



The Dublin System

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Dublin system



- ▶ **a set of criteria and mechanisms** for determining which Member State is responsible for considering an application for international protection
- ▶ establishes the principle that only one Member State is responsible for examining an asylum application
- ▶ It aims to avoid the '**refugees in orbit**' situation, where no Member State would be willing to accept responsibility for examining an application.
- ▶ Also aims to avoid '**asylum shopping**', where the same person applies for international protection in several Member States.



Dublin system – legal basis

Article 78 TFEU

- 1. The Union shall develop **a common policy on asylum, subsidiary protection and temporary protection** with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of **non-refoulement**. (...in accordance with the **Geneva Convention** of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties)
- 2 For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a **common European asylum system** comprising:
 - **e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; (...)**



Dublin system – legal basis



Article 78 (3) TFEU

In the case of one or more Member States being confronted by **an emergency situation characterized by a sudden inflow** of nationals of third countries, the Council, on a proposal of the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Legal basis for the Council Decision (EU) 2015/1523 of 14 September 2015 and consequently Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece – **a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection**



Article 80 TFEU

The policies of the Union set out in this Chapter and their implementation shall be governed by **the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.** (...)



How did we arrive to the Dublin III Regulation?

- Dublin Convention (signed in Dublin, Ireland, on 15 June 1990, in effect from 1997)
- Dublin II Regulation (no 343/2003) – replaced the Dublin Convention in 2003
- Dublin III Regulation (no 604/2013) – in force since 1 January 2014
- In 2016 - the Commission proposed a draft of the Dublin IV Regulation COM(2016)270 (still in the legislative process – not yet finalized nor in effect!)

The main elements of the proposal:

- a new automated system to monitor the number of applicants for international protection and the number of persons effectively resettled by each Member State
- a reference key to determine when a Member State is under disproportionate asylum pressure
- a fairness mechanism to address and alleviate that pressure



Which states participate on the Dublin system?

- ▶ the EU Member States except for Denmark (Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden)
! Denmark is bound by the Dublin rules by means of a treaty instead of the regulation
- ▶ Iceland, Norway, Switzerland and Lichtenstein
- ▶ the Dublin III Regulation is no longer part of the United Kingdom law, only some parts continue to apply under transitional provisions for requests made before the transition



Criteria for establishing responsibility

Article 3(1) of the Dublin III Regulation – Access to the procedure for examining an application for international protection

- the application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate are responsible
- also establishes the right of applicants to have their application for international protection examined

Article 7 of the Dublin III Regulation – Hierarchy of criteria

- shall be applied in the order in which they are set out in Chapter III
- on the basis of the situation when the applicant first lodged an application for international protection
- in view of the application of Articles 8, 10 a 16 take into consideration any available evidence regarding the presence of any family members, relatives or any other family relations of the applicant



Criteria for establishing responsibility

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- ▶ Special rules for unaccompanied minors
 - ▶ Family considerations
 - ▶ MS which allowed entry to its territory
 - A – based on residence documents or visa
 - B – irregular entry or stay
 - C- visa waived entry
 - ▶ Application lodged at the transit area of an international airport
 - ▶ Residual criterion (if neither of the previous criteria cannot be applied)

 - ▶ + special rules for dependent persons
 - ▶ Discretionary clauses (humanitarian clause)

1. Special criteria for unaccompanied minors

- ▶ Unaccompanied minor – the responsible Member State is the one, where a family member, a sibling or a relative of the unaccompanied minor is legally present, provided that it is in the best interests of the minor (Art. 8))

Who is a family member?

Definition in Art. 2 (g) of the Dublin III Regulation

- the spouse of the applicant or in some Member States his or her unmarried partner in a stable relationship
- minor children of the applicant, on condition that they are unmarried
- when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant
- when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her.

Who is a relative?

Definition in Art. 2(h) of the Dublin III Regulation

- the applicant's adult aunt or uncle or grandparent who is present in the territory of a member State
- ▶ In the absence of a family member, a sibling or a relative, the MS responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor

2. Special criteria for family members - A

- ▶ responsible is the MS, where the applicant has a family member, who has been allowed to reside as a beneficiary of international protection (Art. 9)
- ▶ responsible is the MS, where the applicant has a family member whose application for international protection has not yet been the subject of a first decision regarding the substance (čl. 10)
- ▶ the persons concerned must express their desire to be united in writing

Who are family members?

the definition in Art. 2(g) applies for the entire Dublin III Regulation

- the spouse of the applicant or in some Member States his or her unmarried partner in a stable relationship
- minor children of the applicant, on condition that they are unmarried
- when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant
- when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her.

2. Special criteria for family members - B

- ▶ Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough and
- ▶ Where the application of the criteria set out in the Regulation would lead to their being separated ⇒ Art. 11
 - A) The responsible MS is the one responsible for taking charge of the largest number of them
 - B) Failing this, responsibility shall lie with the MS which is responsible for examining the application of the oldest of them

3. MS which allowed entry to the territory

A – entry based on a residence document or visa (Art. 12)

- responsible is the MS, which issued the residence document or visa to the applicant
- if the applicant is in possession of more than one valid residence document or visa
 - a) the MS which issued the residence document conferring the right to the longest period of residency, where the periods of validity are identical ⇒ the Member State which issued the residence document having the latest expiry date
 - b) the MS 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
- applies also if the residence document has expired less than two years previously or where a visa has expired less than six months previously, where the applicant has not left the territory of the Member States
- ⇒ where the residence document has expired more than two years previously or the visa expired more than six months previously, the responsible MS is where the application is lodged



3. MS which allowed entry to the territory B – irregular entry and/or stay (Art. 13)

- ▶ Where it is established, on the basis of proof or circumstantial evidence (Art. 22/3) that
- ▶ an applicant has irregularly crossed the border into a MS by land, sea or air having come from a third country,
- ▶ the MS thus entered shall be responsible for examining the application for international protection.
- ▶ ! That responsibility ceases 12 months after the date of the irregular border crossing.



3. MS which allowed entry to the territory C – visa waived entry

- ▶ where the applicant enters into the territory of the MS in which the need for him or her to have a visa is waived ⇒ that MS shall be responsible
- ▶ however, if the third-country national lodges his/her application in another MS in which the need for him to have a visa for entry into the territory is also waived ⇒ that other MS is responsible



4. Application lodged in an international transit area of an airport

- ▶ Where the application for international protection is made in the international transit area of an airport of a MS \Rightarrow that MS is responsible for examining the application



5. The residual criterion

- ▶ Where no MS responsible can be designated on the basis of the criteria listed in the Dublin III Regulation, **the first MS in which the application is lodged** is responsible for examining it (Art. 3/2)
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+ Dependent persons

- ▶ Article 16
- ▶ on account of pregnancy, za new-born child, serious illness severe disability or old age
- ▶ dependent on the assistance of his or her child, sibling or parent
- ▶ **legally resident** in one of the MS
- ▶ or his or her child, sibling or parent legally resident in one of the MS is dependent on the assistance of the applicant
- ▶ The MS shall keep or bring together the applicant with that child, sibling or parent
- ▶ provided that family ties existed in the country of origin
- ▶ that the child, sibling or parent or the applicant is able to take care of the dependent person
- ▶ the persons concerned expressed their desire in writing



Discretionary clauses

- ▶ Art. 17/1 Dublin III: each MS may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if another MS would be responsible under the criteria laid down in the Dublin III Regulation
- ▶ **Humanitarian clause**
- ▶ Art. 17/2 Dublin III: each MS in which an application is lodged may request another MS to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family and cultural considerations, even where that other MS is not responsible under the criteria laid down in the Dublin III Regulation

Statistics in the Czech Republic

	RECEIVED REQUESTS	SENT REQUESTS	TRANSFERS to the Czech Republic	TRANSFERS from the Czech Republic
2016	1882	507	166	124
2017	2010	264	420	94
2018	1191	318	325	90
2019	1412	401	286	84



Question: Is a refugee pursuant to the Dublin III Regulation obliged to apply for international protection in the Member State of entry?

- NO
- The Dublin III Regulation establishes the criteria and mechanisms for determining the MS responsible for examining an application for international protection lodged in one of the MS
- The Dublin III Regulation **does not oblige** applicants for international protection to make an application in the MS of first entry, however that does not mean that an applicant cannot be sent back to the MS of first entry (where Art. 13 applies)
- ! The [proposal of the Dublin IV Regulation COM\(2016\)270](#) enlists the obligations of the applicants in its Article 4 (besides others to make an application in the MS where legally present or in the MS where entered into irregularly) + in Art. 5 enlists the consequences of non-compliance)

M.S.S. v Belgium and Greece

European Court of Human Rights

- ▶ Judgment from 21 January 2011

The case concerned an applicant for international protection from Afghanistan, who arrived to Greece and traveled further to Belgium, where he made an application for international protection

The European Court of Human Rights held that both Greece and Belgium breached their human rights obligations under the European Convention on Human Rights

Greece:

- conditions of detention (degrading treatment), unacceptable living conditions on the street –
- deficiencies in the asylum procedure in the applicant's case and risk of his expulsion to Afghanistan without any serious examination of the merits of his asylum application and without any access to an effective remedy

Belgium:

- by sending the applicant back to Greece, the Belgian authorities exposed him to risks linked to the deficiencies in the asylum procedure there
- there was no effective remedy against the transfer available to the applicant

- ▶ [Dublin's Trap](#)

- ▶ [Grand Chamber hearing](#)



Main shortcomings of the Dublin system

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- ▶ disproportionate distribution of applications for international protection in the Member States
 - ▶ contrary with UNHCR's recommendation it does not take into account, in which MS the applicant would prefer to make his or her application
 - ▶ only a small number of requests to take back or take charge of the applicant result in transfer



Further sources:

[European Parliament – Dublin regulation on international protection applications](#)

[European Asylum Support Office – Annual Report 2018, 2.6. Dublin system](#)





Efforts for a fair distribution of applications for international protection

Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015

- ▶ Establish provisional measures in the area of international protection for the benefit of Italy and of Greece due to an emergency situation of sudden inflow of third-country nationals in 2015
- ▶ Requested the relocation of 40 000 persons in clear need of international protection (Council Decision 2015/1523) and relocation of 120 000 persons in clear need of international protection (Council Decision 2015/1601) from Greece and Italy)



Efforts for a fair distribution of applications for international protection

Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015

- ▶ Hungary (C-647/15) and Slovakia (C-643/15) lodged an action against these Council Decisions with the Court of Justice of the European Union (CJEU – the cases were joined and the CJEU dismissed the action on 6 September 2017
- ▶ In 2017, the EU Commission brought actions against the Czech Republic (C-719/17), Hungary (C-718/17) and Poland (C-715/17) for failure to comply with the Council Decision (failure to relocate the assigned numbers of persons in clear need of international protection from Greece and Italy) – no final judgment has been issued by the CJEU yet



Reform of the Dublin System?

- ▶ In the proposal of the Dublin IV Regulation, the Commission proposed a **corrective allocation mechanism**, which would be triggered automatically when a MS received disproportionate numbers of applications for international protection
 - ▶ If a MS refused to accept the applicant for international protection, a “**solidarity contribution**” would have to be made instead.
 - ▶ Reaching an agreement on the distribution of asylum-seekers seems to be one of the main reasons, why the Dublin IV Regulation is still undergoing the legislative procedure.
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Thank you!

In case of any questions or need for further information or clarification, contact me via e-mail at:

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