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ON REFUGEES
AND EXILES

Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered

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Executive Summary

The 'Dublin Regulation' determines the Member State responsible for processing an asylum claim lodged in the European Union. Usually this will be the Member State through which an asylum seeker first entered the EU. The Regulation replaced the 1990 Dublin Convention, and aims to ensure that each claim is fairly examined by one Member State, to deter repeated applications, and to enhance efficiency. It is linked to EURODAC, a database that stores the fingerprints of asylum seekers entering Europe. The Regulation's 'sovereignty clause' allows a Member State receiving an application to assume responsibility, and its 'humanitarian clause' allows Member States to unite families in certain circumstances.

According to the European Commission's June 2007 evaluation, "*the objectives of the Dublin system . . . have, to a large extent, been achieved*." This conclusion is questionable. After ten years in operation, responsibility is assigned but not carried out, multiple claims and irregular movement persist, and an expensive layer of bureaucracy sits superimposed on a nascent European asylum system. According to the evaluation, low transfer rates are "*the main problem for the efficient application of the Dublin system,*" as fewer than half of agreed transfers are actually carried out. Most of the time, assessing responsibility for an asylum application yields no tangible result. The Commission's suggestion that Member States might annul "*the exchange of equal numbers of asylum seekers in well-defined circumstances*" highlights the absurdity of the system: states agreeing not to exercise their acknowledged responsibility could in fact improve efficiency. Similarly, the issue of multiple asylum applications remains unresolved: each year since EURODAC was introduced, the proportion of applicants reported to have previously applied has grown. Finally, although the annex to the Commission's evaluation contains data that raise the possibility that the Dublin system has a significant financial impact, the evaluation itself omits any meaningful cost-benefit analysis, instead simply asserting that "*Member States consider the fulfilling of the political objectives of the system as very important, regardless of its financial implications*." In ECRE's view, knowing the cost of the system is critical to evaluating it.

Far from promoting inter-state solidarity, a long-standing EU goal, the Dublin system shifts responsibility for refugee protection toward the newer Member States in Europe's southern and eastern regions. In 2005, every border state except Estonia reported more incoming than outgoing transfers, and of the non-border Member States, only Austria reported more incoming than outgoing transfers. The Dublin system has a relatively small net effect on the EU's wealthier, interior Member States: Germany, for example, saw a net outflow of thirty-two asylum seekers due to Dublin transfers in 2005. By contrast, the effect on the often less wealthy 'border' Member States can be significant: in 2005, Dublin transfers increased Hungary's asylum caseload by nearly 10%, and Poland's by nearly 20%. Actually carrying out all agreed transfers would have more than doubled this impact.

The inefficiencies and contradictions of the Dublin system do not merely impact governments and public finances, but often harshly disrupt human lives as well. The

Dublin system pledged to "*guarantee*" asylum applicants "*that their applications will be examined by one of the Member States*." In fact, far too often, a Dublin transfer guarantees that asylum applications will *not* be meaningfully examined. During responsibility determination, the process of deciding which Member State should assess an application, asylum seekers can wait as long as six months before their claims can be heard (even if all deadlines are met), and the Regulation's interaction with Member State practices can result in claims never being heard. Vastly differing refugee recognition rates create an 'asylum lottery': for example, over 80% of Iraqi asylum claims succeed at first instance in some Member States, versus literally none in some others. Reception conditions also vary widely: governments, the European Parliament, and NGOs have raised serious concerns at inadequate or even inhumane treatment of asylum seekers in several Member States. States increasingly detain asylum seekers to try to complete transfers, families are kept apart, and refugees with serious health problems receive insufficient care. The application of the Dublin rules causes additional, unnecessary suffering to already traumatised refugees.

Later in 2008, the European Commission will propose amendments to the Dublin Regulation, creating an opportunity for urgently needed reform. For example, the determination of the country responsible for a claim should not result in transfers to Member States that cannot both guarantee a full and fair hearing of asylum claims, and provide reception conditions that at the very least comply with the EU Reception Directive. The Commission should be empowered to instigate a process to suspend such transfers. Applicants must have a right of judicial appeal against transfer, with suspensive effect. The Dublin Regulation should explicitly require that all transferred cases be examined fully on their merits, that all claimants subject to Dublin procedures receive the same reception conditions as are required for other asylum seekers, and that detention may be used only as an extraordinary measure of last resort, where non-custodial measures demonstrably fail.

Family support can benefit both asylum seekers and their host states, but the Dublin Regulation gives insufficient consideration to the interests of families, and of children and other vulnerable groups. The definition of a family – currently limited to spouses, and minor children and their parents or guardians - should be extended, and refugees should be able to join any family member holding a legal residence status in the EU. The Regulation's humanitarian clause should not be limited to uniting families. It should also allow Member States to prevent the transfer of vulnerable persons such as torture victims, or those with health problems that may require specialised treatment. Determination of responsibility for the applications of children and other vulnerable people should follow a separate process that focuses on their best interests and particular needs.

Confusion and inconsistency exacerbate the Dublin system's effects. Transfers increase pressure on national asylum systems, while mechanisms to facilitate cooperation and mutual support are lacking. The Regulation should require that all asylum seekers receive full information about the system and its implications, in a form they can understand. Officials should receive comprehensive training, and oversight and better dispute resolution mechanisms must be established. The proposed European Asylum Support

Office should share best practices, help Member States to support one another, and monitor respect for human rights.

Ultimately, however, the Dublin Regulation must be replaced entirely. The 'Stockholm Programme,' a set of forthcoming proposals to advance the Common European Asylum System after the Hague Programme expires at the end of 2009, provides the framework to do this. As it enters its second decade, the Dublin regime faces a greatly changed Europe, in which the integration of long-term residents is a top priority. The Dublin system impedes integration by delaying the substantive examination of asylum claims, by creating incentives for refugees to avoid the asylum system and live 'underground,' and by uprooting refugees and forcing them to have their claims determined in Member States with which they may have no particular connection. The Stockholm Programme should therefore include a responsibility allocation system that would operate with, rather than against, a Common European Asylum System.

Responsibility determination should focus on existing connections between asylum seekers and Member States. Extended family ties, the presence of communities of similar origin, language skills, and familiarity with cultures and educational systems can ease integration. Similar factors can also help to predict where refugees will prefer to seek asylum. Member States should accept responsibility for asylum claims based on these or similar criteria, or on asylum seekers' preferences. Either approach would likely reduce irregular movement prior to refugee status determination, as well as facilitating the integration of recognised refugees.

EU Member States should fairly share costs associated with asylum, and should consider collaborating to carry out responsibilities that can be shared without endangering human rights. Collaboration need not imply a single, centralised procedure. For example, interviews and hearings could take place locally, with officials travelling to centres located throughout the EU, whereas tasks such as scheduling, administration and data storage might be handled centrally. Finally, recognised refugees should be able to move freely within the EU to better integrate and to contribute their skills where they are needed, and reintegration support should be provided to assure the sustainable return of those whose claims fail after full and fair examination.

Developed in 1990, nearly fifteen years before the enactment of the first legislative components of the Common European Asylum System, the Dublin system is now an anachronism. Unsurprisingly, a system designed so long ago fails to fit the needs of an EU of twenty-seven Member States that has prioritised the integration of new residents. The Dublin Regulation does not promote harmonisation of EU asylum systems, seriously impedes integration, and sows dissension among Member States. It simply does not work. Rather than pretending it can be made to work, the Stockholm Programme should repeal the Dublin Regulation. Europe cannot afford to miss this opportunity to devise an efficient responsibility-sharing regime that improves solidarity among Member States, and promotes the integration of people who seek, and deserve, international protection.