

# EU ASYLUM LAW II.

## Dublin, reception, temporary protection

Presentation of Boldizsár Nagy at the EIPA Training  
Introduction to EU Asylum and Migration Law

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# The Dublin Convention the Dublin II and the Dublin III regulations (1990, 2003 and 2013)

Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (1990) OJ 1997 C 254/1

and

Council Regulation (EC) No 343/2003 of 18 February 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 OJ 2003 L 50/1

*Implementing regulation*

Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of 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 (OJ L 222 of 5 September 2003, p. 1);

## **REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013**

establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)  
(OJ 2013 L 180/96)

COMMISSION **IMPLEMENTING REGULATION (EU) No 118/2014 of 30 January 2014**  
amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of 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  
OJ 2014 L 39/1

## Purpose and philosophy of Dublin

Every asylum seeker **should gain access** to the procedure. There must be a MS to determine the case

**Only one procedure should be conducted** within the Union. **A decision** by any MS be taken **in the name of others** = no parallel or subsequent application should take place

**NOT BURDEN OR RESPONSIBILITY – SHARING**

The philosophy of Dublin:  
under what conditions is taking charge by another state –without investigation of  
the merits in the first state fair

## Fairness preconditions

If the **substantive law** (the refugee definition) is identical

If **procedural rules** guarantee equal level of protection at least in terms of

- legal remedies (**appeals**)
- access to **legal representation**
- **reception conditions** (support) during the procedure (detention, e.g.!).

### Unchanged rationale:

„**responsibility** for examining an application for international protection **lies primarily** with the Member State **which played the greatest part in the applicant's entry into or residence** on the territories of the Member States, subject to exceptions designed to protect family unity”

(COM(2008) 825 final), p. 6

### Scope:

UK, Ireland, Norway, Switzerland Liechtenstein in,  
Denmark indirectly in (linked by treaty to Dublin II)

**Material scope:** : „ application for international protection” = a request for international protection from a Member State, under the Geneva Convention of for subsidiary protection!!

### Criteria of identifying the responsible state (this is **the hierarchy**)

#### 1 Minor

- **Unaccompanied minor:** where family member or sibling legally present  
Other adult responsible for the minor, whether by law or by the practice  
(If several such persons: minor's interest determines)
- Where minor submitted

#### 2 Adult applicant

- The state in which family member enjoying international protection - if so requested
- The state in which asylum applicant before first decision – if so requested
  - If responsibility would separate the family, then
    - The state responsible for the largest number
    - Where oldest applicant submitted the application

### 3 Residence permit, visa

- The state that issued a valid **residence permit**. (if more: the longest) visa issued
- The state which issued a valid **visa** (on whose behalf it was issued)
- The state which issued a residence permit which **expired in less than 2 years** or a visa (**expired less than 6 months**) if that was used for entry
- If they expired earlier and the person has not left the EU territory – the State where submitted

### 4 Irregular crossing of external border

An irregularly crossed the border into a Member State by land, sea or air having come from a third country, unless 12 months have passed since irregular border crossing took place.

**5 Unnoticed stay** Five months continuous living in a Member State (after irregular entry more than 12 months ago or unknown entry) before lodging the application. (If in several: the last in which she stayed for 5 months)

**Ghezelbash v Netherlands**  
(Staatssecretaris van  
Veiligheid en Justitie,) CJEU,  
Grand Chamber, 7 June 2016

The meaning of „effective  
remedy”

... an asylum seeker is entitled  
to **plead, in an appeal** against  
a decision to transfer him, **the  
incorrect application of one of  
the criteria for determining  
responsibility**, e.g. the grant of  
visa

## 6 Visa waived entry

If a state waives visa obligation – that state is responsible

## 7. Needy family members (not compulsory!)

States „shall normally bring together” (§ 16) In cases of pregnancy, a new-born child, serious illness, severe disability or old age, when an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant - usually the state in which the legally residing person is living should conduct the RSD unless applicant's health prevents travelling there

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**Responsibility** of the state **terminates** when the applicant **leaves** the territory of the EU **for 3 months**

See: *Abdullahi* case, C-394/12 CJEU judgment, 2013  
December



## „SOVEREIGNTY AND HUMANITARIAN CLAUSE(S)”

17 § (1) „...each Member State **may decide to examine** an application for international protection lodged with it by a third-country national or a stateless person, **even if** such examination is **not its responsibility** under the criteria laid down in this Regulation.

Angela Merkel – Germany, in 2015 – not returning to transit states!

17 § (2) A **Member State ... may**, at any time before a first decision regarding the substance is taken, **request another Member State to take charge** of an applicant in order to bring together any family relations, **on humanitarian grounds based in particular on family or cultural considerations**, even where that other Member State is not responsible. Affected applicants must agree in writing. The requested state may approve the request

# REGULATION 604/2013/EU (DUBLIN III)

## PROCEDURE - DEADLINES

- **Taking charge** (Another MS, in which the applicant did not apply, is responsible for the procedure, not where the applicant submitted the application)
- The responsible state has to **be requested** as soon as possible but not later than **3 months** after the submission of the application.
- If there is a **Eurodac hit**, **request** within **2 months**
  - If deadline missed: **loss of right to transfer** – the requesting state becomes the responsible state
- **Reply**: within **2 months**. **Silence = agreement**
  - In **urgent cases**: requesting state sets deadline. Min. **1 week**.
  - Response may be extended to **1 month** by requested state

# REGULATION 604/2013/EU (DUBLIN III)

## PROCEDURE - DEADLINES

**Taking back** (Procedure is still pending in the requested state, applicant withdrew her application there or the application was rejected)

Request:

If no Eurodac hit: **3 months** for request

Eurodac hit: **2 months**

Response: **1 month** (no hit);

**2 weeks** (Eurodac hit)

If taking back **not requested in time**: opportunity to submit a **new application** must be given

*Mengesteab v Germany, C-670/16  
Deadline counts from first registry, not from  
substantive application  
Effective remedy extends to procedural  
rules (deadlines) (26 July 2017 )*

## PROCEDURE – TRANSFER (§ 29)

Within **6 months**

From **accepting the request** to take charge or take back  
(or **from expiry of** respective deadline to respond in  
both cases)

From **the final decision** in case of an **the appeal against**  
**transfer**

If transfer **does not take place within 6 months** the responsible  
**state is relieved** from the obligation to take charge or take back.

The deadline may be **extended** to **one year** if the person is  
**imprisoned** and to **18 months** if she **absconds**

## DETENTION § 28

Only if there is a significant risk of **absconding**  
Detention must be „on the basis of an **individual assessment** and only in so far as detention is proportional and other **less coercive alternative** measures **cannot** be applied effectively.”

„for as short a period as possible”

Request for transfer to be made within  
**1 month**

Reply (requested state must respond) in **two weeks** (if silence: implicit acceptance)

Article 2 (n) "risk of absconding" means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond.

## DETENTION § 28

Transfer: **six weeks** from approval

If deadlines not met: **detention must end** (normal rules apply)

*Khir Amayry* C-60/16 (Sweden)  
CJEU judgment 15 March 2017

After accepting responsibility  
detention may not be longer than  
**2 months** (if transfer appealed)  
and no longer than **6 weeks**

**when there is no longer  
suspensive effect against transfer**

National rules allowing **3 or 12  
months** long detention in such a  
case are **prohibited**

*Al Chodor*, CJEU judgment 2017  
Member States [must] establish, in  
a binding provision of general  
application, **objective criteria**  
underlying **the reasons for**  
believing that an applicant for  
international protection who is  
subject to a transfer procedure  
**may abscond.**

# The problem of non-performing countries

Greece since 2011

Bulgaria, Hungary repeatedly

Inhuman treatment of asylum seekers – transfers stopped

*“Given the worsening situation of asylum-seekers in Hungary, I urge States to suspend any Dublin transfer of asylum-seekers to this country until the Hungarian authorities bring their practices and policies in line with European and international law,”*

Filippo Grandi UN High Commissioner for Refugees, 2017 April 10

<http://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html> (20170627)

**M.S.S v Belgium, and Greece**, Ap. no. 30696/09, ECtHR Judgment of 21 January 2011 – return to Greece and treatment of a.s. in Greece violates Art 3.

**NS contra Secretary of State /UK/ C-411/10** CJEU reference for preliminary ruling Joined with **M.E. and Others v Refugee Applications Commissioner, Minister for Justice and Law Reform** (Ireland) - CJEU judgment of 21 December 2011 – No return to Greece allowed

**AS - Slovenia** Case C-490/16 Judgment of 26 July 2017 the tolerated arrival and transit of an exceptionally large number of third-country nationals (humanitarian corridor) –still „irregular entry” basis of responsibility.

Grounds for transfer may be challenged.

**Jafari** - Austria C-646/16, Judgment of 26 July 2017 Letting people through is not a visa, but irregular entry – Croatia is responsible

„if there are **substantial grounds for believing** that there are **systemic flaws** in the asylum **procedure** and **reception conditions** for asylum applicants in the Member State responsible, resulting in **inhuman or degrading treatment** ... of asylum seekers ... **the transfer** would be **incompatible** [with the regulation]” (§ 86)

➡ in Greece there are systemic deficiencies in procedure and reception conditions as acknowledged in the *M.S.S. v. Belgium and Greece* judgment of the ECtHR

➡ states **must assess** the situation in other member states based on available reports and judgments

➡ Member States **must not transfer** an asylum seeker to the Member State responsible if they should be aware of the fact that **systemic deficiencies in the asylum procedure** and in the **reception conditions** amount **a real risk of inhuman or degrading treatment** (§ 94)



# Article 33 of Dublin III - Early warning and preparedness

## Phase I. Risk of pressure or deficiency – preventive action plan

Either because of the increased pressure or because of the malfunctioning system

MS decides if to make a plan, but it must

„take all appropriate measures to deal with the situation of particular pressure on its asylum system or to ensure that the deficiencies identified are addressed before the situation deteriorates.

## Phase II. (Risk of ) Crisis

Deficiencies are **not remedied** by the plan the or „where there is a **serious risk** that the asylum situation in the Member State concerned **develops into a crisis**

**MS must** – upon the request of the Commission – **produce a crisis management plan within three months**

**Council** monitors – offers guidance – provides solidarity measures

# THE PROPOSED CHANGES AFFECTING INTER-STATE SOLIDARITY IN DUBLIN IV.

- In take back situations – only notification – no request – duty to take back. (Responsibility does not expire with time)
- Chapter VII: **Corrective allocation mechanism**
  - Disproportionate number of applications (after eligibility)
  - Exceeds **150 %** of reference key (including resettled refugees)
  - **Reference key** = total of application in EU – share by MS based on
    - **population size**
    - **total GDP**

} 50 -50 % weight

If unwilling to participate **250 000 Euros/per each applicant**, who would have been allocated

Automated system

# THE PROPOSED CHANGES AFFECTING INTER-STATE SOLIDARITY IN DUBLIN IV.

– EP response (214 proposals for amendment)

- **Eliminate external border**, waived visa and presence in transit zone as a coupling principle
- **Not based on exceeding 150%** of the reference key – not corrective but fundamental allocation system
- **New allocation criteria**
  - Any family member legally residing to unite with (not only refugee)
  - Academic qualification acquired in the Member State
- **Allocation of asylum seekers – from the outset**
- **Choice of four countries**
- **Groups, max 30** may wish to move together

# THE EURODAC SYSTEM

# EURODAC

REGULATION (EU) No 603/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
OF 26 JUNE 2013

## Goal:

promoting **the implementation of Dublin III**,

i.e. the identification of the state responsible for the  
examination of the asylum application

screening out the repeated application

identifying the external border crossed

and

**enhancing law enforcement** by allowing Member States' designated  
authorities and the European Police Office (Europol) to request the  
comparison of fingerprint data with those stored in the Central System

Tool: Central storage by **the EU Agency for Large-Scale IT Systems** (eu-LISA,  
Tallin/Strasbourg) of fingerprints and comparison with those submitted by MS

Target group (above the age of 14):

All asylum seekers, including those applying for subsidiary protection

„Aliens” who have crossed the external border illegally

„Aliens” found illegally present in a MS (not stored, but compared)

Comparable fingerprints – extended to serious criminals

# EURODAC FROM 20 JULY 2015

Storage: asylum seekers: 10 years (blocked if recognized) illegal crossers: 18 months

Oversight: **European Data Protection Supervisor**, in responsible for auditing and monitoring the processing of personal data in cooperation with national authorities.

**72-hour deadline to send the fingerprints** to the Eurodac system;

**More information** concerning asylum seekers is **to be uploaded** (to assure, the right person is transferred)

A ban on transmitting Eurodac data to third states in most cases (Article 35)

# EURODAC FROM 20 JULY 2015

**Law enforcement** agencies' access (entry into force: 20 July 2015)

Access will be given to the nationally designated law enforcement authorities

for “the **prevention, detection or investigation of terrorist** offences or other **serious criminal offences**”

if that is

“**necessary in a specific case**”, and the comparison “will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question”

provided

**neither MS' database nor the VIS** offered a match

A „**verifying agency**” (which transmits the request) controls that these conditions are met

Comparisons must be individual – **no routine, bulk checking**

Access extends to **protected persons for 3 years** after protection need recognised

# Reception conditions directive

**Directive 2013/33/EU** of the European Parliament and of the  
Council  
of 26 June 2013  
laying down standards for the reception of applicants for  
international protection (recast)  
(OJ 2013 L 180/96)

Replacing  
COUNCIL DIRECTIVE 2003/9/EC  
of 27 January 2003  
laying down minimum standards for the reception of asylum seekers  
(OJ 2003 L 31/18)



## New emphasis

Preamble explicitly refers to MS „which are faced with **specific and disproportionate pressures** on their asylum systems, due in particular to their geographical or demographic situation”.

It emphasizes that the EU asylum policy „should be governed by the principle of **solidarity and fair sharing of responsibility**, including its financial implications, between the Member States.”

Much **refinement** concerning **detention** and persons with special needs

# Reception Conditions Directive

## Purpose:

To ensure **asylum seekers a dignified standard of living** and comparable living conditions in all Member States during the refugee status determination procedure

and

by the **similarity of treatment across the EU** limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception

**Only the minimum is prescribed – states may overperform**

# Reception Conditions Directive

**Information** in 15 days, in writing, language!

**Family unity** maintain as far as possible

**Schooling minors** compulsory, (after 3 months)

**Employment** optional exclusion from labour market for a maximum of 9 months.

**Material reception conditions:** „provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.” (§ 17 /2)

**Housing/accommodation:** in kind or allowance for it

**Health care minimum:** „emergency care and essential treatment of illness and of serious mental disorders” (§ 19)

**Detention** – a limited, exceptional tool

• Article 8 para 2:

Member States may detain only detain an applicant, „**if other less coercive alternative measures** cannot be applied effectively” – **individual assessment** is required

- Less coercive alternatives:
- regular reporting to the authorities,
  - the deposit of a financial guarantee,
  - obligation to stay at an assigned place

# Reception Conditions Directive

- Six grounds for detention:

- verifying **identity or nationality**;
- getting the facts forming the basis of the application if there is **risk of absconding** of the applicant;
- **border procedure** (decision on entry);
- application is made only in order to **delay or frustrate the enforcement** of the return decision
- when protection of **national security or public order** so requires;
- **Dublin** procedure

In Case C-18/16 K.v The Netherlands,  
Judgment of 14 September  
Detention for verifying nationality and  
preventing absconding is compatible with  
the Charter of Fundamental rights and Article  
5 of the ECHR

**CASE OF ILIAS AND AHMED v. HUNGARY**  
(Application no. 47287/15)  
ECtHR unanimous judgment 14 March 2017  
Detention in „transit zone” without deadline  
and appeal illegal

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# Reception Conditions Directive

Reduction/withdrawal always **optional**

Decisions „shall be taken **individually, objectively and impartially and reasons shall be given**” (§ 20/5)

Emergency health care must not be withdrawn in any case!

**Appeals** against all substantive decisions must be allowed

# Temporary Protection Directive, 2001

2001/55 EC Directive on Giving Temporary Protection in  
the Event of a Mass Influx of Displaced Persons and on  
Measures Promoting a Balance of Efforts Between Member  
States in Receiving Such Persons and Bearing the  
Consequences Thereof  
2001 July 20, OJ L 212/12

# TEMPORARY PROTECTION DIRECTIVE

## Goal:

**minimum standards** for giving temporary protection in the event of a mass influx of displaced persons

+

to promote a **balance of effort** between Member States

## Basic principles:

**Neither replaces nor excludes** recognition as Convention refugee

Any **discrimination** among persons with temporary protection is **forbidden**



# Temporary Protection Directive

Beneficiaries = 'displaced persons'

who

have **had to leave** their country or region of origin,

or have been **evacuated**,

and are unable to return in safe and durable conditions

in particular:

(i) persons who have fled areas of **armed conflict or endemic violence**;

(ii) persons at **serious risk of**, or who have been the victims

of, **systematic or generalised violations** of their **human rights**;

# Temporary Protection Directive

**Mass influx** means arrival in the Community  
of a large number of displaced persons,  
who come from a specific country or  
geographical area

The **Council decides by qualified majority** the start and end  
of T.P.

Duration

**1 year** + max **two times 6** months  
= total max: **2 years**

Council may end it earlier, but must not exceed two years'

# Temporary Protection Directive

## The voluntary burden sharing model

Preamble: „It is therefore necessary ...to take measures

to promote a balance of efforts between the

Member States in receiving and bearing

the consequences of receiving

such persons.” ...

Provision should be made for

a solidarity mechanism

.... The mechanism should consist

of two components.

The first is financial and the second concerns the actual reception of persons in the Member States.”

**Financial:** European refugee Fund (§ 24) and in case of „sudden and massive influx” Council may recommend additional support.

**Reception of persons:** (§ 25) Council decision announcing TP includes voluntary offer of places by MS. Dual consent to relocation within the EU: the person and the receiving state must agree.

The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. (§ 25)

# THANKS!

BOLDIZSÁR NAGY

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