Evaluation of the Implementation of the Dublin III Regulation – Final Report

DG Migration and Home Affairs

Executive Summary

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Aims of the Study

In line with the Terms of Reference, the aims of the Dublin III Evaluation are threefold:

- To study and provide an in-depth analysis (article-by-article) on the practical implementation of the Dublin III Regulation in all Member States **(phase 1)**;
- To evaluate the effectiveness, efficiency, relevance, consistency and EU added-value of the Dublin III Regulation **(phase 2)**;
- To identify potential aspects in which the Dublin III Regulation could be amended without altering its fundamental principles and/or alternatives taking into account the results of the analysis and research conducted **(phase 3)**.

The Implementation Report feeds into **phase 1 of the Study** and this Executive Summary summarises the key findings.

Outline of the methodology

The Study involved **desk research**, **quantitative analysis**, and **in-depth interviews** with all Member States as well as three associated countries (CH, NO, LI), amounting to **31 Member States** in total. In this Executive Summary we refer to 'Member States', but include under this heading the three associated countries.

Field visits were conducted in **15 Member States** (AT, BE, DE, EL, FR, HU, LU, IT, MT, NL, NO, PL, SE, UK, CH) whereas in **16** (BG, CY, CZ, DK, EE, ES, FI, HR, IE, LT, LV, PT, RO, SI, SK, LI) **phone interviews** were conducted. **Iceland's** contribution to this Study was unfortunately never received.

A broad range of stakeholders were consulted, including: Dublin units, legal/policy advisors, NGOs, lawyers/legal representatives, appeal and review authorities, law enforcement authorities, detention authorities, applicants and/or beneficiaries of international protection. A total of **142** interviews were conducted.

Key findings

The findings are, as far as possible, presented in a chronological structure, following each step of the Dublin procedure.

Organisational structure and resources of the competent authorities

- Different **organisational structures** exist across Member States for the processing of Dublin cases; whereas most Member States have established specialised Dublin units, others have specialised case officers carrying out Dublin-related tasks. These are, in most Member States, part of the determining authority, except in Belgium, Bulgaria, France and Italy where authorities other than the determining authority deal with Dublin, e.g. the Ministry of Interior (BG, IT), the Immigration Office (BE), and the asylum service within local authorities (FR). The tasks and responsibilities of Dublin units differ greatly per Member State. Although in some Member States the Dublin units or specialised case officers carry out the entire Dublin procedure from A to Z (i.e. screening, conducting interviews, making the decision on responsibility, submitting/replying to requests, arranging transfers), in many others, certain steps of the Dublin procedure are carried out by/with the involvement of other authorities (e.g. police/border guards, law enforcement etc.). Despite the involvement of many different authorities, none of the Member States have established a formal coordination mechanism but instead rely on informal coordination structures (email/phone calls, round table discussions where all authorities gather, etc.).

- (Human) **resources of the competent authorities** differ greatly, ranging from: one to five full-time equivalents of Dublin specialised case workers (CY, EE, FR, HR, LT, LV, MT, RO, SI, LI) to 40–60 (NL, UK, CH) and 80 (SE). However, differences in the number of staff must be placed in context as: 1) differences exist in the number of incoming and outgoing requests handled by each Member State, and 2) differences exist in the tasks/responsibilities of Dublin staff. Although overall, most Member States considered the number of staff to be adequate, Cyprus, Greece, France, Ireland and the United Kingdom noted that human resources are insufficient or 'stretched' (UK), particularly following the high influx of applicants experienced since 2014/2015, but also, according to Ireland**,** due to 'the increased complexity and increased burden of Dublin III in comparison to Dublin II'.
- All staff receives the **necessary training on Dublin**, except in France, Portugal and Romania. Views on the effectiveness of training differ per Member State: while most authorities find training useful, according to some, training is not provided often enough.

Procedural guarantees and safeguards for applicants for international protection

- **Information about the application of the Dublin Regulation** is provided by a **range of different governmental authorities** (e.g. immigration authorities/law enforcement/Dublin units/local authorities) at **different points** in the procedure (before lodging, when lodging, after lodging the application for international protection). The majority of Member States provide **both written** as well as **oral information**, with a few exceptions (notably MT and LT[1]). With regard to **written information**, many Member States make use of the common leaflets provided in the Implementing Regulation and information is available in many different languages. When information is provided **orally**, most Member States make use of interpreters. Concerning the **type of information** provided, some Member States confirmed that all elements listed in Article 4(1) are covered. In contrast, about half of the Member States reported that the information provided consists of 'general information' and may thus fall short of the list stipulated in Article 4(1). A legal representative in the Netherlands emphasised the important role played by NGOs as well as legal representatives to fill some of these gaps by providing **tailored information** to the applicant **when appropriate according to the stage of the procedure**. Overall, the **quality of information** was considered adequate in most Member States, however, certain issues were highlighted in some, notably Italy and Greece, where information may not be provided at all and if provided seems to be outdated (EL). Stakeholders in Austria, Luxembourg, and Poland on the other hand flagged that the amount of information is 'too much, too formal and too technical'. Reference was, in particular, made to the common leaflets in this regard.
- Nearly all Member States conduct **personal interviews** to facilitate the process of determining the Member State responsible as standard practice. However, in some (notably IT and EL) a lack of capacity prevents authorities from routinely conducting such interviews. Although some Member States never allow for **the omission of a personal interview**, it is common practice for many others to do so when applicants abscond or when sufficient information is available to determine responsibility (in line with the Regulation). Some Member States also cited other reasons beyond those mentioned in Article 5(2) for the omission of interviews, which may be in violation of the Regulation. When the **personal interview is omitted**, Member States still allow applicants to submit *written* information to ensure they have an **effective opportunity to make known any relevant information** for the determination of the Member State responsible. Different deadlines apply with regard to when Member States accept written information – e.g. any time (CH, LT, MT), before a decision is taken (NO) or within three months of the original application (EL). In Italy additional information must however be provided in person at the '*Questura'*, and, according to an

[1] In Malta applicants are provided exclusively oral information. In contrast, Lithuania stated that applicants are only provided oral information upon request and that therefore it rarely happens in practice.

NGO, the police have no capacity to process this information, which would appear to be in clear violation of the Regulation as well as case-law of the European Court of Justice[2].

- Significant differences exist across Member States as to the **time frames for conducting interviews**: in some (CZ, LT, NL, PL, RO, NO) these are conducted within 24 hours from lodging a claim, whereas in others (BE, LV, SE) they take place within a week (AT, BE, CZ, IE, LV, SE), two weeks (HR, LU, CH), two months (DK), or three months (FR). Moreover, due to the current high influx, some Member States (BE, DE, SE, NO) reported that interviews are **severely delayed**. As to the **conduct and safeguards of interviews**, in about half of the Member States, different types of stakeholders[3] agreed that all safeguards for the personal interview are complied with in practice. In others, NGOs and legal representatives emphasised certain **gaps**, consisting of e.g. language problems (IT, FR, SE), quality of interviewers (AT, IT, LT, MT) and access to a written summary (MT). In Germany, although generally all safeguards are complied with, concerns were expressed as to the tight time frame for interviews (15–20 min. on average).
- An in-depth assessment of the methods to determine the **best interests of minors** was beyond the scope of this Study. However, it is clear from the findings of the Study that Member States apply different interpretations and that no special procedures or guidelines exist to assess the best interests of minors who are applicants for transfer under the Dublin Regulation. It is also not clear what factors the best interests are judged upon; authorities failed to mention specific factors other than those included under Article 6(3). In the majority of Member States, **the best interest assessment is a unilateral assessment** as Member States do not have **specific procedures in place to involve other States** in the assessments of the best interests of the child. However, most Member States do take into account the assessment performed by others, although diverging interpretations on the best interests has on some occasions led to communication issues and mistrust between Member States. The lack of an agreed definition of best interest seems to prevent cooperation between Member States in this regard.
- Normally minors are always appointed **a representative** in all Member States. In some Member States **practical problems are, however, increasingly experienced** with the appointment of a representative, especially in the current context following the high influx. Nearly one third of the Member States consulted flagged situations where delays were encountered or where minors were not appointed a representative at all. This however constitutes a wider problem for the asylum procedure, which is not limited to Dublin. The **type of representative** differs amongst Member States; certain Member States (e.g. BE, BG, LT, LV, NL, PL, RO, SE, SK) appoint representatives with legal training, while others appoint representatives trained in social work (e.g. CY, FR, MT, SI). In some (BE, CY, FI, MT, NO), NGOs expressed concerns in relation to the qualifications of representatives, notably the lack of legal qualifications.
- Member States may use various methods and organisations to **trace family members** of unaccompanied minors. Whereas many involve e.g. the Red Cross, NGOs, social welfare services or immigration authorities, others investigate without consulting a specific institution. Several Member States explicitly noted their direct interaction with other Member States to trace family members. Few Member States reported on the **effectiveness of family tracing activities**, but those that did (e.g. CY, PL, BE, IT) noted that the activities are time consuming, and **often do not give the desired results (i.e. authorities are unable to find relatives** in other Member States).

Criteria for determining the Member State responsible

- Nearly all Member States surveyed indicated they had refrained from transfers to Greece due to concerns about **systemic flaws in asylum procedures or reception conditions** in the country.

[2] See **{** HYPERLINK "javascript:visitAuthor(%22Francesco_Maiani%22)" \o "Open author index" **}**, **{** HYPERLINK "javascript:visitAuthor(%22Constantin_Hruschka%22)" \o "Open author index" **}** (2011) Le partage des responsabilités dans l'espace Dublin, entre confiance mutuelle et sécurité des demandeurs d'asile = Revue suisse pour la pratique et le droit d'asile (ASYL) 2011: 2. 12–19.

[3] e.g. NGOs, lawyers/legal representatives and governmental authorities.

Some Member States mentioned that they had also at times suspended transfers to Bulgaria, Italy or Hungary due to similar concerns. Transfers were suspended less often due to issues around obtaining **individual guarantees of rights**, although some Member States reported having done so for transfers to Italy. Dutch and French authorities, for example, do not transfer particularly vulnerable cases (like minors or those with medical needs) without obtaining individual guarantees.

- While the hierarchy of criteria themselves were broadly considered by most Member States to be clearly laid out, many expressed **concerns** about the **clarity of the list of acceptable evidence** laid out in the Implementing Regulation, which was seen as being **insufficiently detailed**. Several Member States felt that interpretations of what is considered acceptable evidence by authorities in the receiving Member State placed an **unreasonable burden of proof** on the sending Member State. Concerns were particularly raised around the definition and substantiation of 'dependency' in Article 16, as well as the requirement in Article 12(4) that the visa in question had 'enabled' an applicant to enter the territory of the Member State.
- While Member States emphasised that they, as a policy, apply the criteria in the order laid out in the Regulation, the **criteria most often used** are those related to **documentation and entry reasons** (Articles 12 and 13). The **criteria on family** seem to be **used much less frequently** due to the difficulty of tracing family or obtaining evidence of family connections. Member States differ on the types of evidence they will accept of family connections, although many require documentary evidence (such as a birth or marriage certificate) that asylum applicants may have difficulty producing. Delays in processing family cases can be frustrating for applicants, and NGO respondents indicated the lengthy process can drive secondary movements, as applicants decide to take matters into their own hands and travel onwards to be with family.
- According to the responses of Member State authorities, the primary challenge with regard to the effective application of the criteria does not seem to be the clarity of the criteria themselves, but rather the **difficulty of agreeing on evidence** that proves a Member State's responsibility. This is particularly an issue with the **family criteria** where there seems to be substantial divergence on what is acceptable proof of an applicant's family connection. Age assessments were also found to be quite difficult, as Member States conduct these in different ways and may not arrive at the same conclusions regarding whether an applicant is in fact a minor.
- As a result, **Eurodac and Visa Information System (VIS) data are the evidence most often relied on** to determine Member State responsibility, as they are broadly accepted as proof by nearly all Member States. Some Member States indicated it can be difficult to determine responsibility without Eurodac data. Circumstantial evidence, including interview data, tends not to be relied on. One Member State suggested that this is because interview data in particular requires authorities to place trust in the procedures of the other Member State, and such trust is not often forthcoming. The unwillingness to use circumstantial evidence is particularly a problem with regard to family cases.
- Most Member States infrequently **use the discretionary provisions** of the Regulation (Articles 16 and 17) to deal with humanitarian cases, with the exception of Greece, Denmark and the UK. Greece was the only Member State to state Article 17 is used on a regular basis, but authorities there suggested their requests under the Article are rarely accepted, due to disagreement with other Member States about how the article should be used. Greek authorities tend to interpret humanitarian need more broadly than authorities elsewhere (including cases of family reunification that fall outside the definition of the Regulation), who see it as for use only in exceptional circumstances. Most did indicate they had procedures to deal with particularly vulnerable cases or cases where family unity was a concern.
- When the discretionary provisions are applied, the authorities consulted suggest they may encounter some of the same barriers as the other criteria, including the **difficulty of obtaining evidence**. Communication between Member States was broadly found to be sufficient, with the **most common point of contention being the evidence** submitted to substantiate claims.

Member States cited a few examples of direct contact between Member State authorities, such as liaison officers or phone conversations, as examples of best practice for resolving differences.

Procedures for taking charge and taking back

- The **number of take back requests made by Member States is significantly higher than the number of take charge requests**. On average, between 2008 and 2014, 72 % of outgoing Dublin requests were take back requests against 28 % of outgoing take charge requests. Similarly, 74 % of incoming Dublin requests were take back requests compared with 26 % of incoming take charge requests. Between 2008 and 2014, **a larger number of take charge and take back requests were accepted than rejected. However, since 2013 this trend has begun to reverse**.
- The **time frames stipulated for submitting and replying to take charge and take back requests are mostly complied with by Member States**. In a number of cases Member States report that the average time that it takes to submit and reply to take charge and take back requests is significantly shorter than the maximum time frames. However, the time it takes to implement these procedures depends on the type of case, with the **time frames reported to be too short in some cases involving family members**.
- The **current migration crisis** has put increased pressure on asylum agencies, increasing the response times of some front-line and refugee-receiving states, as well as some smaller states that lack capacity/staff. The current context and high influx has also led to an increase in **incomplete requests**, which may lead to rejections and disputes. It has also resulted in an increase in the **'acceptance by default' phenomenon**: some countries deliberately fail to respond to take charge or take back requests by the deadline (if they know they are responsible anyway) as a way of handling a large amount of work in crisis periods.
- Difficulties obtaining agreement between Member States on the evidence needed to demonstrate responsibility are also reported to contribute to the delays. While several Member States make use of the lists of what constitutes probative and circumstantial evidence included in Annex II of the Implementing Regulation, these **lists are broadly considered insufficiently detailed**, particularly with regard to family criteria and when Eurodac or VIS evidence is not available. The smooth working of the system therefore often **depends on relationships of trust between Member States,** which are often weak or non-existent.
- Member States vary in their **approaches to reintegrating applicants who have been the subject of a successful take back request into the asylum procedure**. In some Member States, applicants who have been readmitted following a take back request are automatically returned to their existing asylum application (at the stage in which they left it). In other Member States, the readmission of an applicant automatically triggers a new application. However, in most Member States, applicants can choose whether to return to their existing application or lodge a new one.

Implementation of transfers

- Close to all the Member States consulted declared they s**ystematically notify applicants for international protection** of the decision to transfer him or her to the Member State responsible. Most Member States **notify the decision in writing, and the notification is handed to the applicant in person**. On this occasion the applicant also receives information orally. Written information about the transfer decision is **not frequently provided in a wide variety of languages**. Amongst the Member States consulted to date, only Lithuania notifies the decision in 18 languages. As far as **oral** information is concerned, an interpreter is present in the majority of Member States.
- The majority of Member States typically notify the applicant of **information on the Member State where the applicant will be transferred, the main elements of the decision, the remedies available under national law and the time limits to seek such remedies**. **Information on the**

time limits to apply for the suspensive effect of the appeal, the time limits to carry out the transfers, or the persons or entities providing legal assistance **is also widely shared**.

- The favoured procedure amongst the Member States consulted to carry out transfers seems to be **supervised departures**. Such supervision may include the **payment of the transportation ticket**, the **supervision of transit arrangements** if no direct flight is available, **obtaining the airline's consent for a transfer** – **with or without escort**, accompanying the applicant when boarding the plane (in the case of an air transfer) or being handed over to the authorities of the Member State responsible (in the case of a land transfer).
- Several of the Member States stated that **most transfers are carried out within six months**. In some (e.g. CZ, ES, EE, IE, LV, SI) they are even implemented (well) before the time limit: two to five working days (IE); 14 days (EE); two to three weeks (LV); four to five weeks (CZ); two months (ES); two to three months (SI). **Capacity and resources** are invoked to explain this efficiency, including an increase in the number of staff members in the unit in charge of implementing transfers, the low number of cases, or the fact that a separate authority is in charge of the practical arrangements of the transfer. **Good cooperation** between the concerned Member States as well as **proper travel arrangements** were also considered to speed up the process. Finally, the **cooperation of the applicant** and **knowledge about his or her whereabouts** are key to making sure that the transfer is implemented on time.
- Other Member States (BE, CY, FR, IT, PT, SE) stated that **few to very few transfers were conducted before the expiration of the six-month time limit**. The **extension of the time limits as per Article 29(2)** is by far the main reason invoked by Member States for delays observed in the execution of transfers. Though **imprisonment of the applicant, allowing for a 12-month extension,** seems to be a rare event, and **absconding, allowing for an extra 18 months,** was cited by 20 Member States as the **primary explanation for delays**. **Appeals with suspensive effect** were listed as the second reason for delays in the execution of the transfer.
- Problems with the effectiveness of the transfer procedure are also indicated by the evidence that applicants **do not always stay in the Member State responsible** for processing their claim for international protection. Thirteen Member States indicated that **secondary movements are 'often' observed** after the transfer procedure is completed (BE, BG, CZ, DK, ES, FR, HR, NL, PT, RO, SE, UK, CH).
- A majority of the consulted Member States (21 out of 31) resort to **detention** in order to carry out transfers in certain circumstances. Nine Member States (AT, DE, DK, LT, LV, MT, NL, SI, CH) reported they **rarely** do so in practice, whereas in others (e.g. BE, CZ, HU, LU, PL, SK, UK, LI) detention is used **more often**: in Belgium in 30 % of all cases; in Luxembourg and Poland an estimated 50 %; the Czech Republic 70 %; the Slovak Republic 'often'; in Liechtenstein most applicants are subject to a transfer decision; in Hungary and the United Kingdom all applicants are subject to a transfer decision, except in cases of unaccompanied minors (UAMs). The infrequent use of detention was either explained by applicants agreeing to the transfer (MT), prioritisation of the use of alternatives to detention (LV) as well as the stricter safeguards introduced by the recast legislative instruments. The Netherlands for example explained that the number of applicants detained has significantly decreased under Dublin III in comparison to Dublin II. Practices vary considerably regarding the **stage of the procedure at which detention may be used**, with some Member States resorting to it from the start of the Dublin procedure, and others only when the transfer request has been accepted by the responsible Member State. Such divergent practices between Member States are problematic as they create legal uncertainty and may lead to extensions of the time spent by the applicant in detention. **Time limits applicable to the placement in detention also vary significantly** depending on the Member State.
- Commonly used alternatives to detention include:
  - House arrest (DK, FR, HR, LU, NL, PL, SI, NO);
  - Obligation to report at specific times (AT, FI, HR, LU, LV, NL, NO, UK);
  - Travel documents handed over to the authorities (DK, FI, LU, LV, NL, SE);

- Specific monitored accommodation (i.e. open facilities) for families (AT, BE, DK);
- Deposit (PL, SK).

These alternatives are decided on the basis of **an assessment of the nature of the risk of absconding and the nature of the measure**. In relation to the definition of a 'significant risk of absconding', it appears that most Member States **did not define objective criteria** in their national legislation. In Member States who did, the **'significance' of the risk does not seem to be defined**. Alternative measures are not available in the Czech Republic, Germany, Hungary or Switzerland.

Appeals

- Most of the responding Member States seem to favour **judicial remedies**, most frequently before administrative courts. In some Member States, the appeal is lodged before a **court specialised in migration and asylum law**. Judicial remedies are sometimes available after a review by an **administrative authority**. In **all the responding Member States, remedies are available** against a transfer decision. The Netherlands and Norway indicated that a **high percentage of decisions were appealed** by applicants; the Norwegian authorities estimated the rate of appeal at 99 %. The Czech Republic and Romania noted that the rate of appeal had increased since the introduction of Dublin III in comparison to Dublin II. In contrast, the rate of appeals observed in Cyprus, Malta and Poland is fairly low. In Poland the rate of appealed decisions was estimated at 8.5 %.
- All Member States consulted have set a period of time during which applicants can exercise their right to an effective remedy. The understanding of what constitutes a 'reasonable period of time' varies significantly across Member States, ranging from three to eight days (AT, BE, DE, DK, HR, HU, MT, NL, SI, PT, RO, CH) to 60 days (IT).
- Amongst the responding Member States, nine stated that **the suspension of the transfer** is automatic when the transfer decision is challenged by the applicant. In five Member States, the applicant needs to request the suspension of the transfer, in application of Article 27(3)(c).
- All the Member States allow **access to legal assistance** in principle. In some Member States, a lawyer is automatically assigned to the applicant, while in others the applicant is responsible for identifying a lawyer. Stakeholders indicated that this can be difficult in practice. **The majority of the Member States consulted apply a test** in order to determine whether free legal assistance should be granted. Some of these Member States appear to **only check the means of the applicant, while others also assess the merits of the case**, during which the tangible prospect of success of the case is assessed. Eleven Member States **declared they provide linguistic assistance** to all applicants during their appeal or review.

Administrative cooperation

- When **exchanging information**, all Member States consulted to date use the secured electronic **DubliNet** network. Only in exceptional circumstances do Member States resort to informal information channels (e.g. due to technical difficulties). DubliNet is used to exchange various types of information throughout the entire Dublin procedure, e.g. information requests (including on the grounds of the application for international protection), take charge/take back requests, information exchanges before a transfer is carried out, including health data, etc. The **common health certificate** as referred to in Article 32(1) is used mostly for exchanging health data (with the exception of HU and PL). For the exchange of both **personal as well as health data** most Member States reported that they always seek the **explicit consent of the applicant** before transmission. To this purpose, applicants are asked to sign **a written declaration or certificate**.
- To facilitate the application of the Regulation, several Member States have concluded **administrative arrangements** as referred to in Article 36. Such agreements may consist of exchanges of liaison officers or serve to simplify procedures and shorten the time limits (e.g. RO and SI have concluded an administrative arrangement which establishes dedicated transfer points

on the borders). Around half of the Member States have liaison officers in one or multiple Member States[4]. Member States using bilateral agreements reported that at least one of the parties **informs or consults the Commission** when they prepare or amend existing agreements.

- To date, none of the Member States have used **the conciliation procedure** as described in Article 37. When asked why, Member States explained that **they prefer to resolve disputes informally**. Nevertheless, there were instances when interest in this procedure was manifested (HR), but not followed up.

The Early Warning and Preparedness Mechanism

- To date, the Early Warning and Preparedness Mechanism (EWM) has not been implemented, despite several situations of pressure where its activation could have arguably been justified. Various reasons were cited by Member States which could be seen to support its non-implementation. While some simply argued that the conditions for triggering the mechanism were never fulfilled, others explained that it is difficult to reach political agreement on the triggering of the mechanism in the absence of clear criteria and indicators to measure pressure by. Moreover, the activation procedure was also considered lengthy and complicated. A further underlying reason for its non-implementation could be to do with it being regarded as a sensitive political issue (i.e. could be seen as public scolding, naming/shaming).
- In the absence of the activation of the EWM, alternative support measures sufficed in relieving the pressure and may have also obviated the need to trigger the EWM. In this regard, support provided by the European Asylum Support Office can in certain cases be considered as a de facto replacement of the activation of the EWM, either to prevent (IT, CY) or to manage crises (BG, EL) in the field of international protection. This argument was highlighted by e.g. Austria, Denmark, Spain, Finland, Croatia, and Slovenia.

[4] For example, whereas Italy has liaison officers across eight Member States, Bulgaria has liaison officers in one Member State.