European Commission - Fact Sheet

Questions & Answers: Reforming the Common European Asylum System

Brussels, 4 May 2016

Reforming the Dublin system

What is the Dublin Regulation?

The Dublin Regulation establishes which EU Member State is responsible for the examination of an asylum application. The rules aim to ensure quick access to asylum procedures and the examination of an application in substance by a single, clearly determined, Member State in order to ensure full observance of the right to asylum.

The core principle under the current system is that the responsibility for examining an asylum claim lies first and foremost with the Member State which played the greatest part in the applicant's entry to the EU. In most cases this means it is the Member State of first entry. It can also be a Member State which has issued a visa or residence permit to a third country national, who then decides to stay and apply for asylum when this authorisation expires. Family unity and protection of unaccompanied minors are criteria which lead to derogations from these rules.

Why is it necessary to amend the existing Dublin Regulation?

The current Dublin system was not designed for situations of large-scale uncontrolled arrivals and does not ensure a sustainable and fair sharing of responsibility for asylum applicants across the Union. This has led to situations where a limited number of Member States deal with the vast majority of asylum seekers, putting the capacities of their asylum systems under strain and delaying asylum seekers' applications being processed.

The lack of fairness in the current system – with a handful of Member States placed under disproportionate pressure by having to deal with the majority of asylum applications – also creates a disincentive for the full implementation of the rules.

The current set of rules on the determination of responsibility can also lead to complex and lengthy procedures, which in turn creates a disincentive for compliance with the rules by applicants.

Secondary movements and multiple applications remain a common problem in the EU. 24% of the applicants in 2014 had already launched previous applications in other Member States. The rules do not allow an applicant to choose which country they apply in but lengthy procedures and overburdened systems mean some migrants seek to move on to avoid registration and move on to another EU Member State, creating pressure on a few favoured destination countries.

The system can also be subject to abuse by applicants because it lacks clear provisions on their obligations and sanctions for non-compliance, in particular as regards the refusal to be fingerprinted.

How will the new system be made more efficient and fair?

The system will be fairer and based on solidarity:

- A fair sharing of responsibility will be ensured by the introduction of a corrective allocation mechanism (the fairness mechanism) which would be activated automatically in cases where Member States would have a disproportionate number of asylum requests;
- The new system will automatically establish when a country is handling a disproportionate number of asylum applications by comparison to the overall number of asylum claims made in the EU. It will do this by reference to a country's size and the wealth. If one country is receiving disproportionate numbers above and beyond that reference (representing 150% of the reference number), new applicants in that country will be allocated across the EU until the number of applications is back below that level;
- The fairness mechanism will also factor in the effort being made by a Member State to resettle those in need of international protection direct from a third country. This will acknowledge the importance of efforts to implement legal and safe pathways to Europe;

- A Member State will also have the option to temporarily not take part in the allocation. In that case, it would have to make a financial solidarity contribution of €250,000 to the Member State receiving an applicant for whom it would otherwise have been responsible under the fairness mechanism.

The system will be more efficient:

- Procedures will be streamlined, in particular through shorter time limits for the different steps of the determination procedure, transfers and access to the asylum procedure:
- Take charge requests, asking another Member State to take over responsibility for an application, have to be sent within one month and a decision taken by the receiving country within one month of receipt of the request. No reply will be tantamount to accepting the request;
- Requests from one Member State to another to take back an applicant for whom the latter is responsible and who has absconded ('take back requests') will be transformed into simple take back notifications. Such notifications have to be submitted within two weeks of registration and do not require a reply, only a confirmation of receipt. All Member States will be under a clear obligation to take back applicants they are responsible for;
- Appeals against transfer decisions will be dealt with within 15 days;
- The expiry of deadlines will no longer result in a shift of responsibility between Member States which can lead to the non-respect of the rules and the obstruction of the procedure. Under the new rules, once a Member State has been determined responsible, that Member State shall remain responsible.

The system will prevent abuses:

- Proper registration of all asylum applications in the EU should help detect multiple applications and prevent irregular secondary movements;
- For the first time, the new system introduces clear legal obligations for applicants:
- The new system introduces an explicit obligation for applicants to apply for asylum in the Member State of first irregular entry or in the Member State where a person has stayed legally prior to the application for asylum. This will make clear that applicants do not have the right to choose in which Member State they submit their application. In case an asylum applicant does not comply with this new obligation, Member States must examine the application in an accelerated procedure;
- Applicants will also be obliged to provide all relevant information for determining the Member State responsible for their claim in a timely manner and failure to comply will have proportionate procedural consequences, such as the preclusion of information submitted unjustifiably late;
- To discourage secondary movements, applicants will only be entitled to material reception rights in the country where he or she is required to be present, with the exception of emergency healthcare;
- Before the process of determining the Member State responsible, the Regulation introduces an obligation for the Member State of application to check whether the applicant comes from a first country of asylum or a safe third country. The Member State making this admissibility check will be considered responsible for these applications. The Member State of application must also check whether the applicant comes from a safe country of origin or presents a security risk, in which case they have to examine the application through an accelerated procedure.

The system will protect asylum seekers' best interests:

- Appeals will be accelerated but will have automatic suspensive effects, meaning no transfers will be carried out while the appeal is ongoing;
- The rights of unaccompanied minors have been strengthened through better defining the principle of the best interests of the child and by setting out a mechanism for making a best interests of the child-determination in all circumstances implying the transfer of a minor;
- The right to liberty and freedom of movement will be reinforced by shortening the time limits under which a person may be detained in exceptional cases and only if it is in line with the principles of necessity and proportionality;
- The right to family reunification will be reinforced, in particular by enlarging the scope of the Regulation to include siblings as well as families formed in transit countries.

What is the purpose of the new fairness mechanism?

The new fairness mechanism will apply in situations when a Member State is confronted with a disproportionate number of asylum applications for which it is responsible under the Regulation. The purpose of the mechanism is to ensure a fair sharing of responsibility between Member States in such cases and at the same time swift access for applicants to the asylum procedures.

How will the fairness mechanism work?

A new automated system will allow for the registration of all asylum applications made in the EU and the monitoring on a daily basis of the number of applications made in each Member State. The automated system will record every asylum application made in the EU as well as the number of persons in need of protection each Member State effectively resettles from outside the EU.

The new system will automatically establish when a country is handling a disproportionate number of asylum applications. If the number of asylum applications made in a Member States is above 150% of the reference share, the fairness mechanism is automatically triggered. This reference number is identified on the basis of a key, taking account of the country's population size, and the size of its economy.

Once the fairness mechanism is triggered, all new applications in the Member State concerned are allocated to other Member States, after an admissibility check has been carried out, until the number of applications is back below the 150% level.

Reallocations from a Member State under disproportionate pressure will be distributed evenly to all other Member States on the basis of the base reference key. Other Member States who have already reached 100% of their reference percentage will not be allocated new applications.

The fairness mechanism will also factor in the effort being made by a Member State to resettle those in need of international protection direct from a third country, since they count towards the reference share. This will acknowledge the importance of efforts to implement legal and safe pathways to Europe.

The Commission will review the functioning of the fairness mechanism 18 months after entry into force of the Regulation and annually from then on in order to assess whether the objective of ensuring a proportionate sharing of responsibility between Member States and of relieving disproportionate pressure on certain Member States is met. This review will in particular verify that the threshold for triggering the mechanism is effective.

What are the criteria for the reference key?

The reference key is based on two criteria with equal 50% weighting:

- the size of the population, and
- the total GDP of a Member State.

When will the fairness mechanism be triggered?

The number of applications for which a given Member State is responsible and the numbers of persons effectively resettled by a Member State form the basis for the calculation using the reference key and threshold.

The identification of a Member State handling a disproportionate number of applications is determined by applying the reference key to the current total number of applications as well as the total number of persons that have been resettled by the respective Member States during the preceding 12 months on the basis of entries in the automated system.

The system continuously calculates the percentage of applications for which each Member State has been designated as responsible and compares with the reference share (i.e. 100% of the respective Member State's share according to the reference key).

The application of the corrective allocation for the benefit of a Member State is triggered automatically where the number of applications for international protection for which a Member State is responsible exceeds 150% of the reference share.

The system will start all Member States at zero and only starts registering new applications and resettlements from the moment it is launched.

The system will be applied on a forward-looking basis, which will mean that it is based on the registration of new applications and resettlements from the moment it is launched. Transitional arrangements will apply until reference values for a full twelve month period are reached.

How long will the fairness mechanism apply?

The allocation will continue for the Member State which is confronted with a disproportionate number of asylum applications for as long as this number is above 150% threshold. It will cease when the number of allocations is below this threshold.

Can Member States decide not to take part in the fairness mechanism?

A Member State may decide to opt out temporarily from the fairness mechanism for a renewable period of twelve months, subject to making each time a solidarity contribution of €250,000 per applicant to the Member States which are allocated responsibility for examining the application instead.

Payments will be made at the end of the 12 month period to the Member States who took over such responsibility.

A practical example to illustrate the functioning of the fairness mechanism

For illustrative purposes, assume countries A, B, C and D apply the new Dublin Regulation.

Applying a formula giving 50% weighting to population and 50% weighting to GDP, a reference key is set with the following basic reference shares:

A	B	C	D
10%	30%	20%	40%

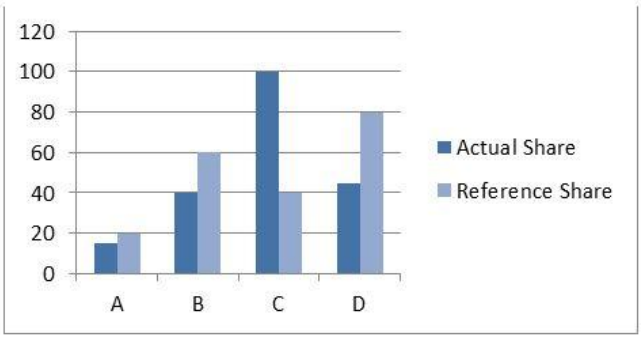
180 asylum applications are made and 20 people are effectively resettled in the four countries as follows. These are each country's actual shares:

	A	B	C	D
Asylum Applications	15	20	100	45
People effectively resettled	0	20	0	0
Actual Share	15	40	100	45

The reference share for each country is their basic reference percentage of the total number of applications and resettlements in all four countries.

	A	B	C	D
Basic Reference Share	10%	30%	20%	40%
Reference Share of 200	20	60	40	80

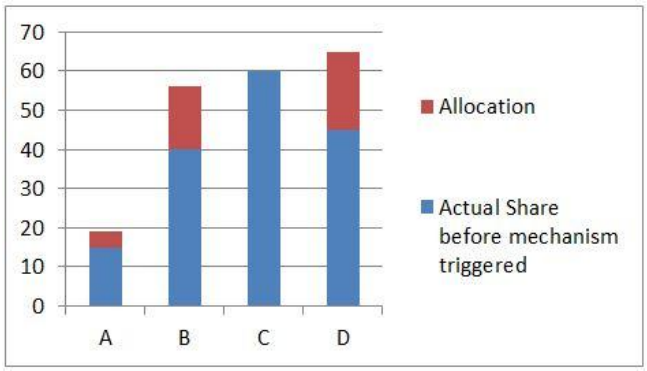
By comparing the reference share of total applications to the actual shares of applications, you see that Country C has received a disproportionate share.



Country C's reference share of 200 applications is 40 applications. In reality though, C has received 100 applications.

As this is above 150% of Country C's reference share of 200 (which would be 60), the fairness mechanism is triggered for Country C, as of when the 60th application is registered in Country C.

The remaining 40 applications are allocated to the other three countries based on the basic reference share (recalculated according to population and GDP minus Country C), such that 4 go to country A, 16 to country B and 20 to country D.



All new applications to Country C will continue to be allocated to countries B and D until its actual share is below 150% of its reference share.

Applications allocated from C will not be sent to countries A, B or D if their actual share reaches 100% of their reference share.

Which obligations exist for applicants?

The Regulation sets out the obligation for each applicant to provide in a timely manner all information relevant for determining the Member State responsible and to cooperate with the competent authorities. Applicants have an obligation to be present and available to the authorities and to respect any transfer decision. Failure to fulfil the legal obligations set out in the Regulation will lead to sanctions for the applicant. Applicants will only be entitled to material reception rights, with the exception of emergency healthcare, in the Member State where their application is treated.

How will the rights of unaccompanied minors be strengthened?

The best interests of the child should be a primary consideration for all Member States. Under the new system, the rights of unaccompanied minors will be strengthened and the assessment of the best interests of the child reinforced. The proposal clarifies that the Member State where the minor first lodged his or her application for international protection will be responsible, unless it is demonstrated that this is not in the best interests of the minor.

Before transferring an unaccompanied minor to another Member State, the transferring Member State will have to make sure that the receiving Member State will take the necessary measures to safeguard their rights without delay.

How will the right to family reunification be strengthened?

The right to family reunification of asylum seekers present on the EU territory will be reinforced and the scope will be extended to also include siblings of an applicant as well as families formed in transit, after leaving the country of origin but before arrival on the territory of the Member State.

These changes reflect recent migratory patterns where people may have stayed for longer periods of time outside their country of origin before reaching the EU, such as in refugee camps. This targeted extension of the family definition is expected to strengthen the right to family reunification and also to avoid the risk of people moving irregularly to join their families.

How will the safeguards on detention for the purpose of transfer be strengthened?

Detention can only take place in order to carry out the transfer in cases where there is a significant risk of absconding and only if no other less coercive alternative measures can be applied effectively. An asylum applicant should not be be detained for the sole reason that he or she is seeking international protection.

Under the new system, the detention period for the purpose of transfers has been significantly reduced, from six to four weeks.

Does the fact that the Commission is making this proposal for a reformed Dublin system mean that it is no longer interested in upholding the existing Dublin rules?

The Commission is making the present reform proposal to ensure that the EU is equipped in the medium-term with an improved and future-proof system that is both sustainable and fair. Until these new arrangements are made applicable, it is imperative that the rules of the existing system are fully implemented; the Commission will vigorously enforce these rules.

As the Commission explained in its Communication of 6 April, there is no choice but to pursue a twin-track strategy of stabilisation through the full respect and application of the existing legal framework, while facing up to the need to reform the architecture of those rules.

Can the UK, Ireland, Denmark and the Schengen Associated States opt-in or out of this proposal?

The United Kingdom and Ireland may participate in this proposal, but are not required to do so, in accordance with the relevant Protocol attached to the Treaties.

This means, for example, that the United Kingdom is not affected by the present reform unless it chooses to be, by deciding to opt in. Unless it opts in, the United Kingdom may continue to apply the existing Dublin regulation as it operates today, in line with the Treaties.

Denmark has an opt out and does not participate in justice and home affairs measures. However, Denmark applies the current Regulation on the basis of an international agreement concluded in 2006. Under that agreement, Denmark may opt in to the recast Regulation.

The Schengen Associated States (Iceland, Norway, Switzerland, Liechtenstein) do not take part in the adoption of any acts amending Dublin and must accept its development without exception. If any Schengen Associated State does not accept an amending act then the respective agreements will be terminated unless the Joint/Mixed Committee established by the agreements decides otherwise, by unanimity.

What will happen with the permanent relocation mechanism proposed by the Commission in September?

The proposal for a new Dublin regulation introduces an automatically triggered fairness mechanism. It therefore has a similar objective as the proposal made by the Commission in September 2015 on the permanent crisis relocation mechanism. Depending on the results of the discussions on this proposal the commission could consider withdrawing the September proposal.

What will happen with the existing emergency relocation schemes?

The existing emergency relocation schemes remain in place and the proposed regulation does not affect them. They are temporary and expire on 26 September 2017.

Whereas the relocation scheme only applies to applicants in Greece and Italy for which the average recognition rate of international protection at the EU level is above 75%, the new fairness mechanism, when triggered, applies to asylum seekers of all nationalities.

A reinforced Eurodac system

What is Eurodac?

Eurodac is a biometric matching database. Its purpose is to provide fingerprint evidence to assist in determining the Member State responsible for examining an asylum application made in the EU.

What changes have been introduced to Eurodac?

The scope of the new Eurodac Regulation has been extended to include the possibility for Member States to store and search data belonging to third-country nationals or stateless persons who are not applicants for international protection so that they can be identified with a view to using this information to obtain a travel document for them for return and readmission purposes.

Why are you storing more personal data in Eurodac?

Storing more personal information centrally in Eurodac will allow the immigration and asylum authorities to easily identify an irregular third-country national or asylum applicant without the need to request this information from another Member State.

The proposal establishes strict access rules to the Eurodac system and the necessary safeguards - ensuring the respect of data protection requirements.

How long will the data be stored?

The data retention period for personal data taken from asylum applicants will be 10 years. This is to ensure that Member States can track secondary movements within the European Union following the granting of international protection status. This data can now be used to transfer refugees or persons granted subsidiary protection back to the Member State that granted them protection.

Fingerprint data for irregularly staying third-country nationals who do not claim asylum will be retained for five years. This will ensure that illegal immigration and secondary movements within and to the EU can be sufficiently monitored. This storage period is aligned with other EU legislation.

Why are you now storing facial images in Eurodac?

The European Agenda on Migration suggested adding additional biometric identifiers to Eurodac in order to mitigate some of the challenges Member States were facing with damaged fingertips and non-compliance with the fingerprinting process. This proposal inserts a requirement for Member States to take a facial image of the data-subject for transmission to the Central System.

Why is the age for taking fingerprints and facial images lowered to six?

Many applicants for international protection and third-country nationals arriving irregularly to the European Union travel with families and in many cases very young children. Being able to identify these children with the help of fingerprints and facial images will help identify children in cases where they are separated from their families by allowing a Member State to follow up a line of inquiry where a fingerprint match indicates that they were present in another Member State.

It will also strengthen the protection of unaccompanied minors, who do not always formally seek international protection and who can risk harm when absconding from care institutions or child social services. Under the current legal and technical framework their identity cannot be established, making it harder to prevent them from ending up in situations which endanger their well-being.

The proposal provides safeguards in order to ensure that the taking of biometrics for minors will be carried out in full respect for their rights and will take into account their best interests.

Will information on the identity of a third-country national be shared with a non-EU country?

Identifying and re-documenting an illegally staying third-country national for return and readmission purposes will require data sharing in some circumstances with third countries - for the purpose of returns. Strict conditions are set out under which this data can be shared. Eurodac cannot be directly accessed by third countries and Member States cannot check data on behalf of a third country. This proposal aligns Eurodac with other databases such as the Visa Information System and the proposed Entry/Exit System.

Can law enforcement authorities access data stored in Eurodac?

Law enforcement authorities and Europol will continue to be able to search Eurodac to prevent, detect or investigate a serious crime or terrorist offence. Minor amendments have been made to the provisions for law enforcement access to make sure that all three categories of data stored in the Central System can be checked when a law enforcement search is carried out.

Can the UK and Ireland opt-in to this proposal?

The United Kingdom and Ireland may participate in this proposal, but are not required to do so, in accordance with the relevant Protocol attached to the Treaties.

What sanctions can Member States impose on an irregular third-country national or asylum applicant if they refuse to give their fingerprints?

The new proposal permits Member States to introduce sanctions, in accordance with their national law, for those individuals who refuse to comply with the fingerprinting procedure. It is up to the Member State to decide the form of penalties or sanctions to be introduced, as long as it does not breach the fundamental rights of the individual concerned. The use of detention or any form of coercion should only be used as a means of last resort.

Member States should refer to the guidelines on the implementation of the existing Eurodac Regulation on the obligation to take fingerprints of all individuals who submit an application for international protection that was proposed by the Commission in May 2015 as a best practice guide.

A European Union Agency for Asylum

Why has the Commission made a proposal for the establishment of a European Union Agency for Asylum?

In its Communication of 6 April 2016, the Commission considered the need to ensure a greater convergence in the asylum system as an important element to improve the functioning of the Common European Asylum System. One of the tools identified by the Commission to achieve that objective is to develop an enhanced mandate for the European Asylum Support Office (EASO). EASO will be transformed into a fully-fledged Agency, which is responsible for facilitating and improving the functioning of the Common European Asylum System

One of the main new tasks of the Agency will be to operate the reference key of applications for international protection under the new Dublin system and support a sustainable and fair distribution of applications for international protection. The Agency will also be tasked with ensuring a greater convergence in the assessment of applications for international protection across the Union, strengthening the practical cooperation and information exchange between Member States and promoting Union law and operational standards regarding asylum monitoring compliance with the Common European Asylum Ssytem and providing increased operational and technical assistance.

The Agency will develop its own capacity to become a centre of expertise on asylum and it will provide comprehensive assistance in crisis situations.

How will the Agency ensure greater convergence in the assessment of protection needs across the Union?

To ensure greater convergence and address disparities in the assessment of applications for international protection, the proposal gives the Agency the task of coordinating efforts among Member States to develop common guidance on the situation in third countries of origin. In addition to these activities, the Agency will also ensure the coordination of networks on country of origin information. Another new task of the Agency will be to assist the Commission in reviewing the situation in third countries which are included in the common EU list of safe countries of origin.

How will the Agency monitor and assess the implementation of the Common European Asylum System?

All aspects of the Common European Asylum System (CEAS), including recognition rates, the quality and nature of international protection and reception conditions will be monitored. The aim of this exercise is to ensure that any shortcomings in the functioning of the Common European Asylum System are addressed as early as possible and to ensure an orderly management of the asylum and reception systems. It will also ensure that the Member States have the necessary tools in place to address situations of disproportionate pressure.

How will the Agency assist Member States with asylum and reception systems that are subject to disproportionate pressure?

The Agency should provide assistance to Member States in cases where the asylum and reception systems are subject to disproportionate pressure that creates exceptionally heavy and urgent demands on their systems. A disproportionate number of applications for international protection for which a Member State is responsible may be an indication of such pressure. In such cases, the Agency will deploy asylum support teams to provide operational and technical assistance to Member States. Those asylum support teams will be composed of experts from Member States and experts from the Agency's own staff. The Agency will organise and coordinate a comprehensive set of operational and technical measures, at the request of the Member State concerned, or on its own initiative. In case the functioning of the Common European Asylum System is jeopardised, the Commission may adopt a decision by means of an implementing act, identifying one or more of the operational and technical measures that the Agency should take to support the Member State concerned. In cases of disproportionate pressure, the Agency will deploy experts from an asylum intervention pool as well as experts from its own staff.

How will the decision be taken for the Agency to make an emergency intervention?

An emergency intervention by the Agency may take place in the event of disproportionate pressure on the asylum and reception systems in a Member State, which puts the functioning of the Common European Asylum System in jeopardy, when that Member State:

- Does not take sufficient action to address the pressure;

- Does not request assistance from the Agency or does not accept assistance offered by the Agency;
- Does not comply with the Commission's recommendations made following failure by a Member State to implement an action plan intended to address serious shortcomings identified during a monitoring exercise.

An intervention by the Agency would be based on a Commission decision, adopted as an implementing act. In that decision, the Commission would identify the measures that need to be taken by the Agency in support of the Member State.

The Executive Director then has two working days to prepare for the practical execution of those measures. The Executive Director and the Member State would need to agree on the operational plan.

Experts from the asylum intervention pool must be deployed within 3 working days from the date when the operational plan is agreed upon. The Agency can also deploy its own staff.

The Member State must cooperate with the Agency to facilitate the implementation of the Commission decision and the practical execution of all the necessary measures.

What will change with the budget and staff of the new Agency?

The EASO budgets for 2015 and 2016 have already been considerably reinforced, given the increasing role of EASO in its support to Member States on asylum matters. The 2016 budget increased the operational expenditure in line with the different dimensions of EASO's interventions to support Member States.

The total resources necessary to enable the Agency to fulfil its expanded mandate amount to €363.963 million for the period 2017-2020. For the Agency to carry out its new tasks effectively, 357 staff members will be needed over the period 2017-2020, in addition to the number of temporary and contractual agent posts currently authorised under the 2016 budget. The total number of staff will reach 500 by 2020.

How will the reserve of asylum experts be composed?

The reserve of asylum experts referred to as asylum intervention pool will be composed of at least 500 persons. Experts from this reserve must be placed at the immediate disposal of the Agency if requested.

The profiles of these experts will vary and they will be determined by the Management Board of the Agency on a proposal of the Executive Director.

The share that each Member State will contribute towards the asylum intervention pool will also be determined by the Management Board on a proposal of the Executive Director.

Can the UK and Ireland opt-in to this proposal?

The United Kingdom and Ireland may participate in this proposal, but are not required to do so, in accordance with the relevant Protocols attached to the Treaties.

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