorities as well as Europol entails the risk that information may pass to third countries, which could have negative repercussions for asylum seekers. This would also increase the risk of asylum seekers being stigmatised. That is why the Parliament considers that each Member State should clarify, on a closed list, the agencies and authorities that have access to the Eurodac database, and for what purpose, in order to prevent any illegal use of data.