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ON REFUGEES AND EXILES

CONSEIL EUROPEEN  
SUR LES REFUGIES  
ET LES EXILES

**REPORT ON THE APPLICATION OF THE DUBLIN II  
REGULATION IN EUROPE**

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EUROPEAN LEGAL NETWORK ON ASYLUM

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## INTRODUCTION

On 18 February 2003, the European Council adopted the Dublin II Regulation 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.<sup>1</sup> It is a mechanism for allocating responsibility to a single Member State for processing an asylum claim. Similar to its predecessor, the Dublin Convention,<sup>2</sup> it establishes a hierarchy of criteria for identifying the responsible Member State and aims at ensuring that every asylum claim within the EU is examined by a Member State, as well as preventing multiple asylum claims and secondary movements of asylum seekers within European Union (EU) territory. In order to assist with the identification of third country nationals having lodged asylum claims in other Member States, it was agreed to set up the EURODAC Regulation.<sup>3</sup> This requires Member States to record the fingerprints of all individuals having lodged an asylum claim or having irregularly entered their territories, and to forward these to a central database in order to enable comparison.

This report provides a comparative overview of the application of the Dublin II Regulation in 20 Member States. It reveals a number of disturbing trends concerning intrinsic flaws in the Regulation, as well as failings of states to properly implement it. There is evidence that many applicants transferred under Dublin are being denied access to an asylum procedure in the responsible state. At the same time some states are increasingly using detention in order to enforce transfer under the Dublin system. The report also illustrates the harsh impact of Dublin on separated children and on families by preventing people from joining their relatives. Most states are not opting to use the sovereignty and humanitarian clauses in the Regulation to alleviate these problems, but instead are applying these clauses inconsistently or not at all. States are failing to inform applicants about the Dublin system or to fully share information with other states, thereby frustrating the effective operation of the Dublin system as a whole. Finally, it has become apparent that many applicants are being denied an effective opportunity to appeal against transfer where effected in error or where it would result in violation of states' obligations under international law.

A major motivation for undertaking the report was to provide a coherent analysis in order to inform the Commission's review of Dublin II, required by March 2006 under Article 28 of the Regulation. This empowers the Commission to propose necessary amendments to the Regulation to the European Council and the European Parliament. The report makes recommendations for immediate action to address the serious shortcomings identified with current arrangements under the Dublin system. In the longer term, ECRE has called for the Dublin II Regulation to be abolished and

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<sup>1</sup> 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, Official Journal of the European Union, 25 February 2003, L50/1 ('Dublin II').

<sup>2</sup> Convention determining the state responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990, Official Journal of the European Union C 254, 19 August 1997.

<sup>3</sup> Council Regulation (EC) No 2725/2000 of December 11 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, Official Journal of the European Union, 15 December 2000, L316/1.

replaced with an alternative system that ensures genuine responsibility-sharing and fully respects the protection needs of refugees.<sup>4</sup> ECRE has consistently stressed that no system of allocation of responsibility can work properly or safely without real harmonisation of European asylum systems. While large differences remain in the quality of national asylum procedures, recognition rates, and integration capacities from one Member State to another, a ‘protection’ lottery will exist for asylum seekers within Europe. Therefore ECRE’s recommendation on the future of the Dublin system represents one element of a package of proposals related to the future development of a Common European Asylum System as envisaged under the EU’s Hague Programme.<sup>5</sup>

The information in the report has been provided by the European Legal Network on Asylum (ELENA)<sup>6</sup> and other national contributors through written questionnaires. Additionally, the questionnaires were complemented with information from the ECRE Country Reports 2004,<sup>7</sup> and other sources where appropriate.

This extended version of the report firstly sets out the historical context in which the Dublin II Regulation was framed. The next section includes individual country tables on the application of the Regulation in Austria, Belgium, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden and the United Kingdom. There then follows a summary of the main findings of the report along with a conclusion. Annex 1 sets out a full list of ECRE’s recommendations for reform of the Regulation. Annex 2 lists the report’s contributors. Annex 3 provides statistical tables on the application of the Dublin II Regulation in 17 Member States. Comprehensive country statistics for Austria, Germany, Greece, Ireland, Poland and Spain are provided in Annex 4. Annex 5 presents a series of UK case studies on the application of the Regulation on separated children. Annex 6 provides information on the contributors of the statistics. A bibliography is included in Annex 7. A summary report of the main findings in this survey is available separately on the ECRE website.<sup>8</sup> It is primarily intended that this extended report will act as a reference tool for legal practitioners with clients within the Dublin II procedure, but along with the summary report, it is also intended to inform ECRE’s wider advocacy objectives.

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<sup>4</sup> For further information on ECRE’s position please see the ECRE Way Forward Paper, Europe’s role in the global refugee protection system, *Towards Fair and Efficient Asylum Procedures in Europe*, September 2005, Section 3.1, pp. 29.

<sup>5</sup> The Hague Programme is a five-year programme for closer co-operation in justice and home affairs at EU level from 2005 to 2010. It aims to make Europe an area of freedom, security and justice. The programme’s main focus is on setting up a common immigration and asylum policy for the 25 EU Member States.

<sup>6</sup> ELENA, the European Legal Network on Asylum, is a forum for legal practitioners who aim to promote the highest human rights standards for the treatment of refugees, asylum seekers and other persons in need of international protection in their daily counselling and advocacy work. The ELENA network extends across most European states and involves some 2,000 lawyers and legal counsellors.

<sup>7</sup> ECRE Country Report 2004 at [www.ecre.org](http://www.ecre.org)

<sup>8</sup> [www.ecre.org](http://www.ecre.org)

## THE DEVELOPMENT OF THE DUBLIN SYSTEM

### The Safe Third Country Concept

The origins of the Dublin system can be traced back to the safe third country concept, which found its way into European asylum policy in the 1990s, when European asylum systems started to receive higher numbers of applications and thus European States started implementing non-arrival and non-admission policies. While non-arrival policies aim at blocking access to EU territory, *inter alia* through visa policies and aircraft carrier sanctions, non-admission policies focus on the notion of “protection elsewhere”.<sup>9</sup> The cornerstone of this notion is the safe third country concept.<sup>10</sup> It gradually replaced the country of first asylum concept, which provided that an asylum seeker could be sent back to a country where he already had found protection. The safe third country concept widened this to include countries through which an asylum seeker had travelled and where s/he could have asked for asylum on the basis that they were generally considered safe for refugees. The change of the situation in central and eastern Europe after 1989 was of crucial importance for the development of the safe third country concept. As countries in the region became democratic states with enhanced human rights standards and acceded to the 1951 Geneva Convention, western European states found it increasingly legitimate to designate them as safe third countries.<sup>11</sup>

ECRE has consistently expressed concern about the safe third country concept and stressed that its application should be limited, as otherwise countries risk violating their obligations under international law, especially their duty to *non-refoulement*.<sup>12</sup> Under international law, the primary responsibility to provide protection remains with the State where the claim is lodged.<sup>13</sup> In the *TI* case, the European Court of Human Rights emphasised that entering into international agreements may not absolve States from the requirement of observing their obligations under international human rights law and more specifically, the application of the safe third country concept does not absolve Member States from the obligation of *non-refoulement* under Article 3 ECHR.<sup>14</sup>

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<sup>9</sup> Byrne, Rosemary; Noll, Gregor; Vedsted-Hansen, Jens (eds.): *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union*, The Hague, London, New York 2002, p. 10. For a deeper analysis of the safe third country notion see Kjaergaard, Eva: *The Concept of Safe Third Country in Contemporary European Refugee Law*, 6 International Journal of Refugee Law 4 (1994); Lassen, Nina and Hughes Jane: *Safe Third Country Policies in European Countries*, Copenhagen 1997 or Byrne, Rosemary and Shacknove, Andrew: *The Safe Third Country Notion in European Asylum Law*, 9 Harvard Human Rights Journal, p. 185-228 (1996).

<sup>10</sup> Other policies falling under the protection elsewhere notion are the safe country of origin and the ‘internal flight alternative’ concepts.

<sup>11</sup> Byrne, Rosemary; Noll, Gregor; Vedsted-Hansen, Jens (eds.): *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union*, The Hague, London, New York 2002, p. 10-14.

<sup>12</sup> Article 33 of the Convention Relating to the Status of Refugees 1951.

<sup>13</sup> ECRE: *Safe Third Countries: Myths and Realities*, February 1995; ECRE: Comments on the amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing Refugee Status, March 2005. See also ILPA: Analysis and Critique of Council Directive on minimum standards on procedures in Member States for granting and withdrawing Refugee Status, July 2004.

<sup>14</sup> ECHR: *T.I. v U.K.*, Application No. 43844/98, Admissibility Decision of 7 March 2000.

Notwithstanding the widespread concerns on its application, the safe third country notion was first codified in the 1990 Dublin Convention, which allowed Member States to “retain the right, pursuant to its national laws, to send an applicant for asylum to a third state, in compliance with the provisions of the Geneva Convention as amended by the New York Protocol.”<sup>15</sup> Moreover, the Convention itself rests on the presumption that all Member States are safe countries to which asylum seekers can be sent. As a supplement to the Dublin Convention, the EU Ministers in their 1992 London Resolutions, adopted certain principles to form the basis for national legislation implementing the safe third country notion.<sup>16</sup> Furthermore, the safe third country concept has been codified in the European Union in the recently adopted Procedures Directive.<sup>17</sup>

## Schengen

The 1985 Schengen agreement aimed at creating a common area of security and justice and gradually abolished controls of persons and goods at the common borders of the Schengen states.<sup>18</sup> The Amsterdam Treaty moved Schengen provisions related to policing and criminal judicial cooperation into the Third Pillar of the Treaty on the European Union. The European Community thus acquired competency for large areas of the Schengen acquis. Special agreements were made in applying Schengen with Denmark, Britain and Ireland. Norway and Iceland are associated members of the agreement.

The key points of the Schengen system are the removal of checks at common borders, replacing them with external border checks according to a common standard; harmonized visa policies with a common list of third countries whose nationals require visas and validity of visas in all Schengen States, i.e. the holder of a valid visa from one Member State may travel within the whole Schengen area. However, it was recognized that these measures had to be accompanied by compensatory measures such as police and judicial cooperation, mainly through the Schengen Information System (SIS), and by drawing up rules determining competence for asylum seekers. The latter was necessitated by the abolition of border checks, which allowed all persons within the Schengen area to travel more freely in between Member States. This led to concerns within the EU about increased secondary movements of asylum seekers and about multiple asylum applications in more than one state leading to the development of the ‘asylum shopping’ phenomenon. Thus, the Schengen Convention aimed to ensure that asylum seekers would not be able to make multiple asylum applications in different Schengen States. It stipulated that they could apply for asylum in one state only and that the choice of this state would not be that of the

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<sup>15</sup> Convention determining the state responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990, Official Journal of the European Union C 254, 19 August 1997, Art. 3 (5).

<sup>16</sup> Resolution on a Harmonized Approach to Questions concerning Host Third Countries, London 30 November and 1 December 1992.

<sup>17</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13, 13.12.2005.

<sup>18</sup> Convention applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders, 19 June 1990.

asylum seeker but would be determined by objective criteria set out in the Convention.<sup>19</sup>

### **The Dublin Convention**

While the Schengen process originally involved only selected European countries,<sup>20</sup> it was not totally separate from the developments at the EC level, but must be seen as a few states moving ahead faster than the community as a whole. Ambitions to create an internal market without internal frontiers and free movement of goods, persons, services and capital within the EU basically led to similar conclusions on how to achieve the goal of abolishing border checks whilst monitoring and controlling the movement of third country nationals and asylum seekers. As at the time, asylum policy did not yet fall into the competence of the EC, the process was taken ahead by intergovernmental negotiations. It resulted in the adoption of the Dublin Convention on determining the state responsible for asylum applications in 1990. It did not become operational however, until complete ratification in 1997. By 1998, all the 15 EU States were members to the Convention.

The Dublin Convention operated a hierarchy of criteria determining the state responsible for an asylum application lodged in one of the Member States. In practice, the article used most frequently was Article 5, which allocated responsibility to the state who issued a valid or – at the time of application – already expired visa or residence permit to the asylum applicant. Articles 6 and 7 related to the state where the applicant illegally or lawfully entered Member States' territory. The last criterion, Article 8, simply allocated responsibility to the state where an application was lodged, given that none of the previous criteria could be applied. Additionally, the so-called “opt-out” clause in Article 3 (4) gave any Member State the right to take up a claim even if not responsible according to the criteria and the humanitarian clause (Article 9) provided for the possibility to assume responsibility due to humanitarian reasons.

The objectives of the Convention were: (1) to ensure that every single asylum application would be processed in one of the Member States and thus refugees in orbit could be avoided,<sup>21</sup> (2) to ensure that asylum seekers could not lodge multiple applications in more than one Member State (so-called ‘asylum-shopping’) and (3) to prevent secondary refugee movements within EU territory.<sup>22</sup>

From the very beginning, the Dublin Convention was widely criticised, especially by NGOs, as being inequitable, unworkable and expensive. One major point of criticism was that the Convention did not take into account the legitimate interest of asylum seekers in choosing the State to examine their asylum claim. Also, the criteria of first point of entry into the Member States territory was said to be unfair in putting the

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<sup>19</sup> Convention applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders, 19 June 1990, Title II, Chapter 7.

<sup>20</sup> France, Germany, Belgium, Luxembourg and the Netherlands.

<sup>21</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990, Official Journal of the European Union C 254, 19 August 1997, Preamble para 5.

<sup>22</sup> Kloth, Karsten: The Dublin Convention on Asylum. An Introduction, in: Marinho, Clotilde (ed.): The Dublin Convention on Asylum. Its Essence, Implementation and Prospects, European Institute of public Administration, Maastricht 2000, pp. 7-16, here p. 8.



burden on particular Member States due to asylum seekers' travel routes and the country's geographical location, instead of establishing a mechanism of burden-sharing. Furthermore, ECRE particularly criticised the application of the safe third country concept, allowing Member States to expel asylum seekers to states outside of the European Union (Art. 3 (5)). The concept did not serve the objective that every asylum request would be considered by one of the Member States and led to a risk of 'refugees in orbit' and chain *refoulement*.<sup>23</sup>

The usefulness and effectiveness of the Dublin Convention was also subsequently questioned, as it applied to less than 6% of the total asylum applications in the EU and less than 2% of all applicants for asylum were actually transferred from one Member State to another.<sup>24</sup> Furthermore, only slightly less than 40% of accepted requests to take back or take charge resulted in actual transfers.<sup>25</sup> This low transfer rate constituted one of the core problems of the operation of the Convention. Ultimately, even Member States acknowledged that the Dublin Convention did not work based on a number of factors as revealed by a study of the Danish Refugee Council<sup>26</sup> and reiterated in the European Commission in its Staff Working Paper "Revisiting the Dublin Convention", whereby it was acknowledged that "few if any Member States appear to regard the Dublin Convention as an unqualified success".<sup>27</sup> The Commission's evaluation concluded with the observation that the Convention had not had a noticeable effect on the demand for asylum within the European Union.

### **The Amsterdam Treaty**

The 1997 Treaty of Amsterdam<sup>28</sup> marked an advancement in the European Union. A main objective of the Treaty was to progressively establish a common area of freedom, security and justice. To this end, all affairs related to free movement of persons, controls on external borders, asylum, immigration and safeguarding of the rights of third-country nationals, and judicial cooperation in civil matters were "communitised" by the Treaty.<sup>29</sup> Article 63 of the Amsterdam Treaty set out six objectives for the first stage of this common European asylum policy.<sup>30</sup> Of the

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<sup>23</sup> ECRE: Position on the Implementation of the Dublin Convention in the Light of the Lessons Learned from the Implementation of the Schengen Convention, December 1997.

<sup>24</sup> Commission Staff Working Paper: Evaluation of the Dublin Convention, Brussels, 13. June 2001, SEC(2001)756, p. 2. See also Heinonen, Matti: The Impact of the Dublin Convention: Statistical Data regarding its Application, in: Marinho, Clotilde (ed.): The Dublin Convention on Asylum. Its Essence, Implementation and Prospects, European Institute of public Administration, Maastricht 2000, pp. 281-297. On statistics by country see also Danish Refugee Council: The Dublin Convention. Study on its Implementation in the 15 Member States of the European Union, January 2001, pp. 129-162. Brandl, U., *Distribution of Asylum Seekers in Europe? Dublin II Regulation determining the responsibility for examining an asylum application*, The Emergence of a European Asylum Policy, Bruxelles 2004.

<sup>25</sup> Ibid.

<sup>26</sup> Danish Refugee Council: The Dublin Convention. Study on its Implementation in the 15 Member States of the European Union, January 2001, Other reasons for the failure of the Dublin Convention included the imbalance of transfer between Member States and the virtual redundancy of measures relating to family and cultural reasons for applying for asylum in a specific country.

<sup>27</sup> Commission Staff Working Paper: Revisiting the Dublin Convention, SEC(2000)522.

<sup>28</sup> Treaty of Amsterdam, Official Journal C 340 of 10 November 1997. It came into force on 1 May 1999.

<sup>29</sup> Therefore, the Schengen agreement and Convention were also included in the Treaty.

<sup>30</sup> These objectives included the adoption of legislation to lay down minimum standards for the reception of asylum seekers, for the qualification of third-country nationals as refugees, for procedures granting and withdrawing refugee status, and for granting temporary protection.

measures envisaged, the main objective of relevance here is the adoption of criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a third-country national. Following on from this, in October 1999, a special EU summit meeting was held in Tampere, Finland to discuss the establishment of a common area of freedom, security and justice. Harmonised objectives for this common asylum system included clear provisions on the responsibilities of Member States for the examination of asylum applications. To facilitate this aim of a clear and workable determination of responsibility for the examination of an asylum application, mechanisms were laid down in the Dublin II Regulation in conjunction with the EURODAC Regulation.

### **The Dublin II Regulation and EURODAC**

With the adoption of the Amsterdam Treaty and in line with the objective of a common European asylum system, it was necessary that the Dublin Convention be replaced with a Community instrument. Therefore the Council Regulation (EC) N° 343/2003 of 18 February 2003 (Dublin II Regulation)<sup>31</sup> replaced the Convention. It was formally adopted on 18 February 2003 and entered into force on 2 September 2003. The central importance of this instrument is emphasised by the fact that it has taken the form of a EC regulation having direct effect upon its Member States. A regulation was preferred to a directive in view of the need to apply strictly defined and harmonised rules in all the Member States for an effective application of the system.

The Dublin II Regulation is binding upon all European Member States except Denmark, including the new members. An agreement between the European Community and the Republic of Iceland and the Kingdom of Norway, makes the regulation applicable to these states also. Therefore, when this report refers to 'Member States', it includes Iceland and Norway, as being members of Dublin II. In the new Member States, the regulation entered into force on 1 May 2004, the date of accession to the European Union. The European Council recently adopted a decision approving the agreement between the EU and Denmark signed on 10 March 2005 extending to Denmark the application of Dublin II and EURODAC Regulations and their implementing rules. Switzerland also requested to take part in these regulations and on 5 June 2005 a public referendum was held where the Swiss population voted in favour of joining the Dublin II agreement. In any case, the Dublin agreement will not be fully implemented before 2008, *inter alia* because the Schengen information sharing system (SIS) and the EURODAC database still have to be put in place in Switzerland.<sup>32</sup>

Realising the initial problems of the Dublin Convention in identifying third country nationals who had already applied for asylum in another Member State, it was agreed to establish a system for the comparison of the fingerprints of asylum applicants named EURODAC. The Council Regulation (EC) N°2725/2000 of 11 Dec 2000 for the establishment of the EURODAC Regulation came into force on 15 December 2000.<sup>33</sup>

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<sup>31</sup>The text can be viewed at [http://www.ecre.org/eu\\_developments/responsibility/dublinreg.pdf](http://www.ecre.org/eu_developments/responsibility/dublinreg.pdf)

<sup>32</sup> Neue Züricher Zeitung 6 June 2005, [www.nzz.ch](http://www.nzz.ch).

<sup>33</sup>Council Regulation (EC) No 2725/2000 of December 11 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, Official Journal of the European Union, 15 December 2000, L316/1.

This is an important instrument in increasing the efficiency of Dublin II and facilitates its implementation in Member States. In accordance with Article 4 of the EURODAC Regulation the fingerprints of any asylum seeker over the age of 14 in the European Union (except Denmark), in Norway and in Iceland are taken. Furthermore, Article 8 of the Regulation provides for the fingerprinting of any alien who irregularly entered a Member State. Since 15 January 2003, these collected fingerprints are stored in a database called EURODAC where they are compared with fingerprint data transmitted by other participating states and already stored in the central database. If EURODAC reveals that the fingerprints have already been recorded, the asylum seeker can be sent back to the country where his/her fingerprints were originally recorded in accordance with the Dublin II Regulation.

### **Hierarchy of Criteria under the Dublin II Regulation**

The Dublin II Regulation establishes a hierarchy of criteria for identifying the Member State responsible for examining an asylum application lodged in one of the states by a third country national, laid down in Chapter III of the Regulation. By order of priority, the criteria set out how responsibility is attributed to Member States as follows: a) a state in which the applicant has a family member (as defined in Article 2(i) of the Regulation) who has refugee status or whose application for asylum is being examined; b) A state which has provided the applicant with a residence permit or a visa or the border of which has been crossed illegally by the applicant; c) in case when the circumstances specified above do not take place, if the applicant enters the territory of a Member State in which the need for him/her to have a visa is waived, that state is responsible for examination of the application. In case none of the above criteria are applicable the first Member State with which the asylum application was lodged shall be responsible for examining it.

Basically, each Member State, when examining an application, establishes responsibility on the basis of these criteria – either at the admissibility stage or when the claim is examined on its merits. If State A arrives at the conclusion that State B is responsible for the claim, it will send a request to the latter to take charge or take back the asylum seeker. When, after considering the request, State B agrees to take over responsibility, the asylum seeker will be transferred from State A to State B. For all these proceedings time limits are set.

However, a Member State may decide to examine an application for asylum even if it is not its responsibility under the criteria laid down in the Regulation according to Article 3(2) commonly referred to as the ‘sovereignty’ clause. In addition, under Article 15, the ‘humanitarian’ clause, any Member State may bring together extended family members on humanitarian grounds.

## COUNTRY INFORMATION TABLES

### Methodology

ELENA, the European Legal Network on Asylum, is a forum for legal practitioners who aim to promote the highest human rights standards for the treatment of refugees, asylum seekers and other persons in need of international protection in their daily counselling and advocacy work. The ELENA network extends across most European states and involves some 2,000 lawyers and legal counsellors, the work is co-ordinated at the European level by the ECRE Secretariat and national co-ordinators are responsible for promoting and facilitating the network at the national level. The ELENA Co-ordinators are practising asylum lawyers in their respective countries. Additional contributors to this report included academics and other asylum practitioners.

This survey was conducted by collecting country information through written questionnaires completed by ELENA Co-ordinators and other contributors on selected provisions of the Regulation. This was followed up with telephone interviews where necessary. Regarding certain provisions, it was sometimes difficult for practitioners to access the appropriate information where it depended upon the willingness of governmental authorities to share such information. Therefore, while every effort has been made to ensure that the tables are as up to date and comprehensive as possible, it is stated where no or only limited information is available. While the report obviously focuses on the workings of Dublin II, it should be noted that Dublin Convention jurisprudence has also been included in a number of tables on the basis that the reasoning of such decisions will often be transferable to the Dublin II Regulation.

The abbreviations in the country information tables are DII, which denotes the Dublin II Regulation and MS, which denotes Member State. The term unaccompanied minors is used to refer to separated children in the tables and annexes.

<b>AUSTRIA</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			The question whether Austria or another Dublin state is responsible is decided in the admissibility stage of the asylum proceedings. According to <b>Art. 5 Austrian Asylum Act</b> an application for asylum is rejected as being inadmissible if another state is responsible under the Dublin II Regulation.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>			Applicants under the Dublin II procedure are not regularly detained. However, the application of the provisions of the <b>Asylum Act 2005</b> (in force since 1 January 2006) will change this situation and will lead to an increase in the detention of Dublin applicants.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Applicants may be detained if the detention criteria under <b>Art. 76 Aliens Police Act</b> are fulfilled. <b>Art. 76 Aliens Police Act:</b> (2) The aliens police authority having territorial jurisdiction may, by administrative decision, issue a detention order for the purpose of guaranteeing a case of expulsion or deportation if: <ol style="list-style-type: none"> <li>1. An expulsion order – even if it is not final – has been issued against an asylum seeker pursuant to <b>Art. 10 Asylum Act</b>.</li> <li>2. Expulsion proceedings according to the Asylum Act have been initiated</li> <li>3. ...</li> <li>4. According to the assumption that the claim will be rejected as inadmissible because another state is responsible, where the assumption is based on the outcome of the interview, the search</li> </ol>

			outcome of the interview, the search (of the person and the person's belongings) and the result of identification (fingerprinting).
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Dublin II applicants have access to the same reception conditions as other asylum seekers.
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>			
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>	Y		It is possible to challenge the presumption of safety of another Member State.
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		Challenges can be brought on the basis of Article 8 ECHR.
<b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b>	Y		In 2002 the <b>Austrian Independent Asylum Review Board</b> ruled that an applicant could not be transferred to Italy according to the Dublin Convention on the grounds that Italy was not deemed safe for Turkish Kurds because there would be a danger of chain <i>refoulement</i> to Turkey. ( <b>Austrian Independent Asylum Review Board, 220.884/30-II/04/02, 17 October 2002</b> ). Under the Dublin II Regulation there have also been challenges of removal to Greece and Slovakia based on protection concerns.
<b>4.2.1 on protection grounds?</b>			
<b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)</b>	Y		In 2004 it was ruled that the asylum authorities have to apply <b>Art. 3 (2) Dublin Regulation</b> where an interference with <b>Art. 8 ECHR</b> would occur in separating a family ( <b>Independent Asylum Senate, 248.247/0-III/07/04, April 2004 (father and unborn child)</b> ).

<p><b>4.3 Does the challenge/appeal have suspensive effect (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		<p>N</p>	<p>The appeal against the expulsion order (not against the decision that the claim is inadmissible) does not have suspensive effect automatically but can be granted by the <b>Austrian Independent Asylum Review Board</b>. In 2004 the Austrian Constitutional Court decided that the complete exclusion of suspensive effect (which was contained in the Asylum Act as amended in 2003 and entered into force on 1 May 2004) in respect of the expulsion decision to another Dublin MS is in conflict with the Austrian Constitution (<b>Federal Constitutional Court 15.12.2004 - B 1019/04</b>). In that case the Court referred to the ECHR admissibility decision <b>T.I. v. UK</b>, which confirmed that the state deciding that another Dublin state is competent remains responsible for guaranteeing that <b>Art. 3 ECHR</b> is not violated. Furthermore, the Court confirmed that a remedy has to guarantee effective protection and therefore requires the possibility to grant suspensive effect of the decision.</p> <p>Regarding a personal hearing, if the application is deemed inadmissible the asylum seeker receives a copy of the case record. He or she is granted a time-limit of not more than 24 hours to express his/her views and a further interview has to be held after that time-limit has elapsed.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>		<p>N</p>	<p>Legal advice according to <b>Art. 29</b> and <b>Art. 64 Asylum Act</b> is provided. However, this legal assistance is only available in the admissibility stage of the procedure and not for appeals against Dublin II decisions. In some cases, free legal aid is provided by non-governmental organisations.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>			<p>It depends on whether the returnee has made a previous application for asylum or not. Applicants who previously applied for asylum in Austria and left the country before a final decision was reached on their claim, generally have access to the asylum procedure and their initial case is reopened. Applicants who never applied for asylum in Austria before have access to the normal procedure. However, applicants who already received a final refusal decision in Austria may re-apply for asylum. In practice, this second application for asylum rarely occurs, as there are very few returnees who have received a previous refusal in Austria.</p> <p>Note that there is no information available on recent practice regarding returnees after the entry into force of the <b>Asylum Act 2005</b> on 1 January 2006.</p>
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### 2. Procedural Safeguards

<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>	Y		
<p><b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b></p>	Y		

### 3. Detention

<p><b>3.1 Are DII returnees normally detained?</b></p>		N	<p>Dublin II returnees are generally not detained.</p>
<p><b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b></p>	Y		<p>They are not regularly detained, they may however be detained if the criteria for detention is met according to <b>Art. 76 Aliens Police Act</b>. Normally they stay at the initial reception centre. According to the provisions of the <b>Asylum Act 2005</b> applicants may not leave the district where the centre is located.</p>



#### 4. Reception Conditions

**4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?**

Generally yes, however the small number of returnees who make a second application for asylum have no access to reception conditions according to the **Federal Care Act 2005**.

### C. APPLICATION OF SELECTED PROVISIONS BY MS

#### 1. Sovereignty Clause (Art. 3 (2))

**1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe)?**

Y

The sovereignty clause is being used on the basis of **Article 8 ECHR**. Previously, according to the **Asylum Amendment 2003**, applications by traumatised asylum seekers were automatically admissible to be examined in Austria regardless of the application of the Dublin II Regulation. However with the recent introduction of the **Asylum Act 2005** traumatised applicants will not automatically be allowed into the asylum procedure in Austria, but only if a violation of Article 3 ECHR can be demonstrated.

There have also been reported instances of the sovereignty clause being applied to examine asylum applications in manifestly unfounded procedures in Austria.

#### 2. Humanitarian Clause (Art. 15)

**2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?**

Y

The humanitarian clause is being used on the basis of **Article 8 ECHR (Independent Asylum Senate, 248.247/0-III/07/04, April 2004 (father and unborn child))**. See the answer above in Question A4.2.2.

**2.2 Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?**

Y

**3. Unaccompanied Minors (Art. 6)**

<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>	Y		
<b>3.2 Are unaccompanied minors informed about the importance of providing information on family members that may be present in another MS?</b>	Y		

**4. Family Unification (Arts. 7 & 8)**

<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>	Y		An information leaflet is provided on the Dublin procedure however the quality of information provided in the leaflet is too complicated for applicants to understand.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>	Y		
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>		N	

**5. Time Limits (Arts. 17,18 & 19)**

<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>			No information available
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**6. Provision of information**

<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its</b>	Y		
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responsibility?		
<b>7. Other problems with the application of Dublin II</b>		
<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to case law and studies and examples):</b></p>		<p>In the official statistics for 2004 and January to February 2005, the number of actual transfers to other MS under the Dublin II Regulation is very low. There is a large difference between the number of transfers requested and the actual amount of applicants transferred. The reason for this is that the applicant is informed about the intention to transfer him or her to another MS. A second interview is held at this time. Meanwhile a high number of applicants “disappear” and no transfer occurs. These people either move on to another country or stay illegally in Austria. This has led to an increasing use of detention by Austrian authorities for Dublin II applicants in order to have an effective transfer to the responsible MS. It should be noted that in the second half of 2005 the number of actual transfers has increased due to this practice.</p> <p>Additionally, according to the limited information available asylum seekers may be directly returned to other Member States outside the scope of the Dublin II Regulation through informal border procedures as shown in informal border practices with the Czech Republic.</p>
<b>8. EURODAC</b>		
<p><b>8. Please provide any observations in relation to the application of the EURODAC system (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	Y	The EURODAC system is applied in Austria.
<b>9. Bilateral agreements (Art. 23)</b>		
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>	Y	<p>According to the limited information available there are some bilateral agreements in place between Austria and other MS. A working agreement was signed with the Slovak Republic in July 2005 for the processing of Dublin II applications. Slovenia and Germany have also signed bilateral</p>

			<p>agreements with Austria.</p> <p>Outside the context of the Dublin II Regulation there is an informal re-admission agreement with the Czech Republic.</p>
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<b>BELGIUM</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			According to <b>Art 51/5 of the law of the 15<sup>th</sup> December 1980 on immigration</b> examination under Dublin II is the first step of the procedure in Belgium, just before admissibility.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>	Y		<b>Art. 51/5 (3)</b> of the law provides for the detention of the applicant if it is necessary to guarantee transfer to the competent Member State, for a maximum period of 2 months (NGOs have observed that in practice sometimes this time limit has been exceeded).
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			There are no specific criteria except for the general criteria of detention under law. It depends on the citizenship of the applications (for example Chechens transferred to Poland) or the competent state.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>			During the procedure and until the decision to transfer under Dublin II is reached, applicants may stay in reception centres. Afterwards, even if there is a challenge of the decision before the Conseil d'Etat, the person has no right to reception conditions, except urgent medical care (example: <b>Cour d'arbitrage, N° 57/2000, 17<sup>th</sup> May 2000 and N°71/2001, 30<sup>th</sup> May 2001</b> ).

<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p> <p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p> <p>Y</p>	<p></p> <p></p>	<p>The decision can be challenged within 30 days before the Conseil d'Etat.</p> <p>There is no presumption of safety in the national legislation. Therefore in theory it is possible and may occur on the basis of <b>Art. 3 ECHR</b>. However, there is no information to suggest this has ever happened in practice.</p> <p>There are a number of successful challenges to transfers under the Dublin Convention, particularly under <b>Article 8 ECHR</b>.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p></p> <p>Y</p>	<p>N</p> <p></p>	<p>There are very few decisions published in relation to Dublin II .The majority of appeals to Dublin II transfers are not successful.</p> <p><b>Article 8 ECHR</b> is the main base for challenging the decision of removal in jurisprudence. (website of the Conseil d'Etat: <a href="http://raadvst-consetat.fgov.be/">http://raadvst-consetat.fgov.be/</a>). <b>CE N° 100.572, 7<sup>th</sup> November 2001, CE N° 97.769, 12<sup>th</sup> July 2001 CE N° 101.547, 6 December 2001, CE N° 103.762, 20<sup>th</sup> February 2002, CE N° 105.432, 9<sup>th</sup> April 2002, CE N° 105.521, 16<sup>th</sup> April 2002, CE N° 109.650, 2<sup>nd</sup> August 2002.</b></p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p>	<p></p>	<p>N</p>	<p>This procedure before the Conseil d'Etat has no suspensive effect. Furthermore from 2 March 2005 summary proceedings (procedure en suspension d'extrême urgence) that have suspensive effect are no longer accessible unless the applicant is detained. This was confirmed regarding a Dublin case by a court decision of 11 March 2005 (N°141.903).</p>

<p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		<p>N</p>	<p>The procedures before the Conseil d'Etat are mainly written submissions but there are hearings where the individual can be present. As the procedure is very technical and only deals with the legality of the decision, a lawyer usually represents the applicant, so in practice there is no hearing of the applicant.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>		<p>According to the law on legal assistance, legal aid is provided when the applicant challenges a decision on expulsion. There is no limit to this principle. The procedure before the Conseil d'Etat is also free if the applicant lacks the means to challenge.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not, please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>			<p>This depends on whether the applicant previously made an asylum application in Belgium. If not, they are admitted to the normal procedure. However, Dublin II returnees who had a previous asylum application in Belgium are not allowed to enter the normal procedure and must make a new application for asylum. In order to introduce a new application the returnee must introduce new information/circumstances for the asylum claim. In practice this is difficult for an applicant to show. Returnees with a previous refusal of asylum in Belgium are placed in deportation proceedings.</p>
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### 2. Procedural Safeguards

<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>			<p>This depends on whether the applicant is able to access an asylum procedure in Belgium.</p>
<p><b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b></p>	<p>Y</p>		<p>This depends on whether the applicant is able to access an asylum procedure in Belgium. If yes, then they receive free legal aid.</p>

<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>	Y		In the past applicants were not usually detained but now it seems to happen more and more frequently especially in relation to applicants who previously made an application for asylum in Belgium.
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		See the answer in Section A 2.2 above.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>		N	It appears that the sovereignty clause is not applied in practice by the Belgian authorities.
<b>2. Humanitarian Clause (Art. 15)</b>			
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>		N	It is rarely applied in Belgium and if it is applied, it is only after the intervention of NGOs or lawyers on behalf of applicants.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>	Y		There is a general guide on the asylum procedure given to the applicants that contains information about the Dublin II Regulation. This guide is currently being renewed and translated into several languages. However, there is no specific and detailed information on



			the implementation of the Dublin II Regulation. The asylum questionnaire for the first interview in the asylum procedure includes questions regarding the reason why the applicant chose Belgium to introduce her/his application. At this occasion, the applicant can explain the reason why the application should be examined in Belgium.
<b>3. Unaccompanied Minors (Art. 6)</b>			
<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>	Y		Article 6 is being respected by the Belgian authorities.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>	Y		Children's first interviews are held in the presence of a guardian. At that stage they receive the relevant information.
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		Belgium goes further by allowing family unification under Article 8 to the appeals stage rather than just to first instance decision.
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>		N	Not specifically.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>	Y		The Belgian law does not define family members but refers to the definition under the Dublin II Regulation.
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>			No information available.

**5. Time Limits (Arts. 17, 18 & 19)**

<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		In most cases the time limits are respected. Dublin II cases are prioritised and the request is quickly sent out to the other responsible MS.
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**6. Provision of information**

<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>			No information available. Overall it is difficult for NGOs in Belgium to gain access to this information as the Dublin II procedure is carried out in the government's internal procedures.
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**7. Other problems with the application of Dublin II**

<b>7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to the case law and studies and examples):</b>		N	
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**8. EURODAC**

<b>8. Please provide any observations in relation to the application of the EURODAC System. (e.g. are fingerprints being taken of all applicants entering the territory?).</b>	Y		In Belgium, around 200 Dublin II cases are detected every month with fingerprint information under EURODAC. Belgium is responsible for the examination of some of these cases. There has been an increase of Dublin II cases in practice.
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**9. Bilateral agreements (Art. 23)**

<b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b>			No information available.
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## CZECH REPUBLIC

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			Whether an asylum seeker falls under Dublin or not is assessed before the asylum procedure starts at the Czech Ministry of Interior.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	Applicants under the Dublin II procedure who voluntarily come in contact with the Czech authorities and apply for asylum are not detained while a request is made to another state. However, their freedom of movement can be restricted.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Applicants who do not apply for asylum immediately after they arrive in the country, and are found in an illegal situation, are usually detained. The fact that they subsequently apply for asylum in the detention centre does not change their detention conditions. Families are detained in a special facility for children in Bělá-Jezová. Adult single males and adult single females are detained in Velké Přílepy detention centre. The length of detention varies in each case and depends on the timing of the response of the requested state. When applicants give truthful information and collaborate with the authorities the transfer to the state responsible is usually carried out within four weeks (the majority of cases are transfers to Poland). However, in some cases, it can take up to three months to transfer to another MS (for example this has occurred in several cases with Austria). The maximum length in detention is six months according to national legislation.

### 3. Reception Conditions

<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Yes, applicants under the DII procedure are provided with the same services as other asylum seekers.
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### 4. Challenging/Appealing a DII Decision (Art. 19)

<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p> <p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p> <p>Y</p> <p>Y</p>		<p>It is possible to lodge an appeal to the Regional Court.</p> <p>It is possible to challenge an application on protection grounds however with no suspensive effect of appeal applicants may be transferred prior to the appeal proceedings.</p> <p>The appeals are mainly concerned with humanitarian reasons (health problems etc) as to why a Dublin II transfer should not be carried out.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>		N	There is no jurisprudence concerning successful challenges.
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		N	According to the legislation it is possible for the applicant to get a personal interview. However the appeal does not have suspensive effect and in practice often the applicants have already been transferred to another state so communication is difficult.
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	Y		Applicants have access to free legal aid provided by NGO's that receive financial support from the Czech Government.

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b>	Y		DII returnees may enter the full asylum procedure according to <b>Art. 10 Asylum Act</b> . However when returnees are in the airport procedure their claim made be examined in an accelerated procedure which means in practice that the application will most likely be refused and the applicant will be fast-tracked for deportation.
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### 2. Procedural Safeguards

<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		

### 3. Detention

<b>3.1 Are DII returnees normally detained?</b>		N	DII returnees are not normally detained but placed in open refugee camps.
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		<b>Art. 124 Aliens Act</b> allows an applicant to be detained under the following grounds: if the alien constitutes a threat to the country's security and/or public or if there is a danger that the applicant may abscond prior to deportation.

### 4. Reception Conditions

<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		However, it should be noted that generally there are either no or very limited facilities available for traumatised applicants or for those requiring psychiatric treatment/counselling.
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## C. APPLICATION OF SELECTED PROVISIONS BY MS

### 1. Sovereignty Clause (Art. 3 (2))

<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another State is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>	Y		The sovereignty clause has been applied in some cases in the Czech Republic in combination with the humanitarian clause in relation to extended family members and for humanitarian reasons.
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### 2. Humanitarian Clause (Art. 15)

<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>	Y		According to information provided by the Ministry of Interior, the humanitarian clause is used for the reunification of extended family relatives and for old or sick people, whose transfer could have a negative effect on their physical and psychological state.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>			No information available.

### 3. Unaccompanied Minors (Art. 6)

<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>	Y		According to the limited information available it appears that the Czech Republic respects this article.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>			No information available.

**4. Family Unification (Arts. 7 & 8)**

<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		Available information suggests that the Czech authorities respect <b>Art. 7 and 8</b> .
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>			No information available.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>	Y		The definition is the same as Article 2 (i).
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>		N	Unmarried couples are not treated the same as married couples.

**5. Time Limits (Arts. 17, 18 & 19)**

<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		In general the Czech authorities are respecting the time limits.
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**6. Provision of information**

<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>	Y		According to official information the Czech Republic provides the other party with all the necessary information.
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**7. Other problems with the application of Dublin II**

<b>7. If you have observed any other problems concerning the application of the Dublin Regulation describe them here (referring to case law and studies and examples):</b>			Applicants under the DII procedure seek legal advice in order to be removed from detention as soon as possible so they may be transferred to an open refugee camp in the responsible Member State. In the Czech Republic there were many cases of Chechen families that came from Poland and were detected and detained on Czech territory. For those applicants the only solution was to return to Poland and wait for the outcome of their asylum application there. There have also been some cases of applicants
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			that arrive from Austria and are still in the procedure there and shall be transported there soon, but the Austrian authorities do not react promptly to requests and the applicant has to wait in Czech detention for months.
<b>8. EURODAC</b>			
<b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b>	Y		The EURODAC system is being applied in relation to asylum seekers at the border.
<b>9. Bilateral agreements (Art. 23)</b>			
<b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b>		N	According to the limited information available, the Czech Republic has re-admission agreements with Germany and Austria.



<b>FINLAND</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			All applications go through the Dublin Section of the Directorate of Immigration. If there is a EURODAC hit, the application will be processed in the Dublin II procedure. This is an admissibility procedure where the asylum application is not examined in substance.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	Applicants are not normally detained in relation to the Dublin II Regulation. However, if it is foreseeable that the transfer will happen very quickly (i.e. one week) then the applicant will be detained prior to transfer.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		According to the <b>Section 121 in the Aliens Act</b> an alien can be held in detention ‘if the alien will prevent or hinder the issue of a decision concerning him or her or enforcement of decision on removing him or her to another country’ or ‘detention is necessary for establishing his or her identity’ or ‘there are reasonable grounds to believe that he or she will commit an offence in Finland’.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		

<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>	Y		An applicant can appeal to the Helsinki Administrative Court within 30 days, but the transfer decision can be carried out immediately unless the Court decides to order an injunction.
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>	Y		There is a strong presumption that other MS are safe. However, this can be challenged depending on the individual circumstances of the case.
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		A Dublin II removal can be challenged on various grounds. The provisions on expulsion (including transfer under the Dublin arrangement) in the <b>Aliens Act</b> contain the principle of <i>non-refoulement</i> of the Refugee Convention, the ECHR and the CAT in <b>Art. 145</b> , and a requirement for an evaluation of all the circumstances in the case in <b>Art. 146</b> . Issues such as the principle of family unity and various humanitarian grounds can thus in principle be invoked.
<b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b>			There are some individual instances where the Court has overturned expulsion decisions and returned the case to the Directorate of Immigration for a new examination.
<b>4.2.1 on protection grounds?</b>		N	There have been challenges on protection grounds to the DII procedure, particularly where an applicant has received a final decision in the other Member State or in relation to transfers to Greece. However, these challenges have usually been unsuccessful in practice.
<b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		The Court has stopped removal in many cases related to family unity, humanitarian grounds and the situation of unaccompanied minors. Since the Court does not give reasoned decisions in the application of these cases, it is difficult to exactly give the reasons for stopping removals to other Member States.
<b>4.3 Does the challenge/appeal have suspensive effect (i.e. the transfer is not carried out until</b>		N	The Court can order not to transfer the applicant, but a removal decision under the

<p><b>the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		N	<p>admissibility procedure can, by law, be carried out immediately after the decision has been communicated. Normally, there is only a few hours to write an appeal.</p> <p>Applicants only receive an interview upon arrival with the police authorities and then they are asked if they have any objections to being transferred under the Dublin II Regulation.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	Y		<p>Legal aid is usually provided for up to 100 paid work hours by the State Legal Aid Offices.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>	Y		<p>Applicants do have access to the asylum procedures. However, if the returnees have been in the asylum procedure in Finland prior to their departure, there is evidence that they may be told at the border that a new application will not be successful and they are discouraged to reapply for asylum by the border authorities</p>
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### 2. Procedural Safeguards

<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>	Y		<p>Dublin II returnees are guaranteed a personal interview, but if they have been in the asylum procedure in Finland prior to their departure, the interview may not be substantive, or may only be carried out by the police or border guard.</p>
<p><b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b></p>	Y		

### 3. Detention

<p><b>3.1 Are DII returnees normally detained?</b></p>		N	
<p><b>3.2 If DII cases are not normally detained, are there any criteria under which certain</b></p>	Y		<p>See the answer in Section A2.2 above.</p>

applicants may be detained?			
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible state is not considered safe-please refer to case law or provide examples)?</b>	Y		In some cases, Finland does apply the sovereignty clause, although there are no clear guidelines for this. Finland has examined claims on their merits e.g. in situations where persons have entered the asylum procedure in Greece but have left before completing the procedure there. However 6 months ago the Finnish authorities stopped this practice and now removals to Greece occur under Dublin.
<b>2. Humanitarian Clause (Art. 15)</b>			
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>	Y		It is used to ensure family reunification, e.g. where family members have been split up during the journey or when one family member arrives later than the other members.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>		N	The interview performed with asylum seekers under Dublin II is a truncated one, mainly related to identity and travel route. There is concern that the importance of providing relevant information that would merit the application of either the sovereignty clause or the humanitarian clause is not being stressed enough to the applicants.
<b>3. Unaccompanied Minors (Art. 6)</b>			
<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first</b>	Y		According to the limited information available it appears that the Finnish authorities do respect <b>Article 6</b> . However, in considering their best interests, minors are not removed to another MS where they previously lodged an asylum

<b>lodged?</b>			application. Transfers on this basis do occur however, in relation to age disputed minors.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>		N	See above Section B Question 2.2 concerning the interviews with Dublin II applicants. Also with unaccompanied minors, there is concern that due care is not taken by the interviewing police officers to inform applicants of the possibility of joining family members.
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		This is being strictly applied in Finland.
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>		N	See the answers to Section B Question 2.2. and 3.2 above for further information.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>	Y		
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>	Y		In principle, yes. Unmarried couples would, however, have to provide some type of proof or documentation as evidence of cohabitation for at least 2 years.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		According to available information.
<b>6. Provision of information</b>			
<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>	Y		According to the limited information available, Finland provides all the relevant information to other MS.

<b>7. Other problems with the application of Dublin II</b>			
<p><b>7. If you have observed any other problems concerning the application of the Dublin Regulation please describe them here (referring to case law and studies and examples):</b></p>			<p>The general problems in relation to Dublin II are as follows:                      -it is very difficult to challenge the “safety” presumption of other MS.                      -there is limited time and limited opportunities for interview under the Dublin II procedure to have a successful appeal.                      -very little information is given to applicants about the application of the Dublin II regulation and the various clauses and their implications, by the interviewing police officers                      -if there is EURODAC hit or a request is accepted from another MS, the transfer can happen quickly and no information is given to applicants before the decision to transfer them.</p>
<b>8. EURODAC</b>			
<p><b>8. Please provide any observations in relation to the application of the EURODAC System. (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	Y		<p>The EURODAC provisions are fully implemented.</p>
<b>9. Bilateral agreements (Art. 23)</b>			
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>		N	<p>According to the limited information available Finland is not a party to any such agreement. There is an agreement with other Nordic countries in relation to passport control but this has little effect on asylum seekers and the Dublin II Regulation is only applicable to them.</p>

<b>FRANCE</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			According to French asylum law, an asylum application can fall under the Dublin II Regulation at any stage of the procedure of determination ( <b>section L741-4,1°</b> ). In practice, the Dublin II Regulation usually applies before the asylum seeker has received a temporary permit in order to lodge his/her application to the first instance of determination according to EURODAC information.
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	Applicants under the DII procedure are not detained on that basis. However they may be detained to aid transfer if there is chance they may abscond.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Detention occurs when foreigners are not allowed to stay / be admitted in to France, and the French authorities use detention to aid deportation.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>			It depends on which stage of the procedure the DII Regulation is applied. When applicants are able to lodge an application before falling under Dublin II, they can have access to housing and allowance. If not, which is what generally occurs, they only have access to urgent health care.

<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p> <p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p> <p>Y</p>	<p>Y</p> <p>Y</p>	<p>It is possible to challenge a Dublin II decision. However this is limited by the fact that there is no suspensive effect and the challenge proceedings can take up to two years.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p> <p>Y</p>	<p>Y</p> <p>Y</p>	<p>There has only been a few DII case's of the high administrative court (Conseil d'Etat), on Greece practice. The Conseil d'Etat ruled that a Sudanese asylum seeker could be removed to Greece as Greece is a State party to the 1951 Refugee Convention and it was considered not possible to challenge practical implementation of the Dublin II procedure (<b>CE No 278805 24 March 2005</b>) <b>CE, 24 March 2003, n°281001, M. Tamir A</b>).</p> <p>There is jurisprudence on successful challenges to a DII decision in relation to the following areas: time limits and family reunification. In <b>CE No 261913 25 November 2003</b> the court overturned a decision not to transfer an applicant to Austria on the basis of <b>Article 3 ECHR</b> (due to the applicant's wife being heavily pregnant). Hence, Austria was deemed competent to examine the asylum application under the Dublin II Regulation. In <b>CE No 267360 14<sup>th</sup> May 2004</b> there was a successful challenge to a transfer order to Austria under Dublin II on the basis that the transfer did not take place within six months of the date of the request and therefore under <b>Article 19(4)</b> France was responsible for examining the asylum application and not Austria. The court ordered the French authorities to examine the asylum claim according to <b>Article 3(2)</b> of the Regulation.</p>



<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>			<p>Judges may grant suspensive effect however, in practice this is rarely granted.</p> <p>A personal hearing may be granted by the court however it depends on the grounds of the applicant's challenge and if they have not already been removed to another MS.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	Y		<p>Applicants do have access to free legal aid.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>	Y		<p>There are two possibilities depending on the DII 'take back' or 'take charge' situation. In a 'take charge' situation an asylum seeker can lodge an application for asylum, which will be examined under the normal procedure.</p> <p>In a 'take back' situation an asylum application has already been lodged in France before the applicant travelled to another MS. After being transferred back to France, if a new application is submitted, it will be by an accelerated procedure. In this procedure an appeal against a negative decision will have no suspensive effect.</p>
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### 2. Procedural Safeguards

<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>			<p>Only if the application is considered not to be manifestly unfounded. If the application is considered manifestly unfounded then the applicant is not guaranteed a personal interview.</p>
<p><b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b></p>			<p>It depends on whether they are able to access an asylum procedure and on the conditions of their entry into France (regular or irregular) – they can have access to legal aid only for challenging the first instance determination</p>

			decision in the asylum procedure.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Please see the answer in Section A 2.2.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		If they are not in an accelerated procedure, they can have access to reception conditions.
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>	Y		French authorities apply <b>Art. 3 (2)</b> in cases of unification of extended family members and for medical health concerns of the applicant. France also applies it in relation to requesting another MS to take responsibility for an asylum application.
<b>2. Humanitarian Clause (Art. 15)</b>			
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause being used to help ensure family reunification?</b>		N	The humanitarian clause is rarely applied on the basis of unification of extended family members and for humanitarian reasons.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>		N	The French authorities never provide such information.

### 3. Unaccompanied Minors (Art. 6)

<p><b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b></p>		N	<p>No difference is made between adults and unaccompanied minors. The French authorities do not consider the best interests of the minor under the Dublin II procedure.</p>
<p><b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b></p>		N	<p>Minors do not seem to be informed of the importance of providing information on family members.</p>

### 4. Family Unification (Arts. 7 & 8)

<p><b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b></p>	Y		<p>According to the limited information available.</p>
<p><b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b></p>		N	<p>This information is never provided to DII applicants.</p>
<p><b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b></p>	Y		<p>The French authorities apply the definition stated in the Dublin II Regulation.</p>
<p><b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b></p>	Y		

### 5. Time Limits (Arts. 17, 18 & 19)

<p><b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b></p>	Y		<p>In general the time limits are being respected however there have been exceptions where transfers were not carried out within six months according to <b>Article 19(3)</b>.</p>
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### 6. Provision of information

<p><b>6. As requesting state, does the MS provide all</b></p>			<p>No information available. Asylum seekers and</p>
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<p><b>the necessary information enabling the requested state to decide upon its responsibility?</b></p>			<p>legal advisers are denied access to this information by the Ministry of the Interior.</p>
<p><b>7. Other problems with the application of Dublin II</b></p>			
<p><b>7. If you have observed any other problems concerning the application of the Dublin Regulation please describe them here (referring to case law and studies and examples):</b></p>			<p>The applicant is not provided with enough information on the Dublin II procedure for example: date of the request, date of the reply, information on time limits etc. Such information would be useful for challenging a Dublin II procedure.</p> <p>Additionally, according to the limited information available, there have been reports of asylum seekers returned directly to other states such as Italy and Switzerland through readmission agreements outside the scope of the Dublin II Regulation.</p>
<p><b>8. EURODAC</b></p>			
<p><b>8. Please provide any observations in relation to the application of the EURODAC System. (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>		<p>The French authorities are applying EURODAC.</p>
<p><b>9. Bilateral agreements (Art. 23)</b></p>			
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>			<p>No information available. Outside the context of the Dublin II Regulation there are informal border agreements with Italy and Switzerland.</p>

## GERMANY

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			In the normal asylum procedure the Federal Office will conduct an interview not long after the application for asylum is formally lodged where there is also a Eurodac screening. A decision as to whether an applicant falls under the Dublin II procedure is made in the context of this first interview carried out by the Federal Office for Migration and Refugees (BAMF). Thus, the Dublin decision is taken at an admissibility stage, as the case will not be considered on its merits. ( <b>Sections 26(a), 29(3), 34(a), 35 of the Asylum Procedure Act (AsylVfG)</b> ). Particular procedures conducted by the Federal Police may apply if the applicant is seized while illegally crossing the border.
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	Generally detention is not lawful during the normal DII procedure. However a draft new law of 3 January 2006 contains provisions, which allow for a broader use of detention during the DII procedure. In border cases the applicants are regularly detained pursuant to <b>Art. 14 (3) AsylVfG</b> . There are several court decisions declaring unlawful the practice to detain applicants during the procedure, which shows that detention is a practical problem in applying the Regulation.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		<b>Section 62 of the Residence Act (AufenthG)</b> provides grounds for the detention of asylum seekers.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants</b>	Y		As the normal procedure under Dublin II is carried out like a normal asylum procedure the applicants have the same reception conditions

under the normal procedure?		as all other asylum applicants.
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>		
<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p>	Y	<p>It is possible to challenge the decision. The appeal has to be lodged to the district Administrative Court within a time limit of two weeks after the notification of the decision.</p>
<p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p>	N	<p>It is not possible to challenge the presumption that another Member State is safe. All EU States are safe according to <b>Article 16(a)(2) and (5) of the Constitution (Basic Law) and Sections 26a (2), 29 (3) AsylVfG</b>. It is interesting to note this in relation to the safe third country concept in that among the new MS only Poland and the Czech Republic were considered safe third countries and Hungary and the Slovak Republic were considered safe countries of origin prior to the 1 May 2004.</p>
<p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	Y	<p>In theory ‘yes’, if there are barriers (or limitations) to deportation on grounds not related to persecution (inlandsbezogene Vollstreckungshindernisse) e.g if the transfer cannot be effected for medical reasons. A new worrying tendency in the jurisprudence is to deny access to courts. For example, the <b>Administrative Court Berlin on 17 and 23 May 2005 – 33 X 74/05 and 33 X 75/05</b> - dismissed appeals against the deportation order on the grounds that the applicant (formally) has the possibility to voluntarily enter the responsible country and therefore the deportation order is of no legal relevance. The <b>Administrative Court Hamburg on 22 September - 13 AE 555/05</b> - ruled that the appeal foreseen in Article 20 has to be lodged against the receiving Member State as the requesting Member State is not accountable for the decision. These exceptional judgements highlight the tendency to significantly reduce the actual possibility to appeal a Dublin decision.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p>		<p>There are very few court decisions on Dublin II. There were a number of successful</p>

<p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p>	<p>N</p>	<p>challenges under the Dublin Convention and the reasoning behind those decisions should be transferable to the actual situation under the provisions of Dublin II.</p> <p>One relevant case is the decision: <b>Administrative Court Braunschweig, decision of 26 January 2005 - 5 A 52/04</b>. In the case it was decided that Germany was obliged to take over the case under Art. 3(4) Dublin Convention as the applicant, who was mentally ill and needed his uncle's and his sister's help who both lived in Germany. In <b>Higher Administrative Court Mecklenburg-Vorpommern, decision of 29 November 2004 - 2 M 299/04</b>, the court stated that the Federal Office has to assess if there are barriers (or limitations) to deportation on grounds not related to the persecution (internal limitations - c.f. <b>4.1.2</b>) when it intends to expel people to safe third countries.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	<p>Y</p>	<p>N</p>	<p>The suspension of the transfer proceedings is generally prevented by <b>Section 34a (2) of the Asylum Procedure Act</b>, if a deportation order has been issued. An injunction can nevertheless be granted in very exceptional cases in line with a judgement of the <b>Federal Constitutional Court of 14 May 1996</b> lifting (to a very small extent) the general prohibition to suspend the transfer. If a notification announcing deportation according to <b>Section 35 (2) Asylum Procedure Act</b> is issued there is a right to apply for an injunction within one week under <b>Section 36 (3) Asylum Procedure Act</b>. The new proposed law of January 2006 will further restrict the possibility of obtaining an injunction to suspend removal.</p> <p>During the appeals procedure the applicant generally has the right to an oral hearing. But normally the court uses its right to abstain from interviewing the applicant.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure?</b></p>			<p>Applicants need to apply for legal aid. It is granted only when the court considers the</p>

<p><b>Are there limits to any aid given?</b></p>			<p>appeal likely to be successful, which is very rarely the case. Some NGOs provide for legal counselling. In the airport procedure legal counselling is provided free of charge at the appeals level.</p>
<p><b>B. PRACTICE OF RECEIVING MS</b></p>			
<p><b>1. Access to Asylum Procedures</b></p>			
<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>			<p>Applicants with no previous asylum application in Germany have access to the normal asylum procedure. However, applicants with a previous asylum application in Germany which was deemed withdrawn due to the fact that the applicant did not appeal their initial decision within the three-month time limit, may find it difficult to re-open their application. It remains possible to lodge a second application (<b>Section 71 AsylVfG</b>) based on new facts or recent information regarding the asylum claim. If there is no new information, the German authorities will not consider the application for refugee status, but they have the responsibility to fully examine whether the applicant may be granted subsidiary protection. However in practice this obligation does often not lead to a full examination of the claim. It is possible to challenge the decision to not review the case, however, it is in a fast-tracked procedure, which means that there is generally no suspensive effect.</p>
<p><b>2. Procedural Safeguards</b></p>			
<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>	<p>Y</p>		<p>Only in “take charge” cases. But it should be noted that applicants in “take back” cases will normally have had an asylum interview before leaving Germany.</p>
<p><b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b></p>	<p>Y</p>		<p>Applicants have access to a lawyer of their choice. Free legal aid is only granted in court proceedings if the case is likely to be successful. Therefore in practice, free legal aid is only provided in exceptional circumstances.</p>



<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	DII returnees are not normally detained.
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Dublin II cases may be detained if they committed a criminal offence or avoided deportation according to <b>Section 62 AufenthG</b> . Upon return, data is transferred to the German criminal authorities and the asylum seeker may be charged with a criminal offence because they previously left the German territory irregularly. In practice, however, the asylum seeker is generally fined on this ground rather than detained.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants have access to reception conditions as set out in <b>Section 44-54 AsylVfG and Asylbewerberleistungsg.</b>
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>	Y		This Article has, in practice, a very limited scope as no exact criteria are defined for its application and the authorities are reluctant to apply the clause in favour of an applicant. This Article is being applied where an asylum seeker can be returned to his/her country of origin or to a safe third country. Therefore, even if another Member State is responsible, German authorities may examine the claim, declare it manifestly unfounded and return the asylum seeker under an accelerated procedure.
<b>2. Humanitarian Clause (Art. 15)</b>			
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>			The provision is rarely applied. In 2004, Germany lodged a request to another Member State under Article 15 in 10 cases (7 of them were rejected; 3 consented) and was requested by other Member States in 50 cases (30 rejected; 20 consented).

<p><b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b></p>			<p>All the information is in the information leaflet, which all applicants receive at the beginning of the procedure. This is distributed in a number of languages, however applicants do not always understand the complicated information in the leaflet and insufficient information is provided to applicants who are illiterate.</p> <p>During the interview there is no information provided which would enable an applicant to give information which would justify the application of Article 15.</p>
<p><b>3. Unaccompanied Minors (Art. 6)</b></p>			
<p><b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b></p>	<p>Y</p>		<p>Available information suggests that Article 6 is being respected in Germany. There is one decision by the <b>Administrative Court Gießen of 23 February 2005 - 2 E 1131/04.A</b> – on Article 6 through which the Federal Office (having wrongfully applied <b>Article 13</b>) was imposed the obligation to examine the asylum application. Problems occur when the guardian is not aware of transfer of the minor until it takes place. Another problem consists of not providing information to the other Member State in taking back minors if they are aged 16 or 17 and therefore considered as adults by the German law (<b>Section 12 AsylVfG</b>), so when they are transferred a guardian for this procedure is not necessary by law but since 1 October 2005 a guardian has to be appointed for all other forms of help (<b>Section 42 Youth Welfare Act</b>).</p>
<p><b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b></p>	<p>Y</p>		<p>Generally, all applicants have the opportunity to draw the authorities' attention to the presence of family members in other Member States during the interview.</p>
<p><b>4. Family Unification (Art. 7 &amp; 8)</b></p>			
<p><b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b></p>	<p>Y</p>		<p>Germany applies the family unification clauses very narrowly to immediate family members as defined by Article 2(i) in the Regulation.</p>

<p><b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b></p>			<p>See the answer to C2.2 above.</p>
<p><b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b></p>	<p>Y</p>		<p>The German authorities use the same definition as stated in the Dublin II Regulation.</p>
<p><b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b></p>		<p>N</p>	<p>Unmarried couples are not treated the same as married couples. The exception is registered same-sex partnerships.</p>
<p><b>5. Time Limits (Arts. 17. 18 &amp; 19)</b></p>			
<p><b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b></p>	<p>Y</p>		<p>Generally the time limits are respected but there have been exceptions regarding requests to take back. In a number of cases where the time limits were not respected, the requested MS nonetheless accepted its responsibility. In addition, there have allegedly been some cases (with especially Italy involved) where after the time limit of Article 18 (1) had elapsed the transfer was effected without any response of the Member State.</p>
<p><b>6. Provision of information</b></p>			
<p><b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b></p>	<p>Y</p>		<p>Generally all the relevant information is sent to the other state however there may be exceptions to this in practice. Normally the requested Member State will also ask for more information to be able to decide upon its responsibility. A problem consists of the non-notification of data to the MS taking back unaccompanied minors if an asylum seeker is aged 16 or 17 and is therefore considered as an adult by the German law (<b>Section 12 Asylum Procedure Act</b>).</p>
<p><b>7. Other problems with the application of Dublin II</b></p>			
<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to case law and studies and examples):</b></p>			<p>Compared to the Dublin Convention the procedure is more efficient and to some extent fairer. However, the cooperation between the MS is an administrative one. In relation to <b>Article 15</b> and <b>Article 3 (2)</b>, the</p>

		<p>prerequisites are not clear hence the provisions cannot be objectively applied and are therefore only rarely applied in favour of an applicant.</p> <p>Concerns:</p> <ul style="list-style-type: none"> <li>- Decision: very short reasoning.</li> <li>- Notification of decision on same day as the transfer. This renders the appeal ineffective and at the same time violates <b>Article 19(2)</b> of the Regulation.</li> <li>- Appeals procedure is very restrictive not taking into account the wishes as well as the humanitarian and protection needs of the applicant.</li> <li>- Limited capacity of legal aid.</li> <li>- Leaving Germany without permission is considered a criminal offence.</li> <li>- Use of <b>Article 3(2)</b> in manifestly unfounded cases.</li> <li>- No use of <b>Article 3(2)</b> in cases of severe traumatisation (be it in order to avoid transfer or to avoid a situation of non-treatment in the responsible MS) but at least in some cases the competent authority (intentionally) missed the deadline for the transfer, so that Germany became the responsible Member State for the respective application.</li> <li>- Recognition as minor only if the person is under 16 yrs of age.</li> <li>- Age-assessment from appearance.</li> <li>- Use of readmission agreements instead of the Dublin II Regulation in border procedures.</li> </ul>
<b>8. EURODAC</b>		
<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	Y	<p>All applicants above 14 years of age are fingerprinted immediately for EURODAC (<b>Sections 16 (1), 18 (5), 19 (2) Asylum Procedure Act</b>).</p>
<b>9. Bilateral agreements (Art. 23)</b>		
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>	Y	<p>There are bilateral agreements according to <b>Article 23</b> with Sweden, Austria and the Czech Republic. An agreement with Poland is currently being prepared. Switzerland and Denmark also have diplomatic agreements with Germany connected to the Dublin System.</p>

<b>GREECE</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			It is assessed before substantively considering the asylum application according to <b>Presidential Degree 61/99 Art. 2(9)</b> and the authorities notify the applicants of the decision to transfer them to another responsible MS.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	Generally, asylum seekers are not detained in this situation in Greece.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Applicants may be detained if a deportation order has been issued against them prior to the lodging of an asylum application.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>		N	There is no provision at national asylum law and, according to the limited information available, there have been no challenges to the Dublin II procedure. However, under general legislation it is possible to challenge an administrative decision within 60 days of the notification of such a decision to the person concerned.

<p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>		N	<p>It is not possible to challenge the presumption that another Member State is safe.</p> <p>No information available.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>		N	<p>No information available.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	Y	N	<p>The challenge under general administrative law may have suspensive effect.</p> <p>The challenge under general law is an administrative procedure and there is no hearing for the applicant in this procedure.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>			<p>Only refugee assisting non-governmental organisations provide free legal aid for challenges and this depends on the merits of the case. Applicants have access to private lawyers.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>			<p>Dublin II returnees who have never previously lodged an asylum application in Greece will have their application examined according to the normal asylum procedure upon return to Greece. For returnees who have previously lodged an asylum application in Greece, the position is problematic. In such cases, the authorities interrupt the examination of the asylum application of such asylum seekers basing the decision on their unauthorised</p>
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		<p>departure from Greece. Since January 2004 there have been more than 200 interruption decisions on that ground.</p> <p>The Secretary General of the Ministry of Public Order on the basis of <b>Art 2(8) Presidential Decree 61/99</b> will issue an interruption decision. If the decision is issued before the arrival of the returnee in Greece a deportation order will be issued upon arrival and the returnee may even be detained prior to deportation. In any case the returnee will have to leave Greece voluntarily or be deported. If the interruption decision is issued after the returnee's arrival in Greece the applicant will stay in Greece for a short period of time with the status of asylum seeker, but after the issuance of a deportation order he/she will also be exposed to arrest and/or deportation. Thus the asylum claim is not considered substantively.</p> <p><b>Art. 2 (8) of the Presidential Decree 61/99</b> provides that 'During the entire examining procedure, the asylum seeker is obliged to stay at the place of his residence which has been stated by him or assigned to him. In the case of arbitrary departure, the procedure for the examination of his asylum claim is interrupted following a relevant decision issued by the Secretary General of the Ministry of Public Order, which is notified to the asylum seeker, considered as a person "of unknown residence". If, within reasonable time, which in any case cannot exceed the limit of three months from the date of issuance of the relevant decision, the asylum seeker reappears before the authorities and submits official documentation proving that the absence was due to "force majeure", the above-mentioned decision is revoked and the asylum claim is examined on its merits (the full text of the decree can be found at UNHCR's website, <a href="http://www.unhcr.ch">www.unhcr.ch</a>).</p> <p>Since this practice of the Greek authorities started in January 2004 the Legal Unit of the Greek Council for Refugees has prepared and lodged about 30 appeals against interruption decisions on behalf of DII returnees. However, the Greek authorities reject the appeals as according to the national legislation (<b>Presidential Decree 61/99</b>) the appeal will</p>
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			only be accepted if the asylum seeker can prove that his/her departure was due to circumstances of “force majeure”. According to their interpretation “force majeure” covers only situations of serious health problems, hospitalization etc.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		Their application is examined according to normal procedure with the guarantees provided by law including a personal interview unless the authorities interrupt the procedure for the reason mentioned above in Section B Question 1.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>			See the answer to Section A 4.4 above.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>	Y		<p>DII returnees whose asylum claims have been interrupted or examined and rejected prior to their transfer may be detained to assist in their deportation. The maximum detention period in this situation is three months.</p> <p>DII returnees with no previous asylum application in Greece may be held in custody temporarily in specially designated areas at points of entry such as airports, until the authorities conduct their first examination of the asylum application. In practice this is a period of a few days.</p>
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		If afforded access to the normal procedure.



## C. APPLICATION OF SELECTED PROVISIONS BY MS

### 1. Sovereignty Clause (Art. 3 (2))

<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>		N	According to the limited information available, the sovereignty clause is not being applied in practice.
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### 2. Humanitarian Clause (Art. 15)

<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>		N	The humanitarian clause has never been applied in the context of Greece requesting to ‘take charge’ of an asylum application.  Greece has requested other MS to apply the humanitarian clause to take responsibility for an asylum application. However, only in a few instances did the other MS take responsibility of the asylum application.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>			Applicants are asked questions during the first examination of their claim regarding the presence of family members in other Member States. However, it is not possible to state with any certainty what information or explanation is provided to the applicants by the authorities- and indeed this may vary from one location to the other. NGOs make a point of informing the applicants about the importance of providing information.

### 3. Unaccompanied Minors (Art. 6)

<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>	Y		According to the limited information available it seems to be respected in practice. However, sometimes the minor may not disclose information on the presence of family members in other MS.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on</b>			See above Section C 2.2.

<b>family members that may be present in another MS?</b>			
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>			See above Section C 2.2.
<b>4.3 How are family members defined in national law? Is the definition different similar to the definition in Article 2(i)?</b>	Y		
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>		N	No. The national law does not recognise unmarried partners as family members.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>			No information available.
<b>6. Provision of information</b>			
<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>			No information available.
<b>7. Other problems with the application of Dublin II</b>			
<b>7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to case law and studies and examples):</b>			Many asylum seekers are directly returned to Greece from the Italian border outside the scope of the Dublin II Regulation.

**8. EURODAC**

<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints taken of all applicants entering the territory?).</b></p>	<p>Y</p>		<p>EURODAC is being rigorously applied in Greece.</p>
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**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>		<p>N</p>	<p>There are no bilateral agreements between Greece and other MS. However Greece has signed and ratified readmission agreement with other Member States including Latvia, Poland, France, Italy, Lithuania, Hungary and Slovenia.</p>
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## HUNGARY

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			The applicant's fingerprints are taken immediately after s/he applies for asylum or immediately upon interception for persons who cross the border illegally. An interview will be held upon receipt of EURODAC information to determine whether another MS is responsible for the asylum application. According to the law, the asylum authority is obliged to assess throughout the procedure whether the applicant falls under the Dublin II Regulation.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Applicants may be placed in pre-deportation detention. Also, asylum seekers arriving in Hungary illegally without the necessary documentation may be detained if apprehended by the border authorities or police before applying for asylum. The fact that such a person lodges an asylum claim does not affect his/her detention per se.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants under the DII procedure have access to the same reception conditions as other applicants.

<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>		N	According to <b>Section 1/B (4)</b> there is no appeal against the DII decision. Judicial review of the DII decision may be requested within 15 days from the date when the decision was communicated to the applicant. The Act on Administrative Proceedings and the Act on Civil Proceedings entitles the court to suspend the execution of an administrative decision upon request on a case by case basis. If this happens, the court has to decide on the suspension within 8 days from receiving the applicant's request. In practice, it can easily happen that by the time the applicant's request to suspend the execution of the DII decision is being examined by the court, the applicant has been transferred.
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>		N	It is not possible to challenge the presumption that another MS is safe.
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		In principle the DII transfer can be challenged on other grounds however in practice this has not happened.
<b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b> <b>4.2.1 on protection grounds?</b> <b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>		N	According to the information available there is no case law concerning successful challenges.
<b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b>		N	The request for judicial review does not automatically suspend the implementation of the transfer.
<b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b>	Y		If there is an appeal, applicants do get a personal hearing.
<b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b>	Y		Free legal aid in the court procedure is provided through the services of the Hungarian Helsinki Committee's lawyers.

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b>			According to the information available DII returnees do have access to the normal asylum procedure. If a returnee had a previous asylum application in Hungary they are questioned upon return as to whether he/she wishes to continue the existing application. If so the application is resumed. Similarly if a previous appeal is still pending before the Municipal Court then this will also be resumed. However, even in cases where a formal decision was reached on the previous asylum application the applicant can apply for asylum again. When submitting a new asylum claim, applicants have their personal data re-registered and their fingerprints are re-taken.
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### 2. Procedural Safeguards

<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		The general rules are applicable. Therefore, access to state funded free legal aid is currently available only in the administrative procedure.

### 3. Detention

<b>3.1 Are DII returnees normally detained?</b>		N	
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		There are criteria under which certain applicants may be detained such as a previous deportation order.

### 4. Reception Conditions

<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		However, it should be noted that generally there are either no or very limited facilities available for traumatised applicants or for those requiring psychiatric treatment/counselling.
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## C. APPLICATION OF SELECTED PROVISIONS BY MS

### 1. Sovereignty Clause (Art. 3 (2))

**1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?**

No information available.

### 2. Humanitarian Clause (Art. 15)

**2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?**

No information available.

**2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?**

No information available.

### 3. Unaccompanied Minors (Art. 6)

**3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?**

No information available.

**3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?**

No information available.

### 4. Family Unification (Arts. 7 & 8)

**4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be**

No information available.

processed in MS where they have family members (both when receiving and requesting)?			
4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?			No information available.
4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?		N	Family members are defined slightly differently in the national law. There are two different definitions provided in the legislation: <b>Section 2 (f) Asylum Act:</b> ‘immediate family member: the spouse and minor child of a foreigner, in the case of a minor applicant, the parents’. <b>Section 2 (e) Aliens Act:</b> ‘family member shall mean—unless otherwise provided for in this Act— the spouse, dependant offspring, adopted or foster child of the foreigner, the child of his/her spouse, in case of minors the parent and the dependant and the ascendant of the foreigner and his/her spouse.’
4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?		N	Unmarried partners are not defined as family members in the <b>Hungarian Aliens Act</b> , therefore they are not treated the same as married couples.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
5. Are the time limits being respected by states both when receiving and requesting transfers?			No information available.
<b>6. Provision of information</b>			
6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?			No information available.
<b>7. Other problems with the application of Dublin II</b>			
7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to		N	



<p>case law and studies and examples):</p>		
<b>8. EURODAC</b>		
<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>		<p>The applicant's fingerprints are taken immediately after s/he applies for asylum (immediately upon interception for persons who cross the border illegally) and are sent - within 24 hours - to the Hungarian Fingerprint Institution (national dactyloscopic authority). This institution analyses, compares, collects and registers all fingerprint records. It is also the national Eurodac Unit and provides information about Eurodac hits and records. This authority immediately forwards the fingerprints to the Eurodac centre in Luxembourg. The results come back to the asylum authority within 24 hours, after which a second, detailed interview will be held.</p>
<b>9. Bilateral agreements (Art. 23)</b>		
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>	Y	<p>There is a bilateral agreement between Austria and Hungary facilitating the transfer of applicants under DII.</p>

<b>IRELAND</b>			
Question	Ye s	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			Information is gathered during the initial interview carried out in accordance with <b>Section 8 Refugee Act 1996</b> as amended. However, if at any stage of the asylum procedure it appears that the case should be examined in another MS then it may be dealt with in accordance with the Dublin II Regulation.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>			While there is little information available on the detention of Dublin II applicants, specific provisions allow for this (see A2.2 below) and recently the Minister for Justice, Equality and Law Reform, in correspondence with one Dublin II absconder, highlighted his ability to arrest and detain pursuant to the below provisions.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Pursuant to <b>Section 7(5) of the Refugee Act 1996 (Section 22) Order 2003, (SI No. 423 of 2003) as amended by the Refugee Act (Section 22) (Amendment) Order 2004, (SI No 500 of 2004)</b> , persons subject to Dublin II transfer order's can be “. . . arrested and detained for the purpose of ensuring his or her departure from the state in accordance with the transfer order.” Further to the specific provisions for detention of persons subject to Dublin II, general provisions for the detention of asylum seekers are contained in <b>Section 9 (8) (d) Refugee Act, 1996 (as amended by Section 7 (c) Immigration Act 2003)</b> , which provides for the detention of asylum seekers where an immigration officer or a member of the Garda

			Síochána, “with reasonable cause, suspects” that an asylum seeker over the age of 18 intends to avoid removal from the State in the event of his or her application for asylum being transferred to a Convention country or a safe third country under the Dublin II Regulation and/or other international agreements. Criteria under which "certain applicants" for asylum may be detained can be found in <b>Section 9 (8) (a) to (f) and Section 9 (13) of the Refugee Act 1996, as amended.</b>
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants under the Dublin II procedure have access to normal reception facilities, including food and housing in direct provision hostels. Dublin II applicants are generally housed within the Dublin area.
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			

<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p> <p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p>	<p>Y</p> <p>Y</p>	<p>Section 8 of the <b>Refugee Act 1996 (Section 22) Order 2003</b> (SI No. 423 of 2003) allows for an appeal of the decision to transfer the applicant to another MS. The applicant has fifteen working days from the date of the Refugee Applications Commissioner's decision to appeal to the Refugee Appeals Tribunal.</p> <p>It is possible to challenge the presumption that another MS is safe. However, according to the limited information available, there have been few successful challenges on this ground. Challenges to the removal on protection grounds can occur at the level of the higher courts in line with the Irish Constitution (<b>Article 40.3.2</b> – right to life) and the European Convention of Human Rights Act 2003. In <b>M v Minister for Justice Equality and Law Reform [2005 No. 98 JR]</b>, (<i>unreported</i>, 15 November 2005) Finlay Geoghegan J upheld the duty of the state to exercise its powers in implementing Dublin II transfer orders to uphold the right to life of the person in line with the Constitution, <b>Sections 2 and 3 European Convention on Human Rights Act 2003</b> (requiring the state to exercise its power in a manner compatible with its obligations under the ECHR) and <b>Article 2 ECHR</b>.</p>
<p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p>	<p>Dublin II removals can be challenged on other grounds for example for humanitarian reasons.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>N</p> <p>N</p> <p>Y</p>	<p>Decisions of appeals at the Refugee Appeals Tribunal are currently not published.</p> <p>According to the limited information available there is no relevant case law on successful challenges on this ground.</p> <p><b>R S and N M v ORAC Jan 05 2005 852</b> (<i>unreported</i>). The decision to return the applicant to Germany under the Dublin II Regulation was challenged by an application for leave to judicially review based on the mental health of the applicants, the risk to their lives caused by the proposed transfer to Germany and the risk of chain <i>refoulement</i>. It</p>

		<p>was held that no risk of <i>refoulement</i> arose in this situation however the risk of suicide and potential breach of the Constitution and ECHR in this regard, caused the Court to find that there were arguable grounds to suggest that in circumstances where there was a risk of suicide the Minister could consider whether to implement the transfer order or not and must do so with regard to the Constitution and ECHR. Leave was granted. The case was settled following this decision and the applicants were entered in the asylum determination process in Ireland.</p> <p>In <b>M v Minister for Justice Equality and Law Reform [2005 No. 98 JR] (unreported, 15 November 2005)</b>, the High Court found that a real and substantial risk of suicide existed if the transfer order was to be implemented based on medical evidence. The Minister for Justice was ordered by the Court to consider the appeal pursuant to his discretion to revoke or amend DII removal orders. This decision was necessary in light of the protection to life provided for in the Irish Constitution and the ECHR.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	<p>N</p> <p>N</p>	<p>Pursuant to section <b>8(3) Refugee Act 1996 (Section 22) Order 2003 (SI No. 423 of 2003)</b> any appeal submitted by the applicant will not suspend his/her transfer to the responsible MS under the Dublin II Regulation. However, if an applicant issues Judicial Review Proceedings and secures an injunction to stop the transfer pending the Judicial Review outcome, this operates to halt any transfer.</p> <p>Lawyers represent the applicant and the appeal is non-suspensive therefore, it is possible that the applicant may not even be present in the state at the time of the appeal.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>		<p>Dublin II applicants have access to free legal aid for the appeal at the Refugee Appeals Tribunal. However, applicants do not have</p>

			automatic access to free legal aid for Judicial Reviews.
<b>B. PRACTICE OF RECEIVING MS</b>			
<b>1. Access to Asylum Procedures</b>			
<b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b>			If Ireland accepts the Dublin II request and the transfer takes place, the applicant may make his/her asylum claim at the Office of the Refugee Applications Commissioner (ORAC) on his/her return. If the Commissioner has already dealt with the asylum claim or the application has been deemed withdrawn, the applicant will have to apply to the Minister for Justice, Equality and Law Reform in writing under <b>Section 17(7) of the Refugee Act 1996</b> (as amended). This is a discretionary Ministerial decision and it is difficult to obtain permission to re-apply for asylum.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>		N	Dublin II applicants are not guaranteed a personal interview. It depends on whether they have access to an asylum procedure upon return.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		Dublin II returnees have access to free legal aid if they are given permission to enter the asylum procedure.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	Applicants are not usually detained if they have been given permission to re-enter the asylum procedure.
<b>3.2 If DII cases are not normally detained, are</b>	Y		See Section A Question 2.2 above for further

there any criteria under which certain applicants may be detained?			information.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants under the Dublin II procedure have access to normal reception facilities.
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>			No information available.
<b>2. Humanitarian Clause (Art. 15)</b>			
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>	Y		In general, if the applicant discloses information relating to the humanitarian clauses for example, severe illness, etc at the ORAC stage then this will be taken into consideration. If this information is provided after a transfer order has been made, it has, until the <i>M</i> decision, not been taken into account.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>	Y		An information leaflet is available in a number of languages and this provides some details on the possible application of provisions such as the humanitarian clause. However the information in this leaflet is too complicated for asylum seekers and the state does not provide any further information during the Dublin II procedure.
<b>3. Unaccompanied Minors (Art. 6)</b>			
<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS</b>	Y		Article 6 is being respected however in practice there have not been many transfers of children

<p><b>where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b></p>			<p>to other MS from Ireland. Ireland has also received requests for children from other MS to be returned to Ireland under Dublin II. Requests to date have come from the UK, France, Belgium, and Germany. These cases are normally in relation to a child detained by immigration abroad, but with a parent in Ireland in the asylum procedure. Three children were returned to Ireland in 2004 for this reason, others are currently being processed.</p>
<p><b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b></p>	Y		<p>The minor is given an information leaflet like other Dublin II applicants. See the answer to Section C 2.2 above.</p>
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<p><b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b></p>		N	<p>According to the information available, the Irish authorities are not always respecting these articles. Proof that a person is a family member is established through DNA testing which can sometimes delay family reunification.</p>
<p><b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b></p>			<p>Apart from being provided with an information leaflet, no further explanation of this takes place.</p>
<p><b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b></p>	Y		
<p><b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b></p>	Y		<p>Unmarried couples are treated the same as married couples in relation to Dublin II if the applicant discloses this during his/her application.</p>
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<p><b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b></p>	Y		<p>According to the limited information available, Ireland respects the time limits in the Regulation. Where Ireland's request is based on data obtained from the Eurodac system the one-month time limit is reduced to two weeks.</p>



**6. Provision of information**

<p><b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b></p>	<p>Y</p>		<p>According to the limited information available, in general it seems that the Irish authorities provide all the relevant information to other MS. However there may be exceptions to this practice.</p>
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**7. Other problems with the application of Dublin II**

<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to case law and studies and examples):</b></p>			
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**8. EURODAC**

<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>		<p>EURODAC is being applied in Ireland.</p>
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**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>			<p>No information available.</p>
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**ITALY**

Question	yes	no	Details
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**A. PRACTICE OF REQUESTING STATES**

**1. National Determination Process**

<p><b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b></p>			<p>Once the competent authorities record the applicant's request of asylum (information on the family members, travel, documents etc), it is assessed whether the applicant falls under Dublin II. If the Italian authorities become aware that another MS may be responsible for the asylum claim a 'Dublin II form' is filled out which is then sent to the Dublin Unit.</p>
<b>2. Detention</b>			
<p><b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b></p>		N	<p>Generally asylum seekers are not detained in Italy however, since the introduction of new asylum legislation in April 2005, asylum seekers may be placed in temporary retention centres (identification centres) but these are not the same as detention centres.</p>
<p><b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b></p>		N	
<b>3. Reception Conditions</b>			
<p><b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b></p>	Y		<p>In general applicants have access to reception conditions if they are available. Access is possible in principle, however full reception conditions are often not available in Italy limiting the possibility of DII applicants receiving reception.</p>
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			

<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p> <p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p> <p>Y</p> <p>Y</p>		<p>An applicant can lodge an appeal before the Regional Administrative Tribunal.</p> <p>In theory yes, the national legislation does not contain any statutory presumption that MS are safe.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>		<p>N</p>	<p>According to the limited information available, there have been few successful appeals against the Dublin II Regulation.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	<p>Y</p>	<p>N</p>	<p>Appeals have no automatic suspensive effect but it is possible to suspend a decision on a case-by-case basis.</p> <p>Applicants are not personally interviewed before the Dublin Unit, however they may get a personal hearing in the appeal procedure.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>		<p>In Italy applicants have the right to receive free legal assistance, in practice only if he/she previously received a residence permit.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>			<p>DII returnees generally have access to the normal asylum procedure. However an asylum seeker cannot re-apply for asylum if he is noted as absent during the first interview, i.e. he did not show up (this could happen by the applicant moving on to a further MS). In this case he will be notified with a negative decision. On the other hand, when it is possible to demonstrate that he did not receive the letter informing him</p>
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			of the interview date, he will be notified again with a negative decision, but he is allowed to ask to be interviewed by the Eligibility Commission, for a re-examination of his case. There are other provisions in Italian Law which block the access to normal procedure for example a previous expulsion order or negative decision on an asylum claim by the Eligibility Commission.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	DII returnees are not normally detained, however upon return they may be placed in a temporary retention centre.
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		Applicants may be detained if they have received a previous deportation order or due to the lack of accommodation centres.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants do have access to reception conditions if they are available.

## C. APPLICATION OF SELECTED PROVISIONS BY MS

### 1. Sovereignty Clause (Art. 3 (2))

<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>	Y		The sovereignty clause is being applied in Italy. A recent case involved a South African woman who was suffering from post-traumatic stress disorder and other psychological illnesses. Italy decided to take over the application for asylum even though, under the Dublin II Regulation, Greece would have been responsible.
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### 2. Humanitarian Clause (Art. 15)

<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>	Y		The humanitarian clause is applied in specific situations regarding the condition of the applicant involved (e.g. pregnancy or a new born child, severe handicap, physical or psychological illness or old age). This clause is also used for family unification.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>		N	According to the information available few applicants are informed of the importance of the humanitarian clause.

### 3. Unaccompanied Minors (Art. 6)

<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>	Y		
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>		N	The amount of information provided is varied and NGOs feel that sufficient information is not provided to all unaccompanied minors.

### 4. Family Unification (Arts. 7 & 8)

<b>4.1 Are Articles 7 and 8 being respected,</b>	Y		According to the information available,
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according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?			Articles 7 and 8 are being respected.
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>		N	No, but they have the possibility to declare to the competent authorities where the family members are and what their legal status is.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>		N	The Italian legislation expands the family definition to include handicapped eldest child and dependent parents.
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>		N	The Italian legislation does not recognise unmarried couples.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		Yes although the time limits are not always respected in practice. Sometimes the time limit of two months under <b>Article 18(1)</b> in replying to a request is not always respected, due to the time needed to carry out the internal procedure of investigation with the police officers.
<b>6. Provision of information</b>			
<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>	Y		Generally speaking yes, however in some cases MS do not provide medical certificates or other relevant information on the health conditions of sick applicants.
<b>7. Other problems with the application of Dublin II</b>			
<b>7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to case law and studies and examples):</b>			Under the Dublin II Regulation applicants are transferred with health problems, psychiatric illnesses and severe depression. The applicants are not informed properly about the Dublin II Regulation and many applicants are put in detention prior to the transfer to Italy.

**8. EURODAC**

<p><b>8. Please provide any observations in relation to the application of the EURODAC System. (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>	<p>The Eurodac system apparently works well, however there have been incidents of people being transferred to Italy due to mistaken identity.</p> <p>For example in March 2005, an asylum seeker had been transferred from the UK, after 3 months in detention. Only after the Italian Police took the person's fingerprints was it discovered that the person had never been in Italy, with the result that the UK police had transferred the wrong person. The person was returned to the UK after 6 months.</p>
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**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>	<p>Y</p>	<p>According to the information available the Italian authorities have established agreements with other MS however, according to the limited information available, the real terms of these agreements and parties involved are unknown.</p> <p>Additionally, there are reported instances of Italian border practice of directly returning asylum seekers back to Greece outside of the Dublin procedure.</p>
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## LITHUANIA

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			The decision as to whether there are grounds to apply the Dublin II Regulation is taken by the Migration Department within 48 hours from the time of lodging the asylum application ( <b>Art. 72 Law on the Legal Status of Aliens</b> ).
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	DII applicants are not normally detained. However, the <b>Law on the Legal Status of Aliens</b> does not distinguish asylum seekers from other foreigners illegally coming to Lithuania. This in fact leads to a presumption that all asylum seekers illegally coming to Lithuania shall be detained and only following individual consideration in the courts they might be released from detention or alternative measures can be imposed.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		The grounds for detention are set in <b>Art. 113 Law on the Legal Status of Aliens</b> . This article sets out 7 grounds for detention as follows: 1) in order to prevent the alien from entering into the Republic of Lithuania without a permit; 2) if the alien has illegally entered into or stays in the Republic of Lithuania; 3) when attempting to return the alien to the country from whence he has come if the alien has been refused entry; 4) when the alien is suspected of using forged documents; 5) if a deportation order has been issued; 6) in order to stop the spread of dangerous diseases; 7) when the alien's stay constitutes a threat to public security, public policy or public health. Therefore, if an applicant under DII falls under one of the above-mentioned grounds, he/she may be detained by court decision.



**3. Reception Conditions**

<p><b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b></p>	<p>Y</p>	<p>According to <b>Art. 73 (2) Law on the Legal Status of Aliens</b> Dublin II applicants shall be granted temporary territorial asylum, a foreigner's registration card shall be issued and the applicant shall be provided with accommodation.</p>
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**4. Challenging/Appealing a DII Decision (Art. 19)**

<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p> <p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p><b>Art. 49 of the Order of the Minister of Internal Affairs of 15 November 2004 on the Procedure of Investigation of the Applications for Asylum, Adoption and Execution of Decisions</b> foresees the right of an asylum seeker to appeal a DII decision. Such an appeal must be lodged within 7 days from the date the decision was adopted, not from the day when the asylum seeker was informed of the decision. Therefore, often applicants have to submit a request to renew the time for making an appeal. The time limit might be renewed depending on the individual circumstances of the case.</p> <p>There is no statutory presumption that another MS is safe. In each case it is considered separately whether the third country is safe or not.</p> <p>In theory, yes.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>N</p>	<p>There have been no official challenges to a DII decision to date.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p>	<p>N</p>	<p>Appeals against the decision to transfer do not suspend the execution of the transfer (<b>Art. 49 of the Order of the Minister of Internal Affairs of 15 November 2004 on the Procedure of Investigation of the</b></p>

<p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		<p><b>Applications for Asylum, Adoption and Execution of Decisions</b>). However, the Law on the Administrative Procedure (<b>Art. 71</b>) foresees a general possibility to submit the request to the court to suspend the execution of the appealed decision. The court must decide within one day whether or not to suspend the decision.</p> <p>As the appeal does not have suspensive effect, it may happen that the appeal occurs when the applicant has been transferred, therefore, it is not possible for the applicant to have a personal hearing. However, if the case hearing takes place prior to transfer, the applicant has the right to a personal hearing.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure?</b></p>	<p>Y</p>	<p>During the appeals procedure the applicant has the right to free legal aid guaranteed by the state. Free legal aid is not limited in time.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>	<p>Y</p>	<p>Yes, returnees under DII have access to the normal asylum procedure. However, for applicants who did not previously apply for asylum in Lithuania an interview is held in order to find out whether a person wishes to apply for asylum in Lithuania. Regarding returnees who were previously refused asylum in Lithuania, a second application for asylum may be processed in an accelerated procedure as a manifestly unfounded application.</p> <p><b>Art. 77 of the Law on the Legal Status of Aliens</b> set out how an applicant may be refused access to asylum procedure. When an asylum applicant comes from a safe third country, the Migration Department may decide that he/she shall be refused temporary territorial asylum (i.e. the right to stay in Lithuania during the asylum determination procedure) and his asylum application shall not be examined in substance. Asylum procedures can be blocked if the asylum applicant leaves the Foreigners' Registration Centre or Refugee Reception</p>
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			Centre without authorisation or fails to return to the Centres for more than 24 hours. According to <b>Art. 84 Law on the Legal Status of Aliens</b> the examination of an application of an asylum applicant who has been permitted to reside in the location of his/her choice shall be suspended if it is not possible to contact him/her for 72 hours. Therefore, if the applicant did not receive a previous initial decision on their asylum claim, when the applicant returns to Lithuania they are allowed back into the asylum procedure. However, if the applicant previously left Lithuania before appealing an initial refusal decision within the allotted 7 days, upon return the applicant will be given the opportunity to re-apply for asylum only on the basis of new facts or circumstances.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		Asylum seekers returned to Lithuania under DII are guaranteed a personal interview. However, an interview may not be guaranteed if the applicant had a previous asylum application in Lithuania and it is dependent on whether they are able to re-enter the asylum procedure.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		DII returnees have access to free legal assistance guaranteed by the state dependent on whether they have access to an asylum procedure or not.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	DII returnees are not detained on the basis of application of the DII regulation.
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		See the answer to Section A 2.2 above.  Also there are situations where criminal actions are taken against the asylum seekers returned to Lithuania under DII, who previously crossed the borders illegally. Sometimes such applicants may be detained.

#### 4. Reception Conditions

<p><b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b></p>	<p>Y</p>	<p>Applicants returned to Lithuania under DII have the same rights as other asylum applicants.</p>
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### C. APPLICATION OF SELECTED PROVISIONS BY MS

#### 1. Sovereignty Clause (Art. 3 (2))

<p><b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b></p>		<p>The sovereignty clause is rarely applied in Lithuania and there has been only one reported instance in 2005 when the national authorities applied the sovereignty clause rather than transfer an applicant to Germany on the basis that the asylum application was manifestly unfounded.</p>
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#### 2. Humanitarian Clause (Art. 15)

<p><b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b></p>		<p>N</p> <p>The humanitarian clause has not been applied in Lithuania yet.</p>
<p><b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b></p>		<p>Asylum applicants are not specifically informed about the importance of providing information on family members present in other MS. However, during the interviews, applicants are asked questions about their relatives.</p>

#### 3. Unaccompanied Minors (Art. 6)

<p><b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b></p>	<p>Y</p>	<p>According to <b>Art. 32 of the Law on The Legal Status of Aliens</b> having received information about an unaccompanied minor alien, the Migration Department must together with the Lithuanian non-governmental or international organisations and the temporary guardian of the unaccompanied minor, immediately organise a search for the minor's family members. In practice a request is sent to the Lithuanian Red</p>
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			Cross to organise a search for the minor's family members through the Red Cross network. There have been no cases recorded when family members of a minor have been found in other MS therefore the asylum applications are examined in Lithuania.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>	Y		Unaccompanied minors are not specifically informed about the importance of providing information on family members present in other MS. However, during the interviews, applicants are asked questions about their family members and a request is sent to the Lithuanian Red Cross to organise a search for the minor's family members in MS.
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>			To date there are no known cases where Articles 7 and 8 considerations have arisen.
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>		N	Asylum applicants are not specifically informed about the importance of providing information on family members present in other MS. Applicants are however, asked questions about their family members so the information could arise that way.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>	Y		The definition of is the same as the DII Regulation definition.
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>	Y		Under <b>Art. 2 of the Law on the Legal Status of Aliens</b> unmarried couples who had concluded a partnership agreement or an agreement equivalent to it are treated the same as married couples.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		According to the limited information available the time limits are respected.

**6. Provision of information**

<p><b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b></p>	<p>Y</p>		
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**7. Other problems with the application of Dublin II**

<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation describe them here (referring to case law and studies and examples):</b></p>			<p>One of the main problems in relation to the application of the Dublin II Regulation is the non-suspensive effect of appeals.</p>
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**8. EURODAC**

<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>		<p><b>Art. 69 of the Law on the Legal Status of Aliens</b> provides that an asylum seeker has to be fingerprinted within 24 hours after submission of the asylum application. The Institution, which is responsible for receiving applications for asylum, transfers the data to the Eurodac National Unit as soon as possible, but not later than 24 hours from the moment of submission of the asylum application.</p>
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**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>		<p>N</p>	<p>No such agreements exist in relation to Lithuania.</p>
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## LUXEMBOURG

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			At the very first stage of the procedure, prior to an assessment of the admissibility and the merits of the applicants case. The first consideration is as to whether Luxembourg is responsible for the examination of the request.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>	Y		At present, the practice tends towards systematic detention, except for women applicants with children.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Considering that they are, in principle, detained, the issue does not arise. Otherwise the applicants would benefit from some social support (housing, food, health care).
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>	Y		Yes, just as any other administrative decision, a decision to transfer the applicant can be challenged before the administrative courts (without, however, judicial review). The possibility is however largely theoretical because, in practice, the applicants involved are only notified of the decision at the time of transfer.

<p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p>		<p>In practice, MS will be presumed to be safe. However, there is no statutory presumption of this in the national legislation.</p> <p>The DII decision can be challenged on other grounds. However there does not seem to have been any challenges under <b>Article 8 ECHR</b>. This may be due to the fact that when Article 8 is relevant for the application the authorities will not make a request to another MS and Luxembourg will take over the application.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>N</p> <p>N</p> <p>N</p>		<p>According to the limited information available there seems to have been no successful challenges to Dublin II decisions.</p> <p>Decisions have formerly been challenged on the basis that the request made by the Luxembourg authorities to the receiving state was made outside the time period fixed for such a request. However this challenge was not successful and it was then ruled that though the request was delayed this did not create a right in favour of the asylum seeker and that if, notwithstanding the delay, the receiving state accepted to take the applicant back, the applicant could not complain about that.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		<p>N</p> <p>N</p>	<p>In practice, the appeal does not have suspensive effect and decisions are carried out immediately. There is a possibility to apply for suspensive effect, but this is subject to very strict conditions.</p> <p>A lawyer represents the applicant in the court proceedings.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>		<p>Free legal aid is available for Dublin II applicants and there are no particular limits on this provision.</p>



## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b>	Y		Dublin II returnees do have access to the normal asylum procedure. However, most of the returnees to Luxembourg have actually already had their asylum claim rejected by the Luxembourg authorities prior to leaving the country. Asylum seekers who are returned to Luxembourg under the Dublin II regulation while their original claim is pending are usually allowed to continue with their claim in Luxembourg and receive accommodation and social assistance. However, the legislation in relation to this will be changed in 2006 and then it will be more difficult for a Dublin II returnee to re-open a previous asylum procedure in Luxembourg. If the procedure is concluded when transferred back then applicants are not accepted back in the asylum procedure and they do not receive accommodation and social assistance.
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### 2. Procedural Safeguards

<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		Yes, subject always to their request for asylum not having being previously decided upon.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		See B 2.1 above.

### 3. Detention

<b>3.1 Are DII returnees normally detained?</b>			Dublin II returnees are not normally detained. However, if they had a previous asylum application rejected in Luxembourg, they may be detained prior to deportation. Also Dublin II returnees who had a previous uncompleted asylum application in Luxembourg may be detained on the basis that they may abscond again.
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		They may be detained under the general legislation for detention applicable to all asylum seekers.

#### 4. Reception Conditions

<p><b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b></p>	<p>Y</p>		<p>DII returnees have access to reception conditions if they are allowed to re-open their asylum claim and have not received a previous refusal decision.</p>
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### C. APPLICATION OF SELECTED PROVISIONS BY MS

#### 1. Sovereignty Clause (Art. 3 (2))

<p><b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b></p>	<p>Y</p>		<p>It is only being applied very rarely according to the individual circumstances of the case for example family reasons (<b>Article 8 ECHR</b>).</p>
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#### 2. Humanitarian Clause (Art. 15)

<p><b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b></p>	<p>Y</p>		<p>Applications of <b>Art. 15</b> appear to be very rare in practice.</p>
<p><b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b></p>		<p>N</p>	<p>According to the limited information available, it appears that applicants do not receive much information on the provisions in the Dublin II Regulation.</p>

#### 3. Unaccompanied Minors (Art. 6)

<p><b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b></p>			<p>No information available.</p>
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<p><b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b></p>		<p>N</p>	<p>According to the limited information available, it appears that applicants do not receive much information on the provisions in the Dublin II Regulation.</p>
<p><b>4. Family Unification (Arts. 7 &amp; 8)</b></p>			
<p><b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b></p>			<p>According to the limited information available, <b>Articles 7 and 8</b> are rarely being invoked.</p>
<p><b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b></p>		<p>N</p>	<p>According to the limited information available, it appears that applicants do not receive much information on the provisions in the Dublin II Regulation.</p>
<p><b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b></p>	<p>Y</p>		<p>The definition is the same as the Regulation's definition.</p>
<p><b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b></p>		<p>N</p>	<p>Unmarried couples are not treated the same by the government as are married couples, but case law in general tends to narrow down the relevance of the distinction and recognizes the existence of family life irrespective of marriage.</p>
<p><b>5. Time Limits (Arts. 17, 18 &amp; 19)</b></p>			
<p><b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b></p>	<p>Y</p>		<p>According to the limited information available, Luxembourg is respecting the time limits.</p>
<p><b>6. Provision of information</b></p>			
<p><b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b></p>			<p>No information available.</p>
<p><b>7. Other problems with the application of Dublin II</b></p>			
<p><b>7. If you have observed any other problems</b></p>		<p>N</p>	

<p><b>concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b></p>		
<p><b>8. EURODAC</b></p>		
<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>	<p>All applicants above the age of 14 are fingerprinted for the EURODAC system.</p>
<p><b>9. Bilateral agreements (Art. 23)</b></p>		
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>		<p>N</p> <p>Luxembourg has no bilateral agreements.</p>

## THE NETHERLANDS

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			Applicants are asked to submit all documents (for instance identity and travel documents) when they claim for asylum. Also their fingerprints are taken for EURODAC information. In the Dutch asylum procedure asylum seekers get two interviews: the first concerning the identity, documents and travel route, the second, concerning the reasons for asylum. If the asylum authorities already suppose that another MS is responsible before the first interview, a special Dublin interview will be held in which the asylum seeker is told that another MS is responsible for the asylum request. In that case the asylum request will be rejected on the basis of <b>Art. 30(a) Aliens Act 2000</b> . It also is possible that the Dutch authorities only get to know at a later stage that another MS is responsible. Also in that case an applicant will be transferred to the responsible MS.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>			There is different legal basis for detention of applicants depending on how they entered the Netherlands. An asylum seeker who entered the Netherlands by air and whose asylum request is rejected based on <b>Art. 30(a)</b> and where a Dublin II agreement has been reached within 48 hours, will be detained on the basis of <b>Art. 6</b> of the Aliens Act. An asylum seeker who entered the Netherlands by land and whose asylum request is rejected in the fast track procedure based on <b>Art. 30(a)</b> and where a Dublin II agreement has been reached in 48 hours, can be detained on the basis of <b>Art. 59 (1)(2) of the Aliens Act</b> . Therefore not all applicants are detained but they may be depending on the circumstances involved.

<p><b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b></p>	<p>Y</p>		<p>They may be detained if they are trying to avoid removal to the responsible Member State. This is possible on the basis of <b>Art. 59 (1)(2) of the Aliens Act.</b></p>
<p><b>3. Reception Conditions</b></p>			
<p><b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b></p>			<p>When a Dublin II agreement is concluded during the initial 48 hours the asylum seeker will not receive reception facilities. However if a request under DII is sent to another MS but no agreement has been reached during the 48 hours the asylum seeker may receive normal reception facilities until it is clear which state shall deal with the asylum application.</p>
<p><b>4. Challenging/Appealing a DII Decision (Art. 19)</b></p>			
<p><b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b></p>	<p>Y</p>		<p>An appeal can be lodged within these time limits: one week in the fast-track land procedure, and four weeks in the normal procedure or the fast-track procedure at the airport when the asylum seeker is detained.</p>
<p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p>	<p>Y</p>		<p>It is possible to challenge the presumption that another MS is safe. This is difficult in practice because there must be evidence that the responsible MS breaches <b>Art. 3 ECHR</b> in/directly.</p>
<p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p>		<p>It can be challenged on humanitarian grounds: dependency on relatives etc.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p>	<p>Y</p> <p>Y</p>		<p>There are two successful judgements from the district court Zwolle with respect to Greece: In a judgement of <b>September 29<sup>th</sup> 2004 (AWB 04/30154)</b> the court judged on the basis of the following article: ‘<i>Why Greece is not a Safe Host Country for Refugees</i>’, Skordas and Sitaropoulos, International Journal of Refugee Law.2004; 16: 25-52, and information from the World Organisation Against Torture that removal to Greece could result in indirect</p>

<p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p>	<p><i>refoulement</i>. In a judgement of <b>February 10<sup>th</sup> 2005 (AWB 04/57933)</b> the court judged on the basis of letters from the Greek Council for Refugees and Dutch Refugee Council and a UNHCR report (November 2004) in a ‘taking back’ case that removal to Greece could result in indirect <i>refoulement</i>. In another case, a ‘taking charge’ case, where an asylum seeker was to be sent to Greece, the district court judged on <b>12 December 2004</b> that there was no indirect <i>refoulement</i> because the asylum seeker had not applied for asylum in Greece before and therefore had access to the normal asylum procedure upon return there. On November 15, 2005 the Dutch Council of State (<b>2005055541</b>) ruled that the Netherlands could continue to apply the DII Regulation with regard to Greece. In the particular case the asylum seeker had not had his asylum request processed in Greece. The court ruled that in general it must be assumed that all MS respect the principle of <i>non-refoulement</i>. It is up to the individual asylum seeker to give evidence that this is different in his/her case depending on the individual circumstances.</p> <p>There is case law on different grounds: humanitarian (dependence on relatives) or time limits etc.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	<p>N</p> <p>N</p>	<p>The appeal has no suspensive effect on the basis of <b>Art. 82 Aliens Act</b>. A court procedure has to be started to request suspensive effect.</p> <p>Applicants do not get a personal hearing in the appeal procedure.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>	<p>All asylum seekers have access to free legal aid.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>			<p>There is a difference between 'taking charge' cases and 'taking back' cases. For those applicants, who have not previously made an application for asylum in the Netherlands, they have access to the normal asylum procedure.</p> <p>However, for those who left the Netherlands during a previous asylum application, ('taking back' cases) it is more difficult. In the Netherlands, asylum seekers have to report weekly. If they do not report, the procedure will be terminated and the asylum request is rejected. This happens when the applicant leaves the Netherlands to go to another MS. After the asylum seeker returns to the Netherlands the time limit to appeal the decision to reject the asylum claim will be exceeded, so the appeal will be inadmissible. In that case the asylum seeker has to lodge a new asylum request. However, to lodge a new asylum claim the applicant must show that there are new facts or new circumstances, which did not exist or could not be known to the asylum seeker during the first asylum procedure. Most applicants who left the Netherlands for another Dublin II MS will not be able to fulfil these conditions with the result that their second asylum request is rejected because of the absence of new facts or circumstances.</p> <p>Asylum seekers who left the Netherlands after their asylum procedure was terminated and who are subsequently returned under the Dublin II Regulation also need to fulfil the conditions of new facts or circumstances when they want to lodge a new asylum request in the Netherlands. Many asylum seekers are not able to fulfil these conditions.</p>
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### 2. Procedural Safeguards

<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>	<p>Y</p>		<p>DII applicants may be given an interview but it depends if it is their first or second application</p>
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			for asylum.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		The applicants will receive legal aid after they had an interview. Before the interview there is no free legal aid provided.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>			That depends. See the answer above in Section A Q2.1 above
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		They may be detained if they are in the deportation procedure.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Asylum seekers receive reception conditions except if their asylum claim is examined in an accelerated 48 hour procedure.
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>	Y		One problem observed is that the sovereignty clause is being applied even if the applicant themselves does not wish the Netherlands to take responsibility for the claim. In a judgement of the district court Haarlem of <b>November 3 2004 (AWB 04/45334)</b> the court referred to <b>Art. 3(2)</b> . In that case, the Eurodac information showed that a minor had been in Spain before his arrival in the Netherlands. The Netherlands could have asked Spain whether this person had already applied for asylum there. If the minor had applied for asylum in Spain, then it would be the responsible MS. However the Netherlands took responsibility for the asylum request (which was rejected in the fast track procedure). The asylum seeker argued in appeal that Spain had to be asked to take the responsibility. With reference to <b>Art. 3(2)</b> the court judged that it was not necessary to ask Spain to take the responsibility, because

			each MS has the right to deal with the case itself.
<b>2. Humanitarian Clause (Art. 15)</b>			
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>	Y		The humanitarian clause is only applied in special cases. Please see the answer to Section C Q4.1 below for relevant case law.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>		N	No, the asylum authorities do not provide this information.
<b>3. Unaccompanied Minors (Art. 6)</b>			
<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>		N	There is one example where <b>Art. 6</b> was not respected by the Dutch authorities: In that case, the Netherlands had asked Spain to take responsibility for the asylum application of a minor, while the minor's mother stayed in the Netherlands. Spain accepted the responsibility on the basis of <b>Art. 13</b> the Dublin Regulation but was not informed about the presence of the mother in the Netherlands. The district court Zwolle judged on June 27 <sup>th</sup> 2003 ( <b>AWB 03/22224</b> ) that the Netherlands were responsible on the basis of <b>Art. 6</b> Dublin II Regulation.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>		N	Not with respect to the Dublin II Regulation. These questions are only posed to consider whether the child needs protection on the basis that s/he is a separated child.
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		<b>Articles 7 and 8</b> are being respected in the Netherlands. However, given the fact that 80% of all asylum applications are dealt with in the fast-track asylum procedure, there will not be many cases in which there is still no first-instance decision when a family member arrives. In practice this limits the application of <b>Art. 8</b> .

		<p>In addition, the Netherlands has given a broader definition of <b>Art. 7</b> in the way that the Netherlands not only takes responsibility of family members of recognised refugees (<b>Art. 29(1)(a) Aliens Act</b>) but also of persons who received a residence permit on other protection grounds (e.g. <b>Art. 3 ECHR</b>) (<b>Art. 29(1)(b) Aliens Act</b>), or other humanitarian grounds (<b>Art 29(1)(c)</b>) or depending on the general security and human rights situation (<b>Art. 29(1)(d) Aliens Act</b>).</p> <p>However there seems to be a problem with relatives of persons who already have been naturalized. These persons are not considered as family members within the meaning of <b>Article 7</b>, even if the family member had once been recognized as refugee. This is illustrated by a case in which the applicant appealed on the basis of <b>Article 3(2) and Article 15</b>. The applicant, an Iraqi woman, arrived together with three minor children in the Netherlands while her husband, who also originated from Iraq, lived in Sweden where he also was naturalized as a Swedish citizen. The woman, who wanted to go to Sweden, was stopped in the Netherlands during transfer and applied for asylum. During the first interview she was asked whether she objected if Sweden would take the responsibility of the asylum request. However after the interview the asylum authorities did not take any steps to examine whether Sweden would be willing to take responsibility for the asylum request. According to the asylum authorities, Dublin II was not applicable in this case because the husband of the applicant was not an asylum seeker and had Swedish nationality. In appeal the applicant argued that with respect to <b>Art. 3(2) and Article 15</b> of the Dublin II Regulation, the asylum authorities had been obliged to ask Sweden to take responsibility of the asylum request. The district court Haarlem judged on 12 April 2005 (<b>AWB 05/13491</b>) that the Dublin II Regulation does not compel the asylum authorities to examine whether another Member State is responsible for the asylum request or whether another Member State would be willing to take the responsibility. The asylum authorities always remain authorized to</p>
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			deal with an asylum request by themselves. According to the court the humanitarian clause of <b>Art. 15</b> is restricted to very special, individual cases. Given the fact that the husband has Swedish nationality and there is a procedure for family reunification, the court judged that the asylum authorities did not act contrary to Dublin II.
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>		N	Not in the scope of the Dublin II Regulation. During the first interview, concerning the identity, documents and travel route the asylum seeker is also asked about family members, spouses, children, parents, brothers and sisters. When asylum seekers have relatives in other Member States the asylum authorities do not take action to see whether the relatives can be brought together.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>	Y		In relation to the Dublin II Regulation, the Netherlands complies with the definition laid down in <b>Art. 2(i)</b> .
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>	Y		Unmarried couples are treated the same as married couples in the Netherlands.
<b>5. Time Limits (Arts. 17, 18 &amp; 19 )</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		There is limited information available on the Dutch practice regarding time limits.  Regarding <b>Art. 20(1)(d)</b> , in several cases there was a matter of dispute concerning the time limit in cases where (pre)suspensive effect was provided in appeal. In some cases where (pre)suspensive effect in appeal was given by a court, the applicant argued that the time limit of six months was exceeded and that the Netherlands were therefore responsible for the asylum request. However the AJD judged in these cases ( <b>Nr. 200409817/1, Nr. 200408891/1 and Nr. 200410250/1</b> ) that the time of (pre)suspensive effect is not part of the time limit of 6 months within the meaning of <b>Art. 20(1)(d)</b> , for actual transfer.

**6. Provision of information**

<p><b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b></p>			<p>On the limited information available it appears that the Dutch authorities do provide all the necessary information to other Member States. However in the case cited above in Section C Question 3.1. (<b>Judgement of the district court Zwolle of 27 June 2003 (AWB 03/22224)</b>), the Netherlands failed to inform Spain about the presence of the mother of a minor applicant in the Netherlands. While Spain accepted the responsibility, the court judged that the Netherlands was responsible on the basis of <b>Art. 6</b> of the Dublin II Regulation.</p>
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**7. Other problems with the application of Dublin II**

<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b></p>		<p>N</p>	
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**8. EURODAC**

<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>			<p>No information available.</p>
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**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>		<p>N</p>	<p>No bilateral agreements exist in the Netherlands.</p>
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## NORWAY

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			Upon arrival the police will ask the applicant necessary questions about travel route, identity, documents etc. The police also take fingerprints for the application of EURODAC. The applicant's claim will not be considered in substance, i.e. on the merits of the claim until the authorities are certain that the applicant does not fall under the Dublin II regulation. <b>(Rundskriv UDI 2004-010 ASA SAKSNUMMER: 04/3886).</b>
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		If an applicant refuses to give his/her identity, or there is sufficient reason to suspect that the identity is false, the authorities may request the person to remain in one specific place of residence and to report at certain assigned times to the police. If the applicant refuses to abide by these conditions they may be detained, normally for no more than 12 weeks ( <b>Aliens Act Art. 37</b> ). If it is necessary for the implementation of a transfer, the person may be detained for no more than 6 weeks.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants do have access to reception conditions however they receive a reduced money allowance.

<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>	Y		<p>Yes, normal appeal to the Immigration Appeals Board (Aliens Act s.38).</p> <p>There is no presumption of safety of other MS in Norwegian legislation. There are lists of countries, which indicate which procedure a case should enter, but each case is considered individually on its merits. There have been a few cases where the Norwegian authorities did not transfer Dublin II applicants to other MS because the Norwegian authorities believed there was a risk of <i>chain refoulement</i>.</p>
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>	Y		
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		
<b>4.1 Is there any case law or jurisprudence concerning successful challenges: either</b>			<p>In 2003 The Immigration Appeals board considered approximately 2,600 Dublin Convention cases. However there have been few successful challenges to Dublin II decisions. The cases that were reviewed were mostly due to some “connection to the kingdom (Norway).” The cases were special, and serious health problems were sometimes seen as an obstacle to transferring people to another MS. (For further case law please see <b>The Alien Jury’s The Immigration Appeal Board’s Yearbook, 2003, published 10.06.04</b>). Most successful challenges (not necessarily “challenges” as such, this is to a large extent due to the initiative of the UDI itself) in regard to Dublin II are from the Directorate of Immigration (the UDI), and their decisions do not have the status of ‘case law/jurisprudence’. There are a few instances where asylum seekers who have absconded during the asylum process in another MS are not transferred to that MS under Dublin II as their asylum claim would no longer be given full consideration there. In practice, however, although exceptions on this basis have occurred, they are extremely rare.</p>

<p><b>4.2.1 on protection grounds?</b></p>		<p>N</p>	<p>There has been no successful case law in this area. However there have been some examples of an administrative practice to successfully challenge removals on the basis of chain <i>refoulement</i>. This is very limited in practice though in relation to the individual circumstances of the case.</p>
<p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p>Y</p>		<p>Here are some examples of decisions reached by the Immigration Appeals Board from their public database in relation to the Dublin II Regulation and its predecessor, the Dublin Convention.</p> <p><b>Date: 2003.03:</b> Unsuccessful challenge. A married couple came to Norway in 2000 and applied for asylum. Germany had accepted to take them back under Dublin. The applicants tried to appeal it on the basis of their child's health problems who was prematurely born in Norway and because they claimed the husband could not be transferred due to heart and psychological problems. The Immigration Appeals Board held that to make an exception for health reasons, it would have to be a life-threatening illness in a terminal phase. The man's affliction (three hospitalisations in eight months) or the fact that he suffered from post-traumatic stress disorder was not deemed serious enough. The fact that they had been in Norway for a long time (two years) was not seen as a strong enough reason not to transfer them.</p> <p><b>Date: 2003.03</b> – Unsuccessful challenge. A male asylum seeker came to Norway in 2001 and Austria had accepted to take him back under the Dublin arrangement. He suffered from depression and set fire to himself to avoid being transferred to Austria, which he believed to be a fascist country. The Appeals Board held that he should still be transferred. His psychological problems were not deemed serious enough. The fact that he had been in Norway for a long time was seen as a result of his own actions.</p> <p><b>Date: 2003.03</b> -. Successful challenge. This case involved a family seeking asylum. The husband was diagnosed with cancer after he came to Norway. The Appeals Board held that the uncertainty created as to where their asylum</p>



			<p>application would be treated constituted undue hardship for them, and decided that the application should be handled in Norway.</p> <p><b>Date: 2005.03</b> –Successful challenge. This case involved a husband and wife who had a visa issued by the Greek embassy in Syria. They had not been transferred within six months. However, Greece had also not responded within two months. The Appeals Board held that when Norway has not held the deadline Norway should accept responsibility for the applicants’ claim.</p>
<p><b>4.2 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)? If that depends on certain criteria, what are they?</b></p>		N	<p>It is possible to apply for suspensive effect at the time of appeal, but in these cases it is seldom granted. Therefore, in practice these appeals are non-suspensive.</p>
<p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		N	<p>If the Immigration Appeals Board considers it necessary they may call the applicant in for a hearing, but it is extremely rare in Dublin cases.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	Y		<p>Legal aid free of charge is given in connection with a Dublin II decision (<b>Aliens Act Art. 42</b>). The applicant is entitled to 2 hours free legal aid compared to 5 hours for ordinary cases.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>	Y		<p>DII returnees have access to the normal asylum procedure and returnees that may have had a previous asylum application in Norway appear to have no problems in re-entering the asylum procedure. Such applicants submit a request for re-consideration to the Appeals Board if the case was closed in their absence and the case will then be re-opened.</p> <p>However, there is a procedure known as the 48-hour procedure/category 1-cases, which may affect DII returnees. This procedure (48 actual hours, not working hours) is applied in relation</p>
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			to the country of origin (i.e. if the country is deemed to be safe). The list includes EU member states, a few other western countries (Australia, Canada, etc.), and some additional countries, such as Argentina, Chile, Costa Rica, Israel, Croatia, Moldova, Mongolia, South Africa and the Ukraine. The interview takes place and the first decision is reached during these 48 hours. They have the right of appeal, but usually they are denied suspensive effect. Approximately 10 % of the cases are, upon individual assessment, transferred to the normal procedure. This 48-hour procedure was introduced in January 2004 and is not included in national legislation. It is only an administrative practice and cases should be considered individually in practice.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		Returnees are interviewed as long as they have not been previously interviewed in Norway.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		Yes, DII returnees receive the same legal assistance as other asylum seekers in the regular procedure, 5 hours.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			See the answer to Section A Question 2.2 above.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		

## C. APPLICATION OF SELECTED PROVISIONS BY MS

### 1. Sovereignty Clause (Art. 3 (2))

<p><b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another State is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b></p>	Y		<p>Norway does not apply the Dublin II Regulation in relation to applicants from certain countries or in relation to their individual circumstances on the basis of the sovereignty clause. For example the clause is used in Norway instead of returning applicants to Greece who have already been in the asylum procedure there. The clause is applied for 48-hour procedure/category 1-cases (applicants from some countries presumed to be safe), unaccompanied minors and cases where there is a “connection to the kingdom” (<b>Aliens Act Art. 17</b>).</p> <p>Examples of ‘connection to the kingdom’:          -previous stay in the country          -family members in the country          -strong humanitarian reasons (<i>‘sterke menneskelige hensyn’</i>)  <b>(Rundskriv UDI 2004-010 ASA Saksnummer: 04/3886).</b></p>
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### 2. Humanitarian Clause (Art. 15)

<p><b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b></p>		N	<p>According to the limited information available, the humanitarian clause seems to have been rarely applied in Norway.</p>
<p><b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b></p>	Y		<p>NOAS informs applicants of the importance of providing family information. NOAS provides an information leaflet and shows an information film in many languages, which contains specific information on the application of the Dublin II Regulation.</p>

### 3. Unaccompanied Minors (Art. 6)

<p><b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first</b></p>	Y		<p><b>Article 6</b> is being respected in Norway in relation to unification of minors with family members in other MS. However, it is positive to note that Norway does not apply <b>Article 6</b> in transferring a minor to a MS where they</p>
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<b>lodged?</b>			previously applied for asylum but have no family there, taking into account the best interests of the child. However, unaccompanied minors are intensively age-tested before stopping transfer under the Dublin procedure.
<b>3.2 Are unaccompanied minors informed -of the importance of providing information on family members that may be present in another MS?</b>	Y		NGOs such as NOAS inform applicants of the importance of providing family information.
<b>4. Family Unification (Arts. 7 &amp; 9)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		Family unification is extended to include family members with other forms of legal residency in Norway.
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>	Y		NGOs such as NOAS inform applicants of the importance of providing family information.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>		N	In relation to applying the Dublin II Regulation, normally the applicant is considered to have some 'connection to the kingdom' when the spouse/unmarried partner is Norwegian or Nordic. The same applies when he/she has spouse/unmarried partner, children, parents or brother/sister in Norway with a residence-, working- or settlement permit, or such a case or application in process.
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>	Y		Unmarried couples may be treated the same as married couples depending on the individual circumstances. Several factors are considered including the length of time of the relationship, if it existed in the home country and if they left there together.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>			In general, the Norwegian authorities respect the DII time limits. However, as the time limit

			in <b>Art. 17(1)</b> refers to ‘take charge’ cases Norway will occasionally forward a request to another Member State for ‘taking back’ an applicant after 3 months has passed.
<b>6. Provision of information</b>			
<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>		N	Such information on state practice is difficult to obtain. There are some examples of practice where the Norwegian Directorate of Immigration sends requests to other MS, even though the applicants have returned to their home country for more than three months, and therefore the other MS responsibility has ceased due to <b>Art. 16 (3)</b> of the Regulation (particularly because the applicants’ documentation of their stay in their home country has not been accepted by the authorities). Another example is where the Norwegian authorities requested Belgium to take charge of an asylum application on the basis of an expired visa issued in Belgium. However, the Norwegian authorities did not inform the Belgian authorities that the visa had been expired longer than six months and therefore Belgium’s responsibility would have ceased according to <b>Art. 9(4)</b> of the Dublin II Regulation. NOAS intervened and provided the Belgian authorities with the relevant information so they refused to take charge of the asylum application.
<b>7. Other problems with the application of Dublin II</b>			
<b>7. If you have observed any other problems concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b>		N	
<b>8. EURODAC</b>			
<b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory).</b>	Y		The Norwegian authorities are applying EURODAC.

**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>	<p>Y</p>	<p>There is a Nordic co-operation agreement which preceded the Dublin arrangement and which is still in place (<b>Den nordiske passunionen</b>). In accordance with this arrangement, an asylum seeker may be promptly returned if it is clear that the person came directly from another Nordic country. This means that the person must be apprehended upon entering the country (for instance coming off the ferry from Denmark).</p>
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<b>POLAND</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			Whether the applicant falls under the Dublin II Regulation is assessed immediately after the application for asylum is lodged. If information provided during the asylum procedure indicates that another MS is responsible for examining the application, the Dublin II procedure is applied. In practice such information is often furnished by the asylum seekers themselves who want to be transferred to another MS under Article 7, 8 or Article 15 due to family connections.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		A DII procedure applicant may be detained if he/she fulfils one of the criteria in the <b>Act on Aliens</b> or <b>Act on Granting Protection to Aliens within the Territory of Poland</b> e.g. lodged an application at the border whilst not having the right to enter Polish territory or illegally crossed the border.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Dublin II applicants receive the same reception conditions as other asylum seekers.

<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>	Y		After another MS decides to ‘take charge’/’take back’ an asylum seeker, a decision to transfer the applicant to the other MS is issued. The decision may be challenged at the Refugee Board (the second instance body of the refugee status determination procedure) and appealing a decision of the Refugee Board may be possible in the administrative courts.
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>	Y		In theory yes, according to <b>Art. 3 ECHR</b> . However, in practice this does not occur.
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		Dublin II removal may not violate the rights provided by the European Convention on Human Rights, including <b>Article 8</b> .
<b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b>		N	In practice, there has been only one appeal against the DII decision. The great majority of asylum seekers transferred to other Member States from Poland have, as mentioned above, family in countries to which they are sent and apply or agree to be sent there and therefore do not want to challenge the decision to transfer.
<b>4.2.1 on protection grounds?</b>			No information available.
<b>4.1.1 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>		N	
<b>4.2 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b>		N	Generally, there is no suspensive effect for appeals. The second instance body or the court may decide, however, to suspend the execution of the decision until an appeal is considered.
<b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b>		N	Generally no personal interview is held. An applicant may apply for such an interview on the basis of the general rules stipulated by the Code of Administrative Conduct.
<b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b>	Y		Polish law generally does not provide for legal assistance during the refugee status determination procedure in addition to other administrative proceedings. An applicant may



			however, apply for free legal aid at the level of court proceedings.
<b>B. PRACTICE OF RECEIVING MS</b>			
<b>1. Access to Asylum Procedures</b>			
<b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b>	Y		DII returnees do have access to the normal asylum procedure. If the asylum procedure has been terminated after an applicant left Poland, he/she is advised at the border that he/she may apply for refugee status again. If the procedure has not been terminated it is continued. However, an application of an asylum seeker who has left Poland during the refugee status determination procedure may theoretically be considered as manifestly unfounded though there is no information to suggest that these provisions have been used in relation to DII returnees.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>		N	Please see the answer above in Section A Question 4.4.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	In practice, persons returned to Poland under Dublin II are rarely detained. However, there is a higher chance of being detained if the applicant is a single male.
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			See the answer to Section A2.2 above.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants</b>	Y		However, it should be noted that generally there are either no or very limited facilities available for traumatised applicants or for those

under the normal procedure?			requiring psychiatric treatment/counselling.
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?		N	According to the limited information available there has been no application of the sovereignty clause in Poland. Generally, applicants want to be transferred to another MS and this is usually on the basis of family unification.
<b>2. Humanitarian Clause (Art. 15)</b>			
2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?		N	There have been no cases of Poland taking over responsibility for an application under the humanitarian clause. However, Polish authorities have often applied to other MS requesting them to take charge under the humanitarian clause. Most of these requests to other MS have been rejected however a number of requests have been accepted by Austria, one by Germany and three by France.
2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?	Y		In applying for refugee status an applicant obtains an information leaflet on the application of the Dublin II regulation where it is mentioned that an alien may be admitted to another country if he/she has family members in another Member State, as well as the other DII criteria to be fulfilled. Such information is available in Polish, Russian and English.
<b>3. Unaccompanied Minors (Art. 6)</b>			
3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?	Y		Requests for taking responsibility of unaccompanied minors have been sent under <b>Article 6</b> to Austria and France.

<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>	Y		The Polish authorities assist unaccompanied minors in searching for family members in other Member States.
<b>4. Family Unification (Arts. 7 &amp; 9)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>	Y		In practice the Polish authorities usually apply to other Member States to take responsibility for applicants. There are no known cases of persons transferred to Poland under <b>Art. 7 and 8</b> .
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>	Y		See the answer to Section B Question 2.2 above.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>			The Polish <b>Act on Aliens</b> and <b>Act on Granting Protection to Aliens with the Territory of Poland</b> uses several definitions of ‘family’.
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>		N	Generally, unmarried partners are not considered as ‘family members’.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		Yes, the time limits are respected by the Polish authorities, also the great majority of requests are ‘take back’ requests where there is no time limit. In one case, the transfer was not effected as the person absconded and the time limit was extended to 18 months according to <b>Art. 19 (4)</b> of the Dublin II Regulation.
<b>6. Provision of information</b>			
<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>			No information available.

### 7. Other problems with the application of Dublin II

<p><b>7. If you have observed any other problems concerning the application of the Dublin Regulation please describe them here (referring to case law and studies and examples):</b></p>			<p>Very few transfers from Poland have been effected without the applicant's assistance. Usually, asylum seekers contact lawyers providing legal assistance seeking to be transferred to another MS. The experience of lawyers in Dublin II issues decisions has therefore been limited and in respect to challenging of decisions, appears to be non-existent so far.</p> <p>In addition, often other MS do not reply to requests by Poland to take charge of an application within two months under <b>Article 18(7)</b> of the Dublin II Regulation and hence they are assumed to have taken responsibility of the claim under <b>Article 19(3)</b>.</p>
<b>8. EURODAC</b>			
<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	Y		<p>Some minor problems occurred shortly after the system started to be operative. Since then, these problems have been solved.</p>
<b>9. Bilateral agreements (Art. 23)</b>			
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>		N	<p>Poland has no bilateral agreements under the DII Regulation with other MS. The Polish authorities have been approached in this regard by other MS, however the Polish authorities rejected joining such an agreement. However, there is a bilateral agreement with Germany outside of the context of the DII Regulation, which was introduced in the early 1990's regarding the abolition of visas for Polish in Germany. This agreement also facilitated returns back to Poland.</p>

## PORTUGAL

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			It is during the admissibility phase that it is assessed by the national authorities ( <b>the Aliens and Borders Service - SEF</b> ) whether the applicant falls under the Dublin II Regulation <b>Art. 35 of the Asylum Act (Law 15/98, of 26 of March)</b> .
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	No, applicants under DII are not usually detained while a request is made to another state.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		In Portugal the only detention-like situations refer to asylum requests presented at border points. Applicants can be held in the airport's transit zone for a maximum period of five days while authorities decide on the admissibility of the asylum application.  In this situation Dublin II applicants will enter national territory, where they will wait for a decision under the Dublin II regulation.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants under the DII procedure have access to the same reception conditions as any other asylum seeker in Portugal.

<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>	Y		Yes, according to <b>Art. 29 (4)</b> of the Asylum Act: ‘Within five days from the notification of the transfer decision, the applicant can request its reappraisal by means of an application, with suspensive effect, submitted to the National Commissioner for Refugees, who shall decide within 48 hours’.
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>	Y		National legislation does not contain any statutory presumption that other MS are safe. Therefore, and in theory, depending on the individual case and its circumstances, it is possible to challenge the presumption that another MS is safe. It would seem in practice, however that this argument would not be accepted.
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		
<b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b>		N	The Portuguese Refugee Council is not aware of successful appeals. The National Commissioner for Refugees tends to follow national authorities’ decisions and confirms the transfer decision taken by the Director of SEF. The National Commissioner for Refugees writes in almost every appeal: ‘We believe that the “sociability” rules of MS of EU impose a respect towards the Pacts and Conventions signed by the states and the accomplishment of their disposals. Therefore, the transfer decision does not deserve any reproach.’  No information available.  No information available.
<b>4.2.1 on protection grounds?</b>			
<b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>			
<b>4.3 Does the challenge/appeal have suspensive effect (i.e. the transfer is not carried out until the appeal has been decided upon)?</b>	Y		The challenge does have suspensive effect.
<b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b>		N	

<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>		<p>The Portuguese Refugee Council provides free legal aid throughout the asylum procedure to any asylum seeker in Portugal including Dublin II applicants.</p>
<p><b>B. PRACTICE OF RECEIVING MS</b></p>			
<p><b>1. Access to Asylum Procedures</b></p>			
<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>	<p>Y</p>		<p>DII returnees have access to the normal asylum procedure, just like any other asylum seeker in Portugal. This is respected in practice. Applicants with a previous asylum application in Portugal can also access the asylum procedure and any new elements to their asylum claim may also be considered then.</p>
<p><b>2. Procedural Safeguards</b></p>			
<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>	<p>Y</p>		<p>DII applicants are guaranteed a personal interview. The Portuguese authority, the Aliens and Borders Service (SEF), interviews all applicants.</p>
<p><b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b></p>	<p>Y</p>		<p>The Portuguese Refugee Council throughout the asylum procedure provides free legal aid.</p>
<p><b>3. Detention</b></p>			
<p><b>3.1 Are DII returnees normally detained?</b></p>		<p>N</p>	<p>Dublin II returnees are not detained.</p>
<p><b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b></p>			<p>See the answer above at Section A Question 2.2.</p>
<p><b>4. Reception Conditions</b></p>			
<p><b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b></p>	<p>Y</p>		

## C. APPLICATION OF SELECTED PROVISIONS BY MS

### 1. Sovereignty Clause (Art. 3 (2))

<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>		N	The sovereignty clause is not being applied in Portugal.
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### 2. Humanitarian Clause (Art. 15)

<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>	Y		Recently, Portugal has requested Spain to apply the humanitarian clause in relation to two cases involving Colombian nationals who had family members residing in Spain. Spain applied the humanitarian clause in those cases.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>	Y		There is no information available whether the Portuguese authorities provide such advice. However, the Portuguese Refugee Council provides the same information.

### 3. Unaccompanied Minors (Art. 6)

<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>		N	According to the limited information available it seems that this situation has never occurred in Portugal. Last year there was only one request presented by an unaccompanied minor and it was not a DII case.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>	Y		See the answer to Section C Question 2.2 above.

### 4. Family Unification (Arts. 7 & 8)

<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be</b>	Y		
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<b>processed in MS where they have family members (both when receiving and requesting)?</b>			
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>	Y		In addition, the Portuguese Refugee Council provides the same information.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>		N	<b>Art. 4</b> of the Asylum Law defines ‘family members’. The concept is limited to spouse, minor, adopted or disabled children, and in the case of minor refugees, father, mother and minor siblings of whom he/she is the sole supporter. There is no reference to the fact that the family had to already exist in the country of origin.
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>	Y		In Portugal, Aliens Law treats unmarried couples the same as married couples.
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>	Y		
<b>6. Provision of information</b>			
<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>	Y		The Portuguese authorities send all the relevant documentation to the receiving MS.
<b>7. Other problems with the application of Dublin II</b>			
<b>7. If you have observed any other problems concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b>		N	

**8. EURODAC**

<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>		<p>The fingerprints of all asylum seekers older than 14 years will be immediately registered and the Eurodac will be consulted immediately. This happens at the initial stage of the asylum procedure, in order to check if the asylum seeker has presented a previous application in another MS. Fingerprints are registered in EURODAC the moment the application is presented.</p>
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**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>		<p>N</p>	<p>Portugal has no bilateral agreements with any MS.</p>
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## SLOVENIA

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			After the asylum application has been lodged, the applicant's fingerprints are taken by the authorities and verified through the EURODAC system. If their fingerprints are already in the EURODAC system than the applicant falls under the Dublin II Regulation. In the lodging of the asylum application the applicant is also asked whether s/he has any family members in other MS, than the authorities verify any information through EURODAC. If they are in EURODAC than the applicant may also be transferred under the Dublin II Regulation.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			Detention of asylum seekers is defined in <b>Art. 27 of the Law on Asylum</b> and it states that if necessary, the movement of an asylum applicant can be temporarily limited on the grounds of: <ul style="list-style-type: none"> <li>- establishing the identity of the applicant; or</li> <li>- preventing the spread of contagious diseases; or</li> <li>- suspicion that the procedure is being misled or abused within the meaning of <b>Art. 36</b> of this Law; or</li> <li>- threatening life or property of other people.</li> </ul>
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants</b>	Y		

under the normal procedure?			
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>	Y		The legislation allows the Dublin decision to be challenged at the Administrative Court and Supreme Court of Slovenia however the challenge has no suspensive effect.
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>	Y		The Slovenian legislation does contain a statutory presumption that other MS are safe, however it is possible to challenge this presumption at the Administrative Court. So far there have been no successful challenges on this ground.
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		Yes, the removal can be challenged on other grounds.
<b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b>		N	It is still very rare to challenge a Dublin II decision so there have actually only been 4 cases where the Dublin II decision was challenged. Two cases were actually successful at the Administrative Court but were later reversed by the Supreme Court, which is why it is not possible to cite any successful challenges.
<b>4.2.1 on protection grounds?</b>		N	As already mentioned above, case law regarding the Dublin II procedure is very rare, so there are not many cases to cite. However, recently there was a case in which it was argued that Greece was not a safe country for an Afghan asylum seeker. Unfortunately this challenge was not successful and was rejected by the Supreme Court of Slovenia. In the challenge of the Ministry's decision it was argued that the applicant's asylum application would not be processed in Greece, and that there was a serious possibility he would be returned to his country of origin where he could face torture. Therefore Greece could not be considered as a safe country for the claimant. However this argument was not admissible to the court and the Supreme Court confirmed the Ministry of Interior's decision to transfer the applicant. There was then a further challenge to the Constitutional Court, which was deemed

<p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>			<p>inadmissible, as the applicant was not in Slovenia anymore, therefore they decided there was no legal interest for the case to be reviewed by the Constitutional Court.</p> <p>Additionally, there was a case in which the removal of the applicant from Slovenia to France was challenged under <b>Art. 2 and Art. 3</b> ECHR; the applicant was severely malnourished, with kidney disease, and his removal to France could be unsafe and could endanger his right to life and health. It was reported that in France the reception conditions were not satisfactory, and that the French authorities could not provide the applicant adequate care if he were to be returned to asylum camps in France. The Administrative Court confirmed these arguments however the Supreme Court reversed the Administrative decision and the applicant was nevertheless removed to France.</p> <p>No information available.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>		<p>N</p> <p>N</p>	<p>As the appeal is an administrative procedure there is no hearing at this stage.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>		<p>Applicants have access to a lawyer in the challenge/appeals procedure. There are no limits to any legal aid given.</p>
<p><b>B. PRACTICE OF RECEIVING MS</b></p>			
<p><b>1. Access to Asylum Procedures</b></p>			
<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>	<p>Y</p>		<p>They have access to asylum procedures and it is respected in practice. However for the small number of applicants who had a previous asylum application in Slovenia that was not completed, they may have to make a new application for asylum.</p>

			During the asylum procedure if an applicant is deemed absent from their residence for more than three days than the asylum procedure is stopped. When the applicant is returned to Slovenia under the Dublin II Regulation, in their new application for asylum new circumstances must be included in the asylum claim. If the applicant cannot include any new circumstances then the application may be considered manifestly unfounded. However this provision only affects that small number of people returned in that situation to Slovenia.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		If they are able to enter the asylum procedure upon return.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		DII applicants have the same entitlements as other applicants dependent on whether they can access an asylum procedure in Slovenia.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			See the answer to Section A Question 2.2 above for further information.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the</b>		N	The sovereignty clause has not been applied in Slovenia yet.

<p>sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</p>			
<b>2. Humanitarian Clause (Art. 15)</b>			
<p><b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b></p>		N	<p>There have been no cases so far where the humanitarian clause has been applied.</p>
<p><b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b></p>		N	<p>No, the authorities of the MS do not inform the applicant about the importance of providing such information. They just ask the applicants whether they have any family members in the EU, however they do not inform them about the relevance of this information for the application of Dublin II.</p>
<b>3. Unaccompanied Minors (Art. 6)</b>			
<p><b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b></p>	Y		<p><b>Article 6</b> is respected in general.</p>
<p><b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b></p>	Y		<p>In general, the authorities inform unaccompanied minors about the importance of providing information on family members that might be present in another Member State. At the lodging of the application they are asked about whether they have any close relatives in another MS and if they would like to be reunited with them.</p>
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<p><b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b></p>	Y		<p>Yes, under the condition that the applicant agrees to be reunited with his family members.</p>

<p><b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b></p>	<p>Y</p>		<p>They are asked about their family members whereabouts (whether they are in another MS), however they are not informed in general about the relevance of this information.</p>
<p><b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b></p>	<p>Y</p>		<p>According to the <b>Law on Asylum</b>, close family members are considered to be the spouse and minor, unmarried children and parents of minor refugees. The authorised custodian of the child shall also be considered as a close family member of the unaccompanied minor.</p>
<p><b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b></p>		<p>N</p>	<p>Slovenian aliens law does not treat unmarried partners in a way comparable to married couples.</p>
<p><b>5. Time Limits (Arts. 17, 18 &amp; 19)</b></p>			
<p><b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b></p>	<p>Y</p>		<p>They have been respected so far. However, it has to be considered that Dublin II Regulation has only been in force for less than a year and considering the possibility of extension (up to 18 months) for transfers after the applicant has absconded, it is hard to make a judgement on compliance with deadlines.</p>
<p><b>6. Provision of information</b></p>			
<p><b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b></p>	<p>Y</p>		
<p><b>7. Other problems with the application of Dublin II</b></p>			
<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b></p>			<p>In Slovenia the worst effect of the Dublin II decision is the non suspensive effect of appeals. Another gap is the fact that there is really no case law and all the challenges of the Dublin II provisions have been unsuccessful so far. The humanitarian clause is not used really and the overall view is that the authorities and courts interpret the Dublin II Regulation very strictly.</p>



**8. EURODAC**

<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>		<p>The authorities are using the EURODAC provisions rigorously and are electronically taking and storing fingerprints of all applicants entering the territory.</p>
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**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>	<p>Y</p>		<p>Slovenia has signed a bilateral agreement with Austria, which establishes shorter timelines in relation to terms of communication requests and transfers under the Dublin II procedure.</p>
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<b>SPAIN</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			It is assessed at the first stage of the procedure, when the admissibility criteria are being examined.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	Applicants are not detained in Spain.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			No information available.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		Applicants do have access to reception conditions like other asylum seekers until they get a final determination on their inadmissibility due to the Dublin II Regulation.
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>		N	There is no specific type of appeal for a DII decision. It is possible to use other types of appeal in Spanish legislation in relation to inadmissibility decisions.
<b>4.1.1 on protection grounds (i.e. on the basis that another Member is unsafe)?</b>			No information available.
<b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b>	Y		The DII removal can be challenged on other grounds.
<b>4.2 Is there any case law or jurisprudence</b>		N	According to the limited information available,

<p><b>concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>			<p>there seems to have been no successful challenges under the Dublin II procedure.</p> <p>No information available.</p> <p>No information available.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect (i.e. the transfer is not carried out until the appeal has been decided upon)? If that depends on certain criteria, what are they?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	<p>Y</p>	<p>N</p>	<p>In general, the appeal does not have suspensive effect, although it is possible to request a “medida cautelar” (injunction) asking the court to suspend the transfer whilst waiting for the appeal decision. However, in practice it is very rare for a Dublin II appeal to have suspensive effect.</p> <p>During court proceedings the applicants get a personal hearing.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>		<p>All applicants can request a state-appointed lawyer and free legal aid is available during the appeals procedure.</p>

## B. PRACTICE OF RECEIVING MS

### 1. Access to Asylum Procedures

<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>			<p>An applicant who never previously applied for asylum in Spain is granted access to the normal asylum procedure. However, if a DII returnee had a previous asylum application in Spain, which was refused, the OAR (Oficina de Asilo y Refugio) only gives the applicant a copy of their previous refusal decision, without questioning whether there are any new facts, circumstances or relevant documents to justify a new asylum application.</p> <p>A new notification upon return results in a renewal of the time limit for lodging an appeal. However, there are two different situations: 1) cases with previous formal notification and the applicant just receives a copy of the previous decision with a new notification date, or 2) cases with a negative decision that the applicant was never formally notified of and are only</p>
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			<p>aware of the decision upon return. There is concern that some of these asylum claims are not being considered on their merits. In many situations, non-governmental organisations have intervened to assist in requesting a new interview for a Dublin II returnee in that situation.</p> <p>In addition, recently a new practice has been introduced by the Asylum office, which means that if during the asylum application, the OAR tries to contact the applicant at the assigned address and they are not there, or the applicant does not fulfil a particular requirement, the Asylum office will close the asylum case.</p>
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		Applicants that have access to the normal asylum procedure are guaranteed an interview.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>	Y		All applicants can request a state-appointed lawyer and free legal aid is available during the appeals procedure. There are no limits to legal aid provided at any stage of the procedure.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>		N	
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		After submitting their asylum claim, applicants have the right to access reception conditions. Only if after getting an inadmissibility decision or a refusal decision on their asylum claim are applicant's reception facilities withdrawn.

## C. APPLICATION OF SELECTED PROVISIONS BY MS

### 1. Sovereignty Clause (Art. 3 (2))

<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>	Y		Spain applies the sovereignty clause in relation to extended family members and the humanitarian clause. It is applied if an applicant has any family links to a person with Spanish residency. In those cases the Spanish authorities examine the application.
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### 2. Humanitarian Clause (Art. 15)

<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>			See the answer to Section C 1 above.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>	Y		<p>In general, applicants are asked about their family's whereabouts but not in the context of applying the humanitarian clause to bring them together.</p> <p>Here the intervention of NGOs and private lawyers has had an impact on applying this clause. The OAR generally informs applicants about the DII Regulation, but it is very difficult for them to receive information on the specific implications of clauses such as the humanitarian clause. Therefore, it is very helpful that the NGOs complement the information from OAR. Due to the NGO's closer position to the asylum seekers many applicants feel more secure and confident in providing valuable information in relation to family links in other MS.</p>

### 3. Unaccompanied Minors (Art. 6)

<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>	Y		The Spanish authorities respect this article.
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<p><b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b></p>	<p>Y</p>		<p>In the general questionnaire given to asylum seekers there is a question about the whereabouts of family members. For further information see Section C2.2 above.</p>
<p><b>4. Family Unification (Arts. 7 &amp; 8)</b></p>			
<p><b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b></p>	<p>Y</p>		
<p><b>4.2 Do MS inform the applicants about the importance of providing information on family members that may be present in another MS?</b></p>			<p>See the answer to Section C2.2 above.</p>
<p><b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b></p>	<p>Y</p>		<p>There is no specific definition of family in national law. The definition in Article 2 (i) is applied for the Dublin procedure.</p>
<p><b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b></p>		<p>N</p>	<p>Unmarried couples are not treated the same as married couples in relation to the application of the Dublin II Regulation.</p>
<p><b>5. Time Limits (Arts. 17, 18 &amp; 19)</b></p>			
<p><b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b></p>			<p>There is no information available in relation to this specifically, however in general, since mid-2004, all the time limits have been applied much more strictly. There were problems with respecting the time limits in the first period of applying the Dublin II Regulation, although it has improved a lot in 2005. The difficulty for NGOs and applicants is that the information is not available to check whether the Spanish authorities are complying with the time limits for determining the MS responsible due to the fact that it is an internal procedure of OAR.</p>
<p><b>6. Provision of information</b></p>			
<p><b>6. As requesting state, does the MS provide all the necessary information enabling the</b></p>			<p>No information available.</p>

<p>requested state to decide upon its responsibility?</p>			
<p><b>7. Other problems with the application of Dublin II</b></p>			
<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b></p>	<p>Y</p>		<p>Generally, persons are not being transferred officially under the DII Regulation. When other MS accept to take back an applicant, the Spanish government provides the applicant with a document ‘laissez passer’ to enter the other MS by their own means. If the applicants do not travel to the responsible MS, they become irregular migrants in Spain. Only recently in 2005 was there a change in government practice regarding this but there are no official figures yet.</p> <p>Another problem is the lack of transparency in relation to certain details of the procedure, which makes it difficult to have a proper follow-up of the application of the DII Regulation. The translation service provided for applicants is considered insufficient according to a 2003-2004 Ombudsman Report and there is concern that applicants are not provided with an interpreter.</p>
<p><b>8. EURODAC</b></p>			
<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b></p>	<p>Y</p>		<p>The Spanish authorities rigorously apply EURODAC system, observing its provisions and electronically taking and storing fingerprints of all applicants entering their territories.</p>
<p><b>9. Bilateral agreements (Art. 23)</b></p>			
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>			<p>No information available.</p>

<b>SWEDEN</b>			
Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			It is assessed immediately. All asylum seekers are photographed and their fingerprints are taken. These are always checked with other MS through the EURODAC system.
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another state?</b>		N	Applicants are not usually detained under the Dublin II procedure but depending on the individual circumstances of a case it can happen.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		The criteria for detention stated in the <b>Swedish Aliens Act</b> are applicable to all foreigners. There is no special provision in relation to Dublin II cases.
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>	Y		In practice, it is not always possible to challenge a DII decision. Most of the DII cases are seen as manifestly unfounded and in those cases an appeal has no suspensive effect.



<p><b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b></p> <p><b>4.1.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p></p> <p>Y</p>	<p>N</p>	<p>Technically it is possible to challenge the presumption that another MS is safe but in practice, it is very difficult.</p> <p>DII removal can be challenged on other grounds such as humanitarian reasons, family ties, etc.</p>
<p><b>4.2 Is there any case law or jurisprudence concerning successful challenges: either</b></p> <p><b>4.2.1 on protection grounds?</b></p> <p><b>4.2.2 on other grounds (e.g. humanitarian grounds, Article 8 ECHR or procedural reasons)?</b></p>	<p></p> <p>Y</p> <p>Y</p>	<p>N</p>	<p>Successful challenges are few and are strictly based on humanitarian reasons, and rarely on protection issues. For further information on case law please see the Alien Appeals Board website database at <a href="http://www.un.se">www.un.se</a></p> <p>There has been one successful challenge on this basis in relation to an Uzbekistani applicant who was to be transferred to Greece under Dublin II.</p> <p>See Section A4.2 above.</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect? (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.1 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	<p></p> <p>Y</p>	<p>N</p>	<p>The Swedish Migration Board gives all asylum applicants including Dublin II applicants a personal interview.</p>
<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p></p>	<p>N</p>	<p>In general, applicants do not have access to free legal assistance.</p>
<p><b>B. PRACTICE OF RECEIVING MS</b></p>			
<p><b>1. Access to Asylum Procedures</b></p>			
<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually</b></p>	<p>Y</p>	<p></p>	<p>Returnees generally have access to the normal asylum procedure. However, returnees who had a previous application for asylum in Sweden may find it difficult to re-apply for asylum. New information must be considered in the</p>

considered.			second application for asylum and the applicant has no access to legal assistance during this procedure. However, applicants who did not receive an initial decision, upon return gain access to the same asylum procedure.
<b>2. Procedural Safeguards</b>			
<b>2.1 Are DII applicants guaranteed a personal interview?</b>	Y		Depending on whether the applicant is able to enter the asylum procedure upon return.
<b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b>		N	Only under very special limited circumstances do DII applicants have access to free legal aid. In practice it is very rare.
<b>3. Detention</b>			
<b>3.1 Are DII returnees normally detained?</b>		N	
<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		See the answer to Section A 2.2 above.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another State is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>	Y		The sovereignty clause is being applied in certain situations. For example, if families have been separated, or if there are strong humanitarian reasons. Additionally, the sovereignty clause is applied instead of transferring applicants to Greece who have already been in the asylum procedure there due to the Greek practice of ‘interrupting’ decisions.

<b>2. Humanitarian Clause (Art. 15)</b>		
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family reunification?</b>		N The humanitarian clause is rarely applied in Sweden for uniting extended family members.
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>		N There is no obligation for the Migration Board to inform the applicant that he/she can provide information on their family with respect to the application of the humanitarian clause.
<b>3. Unaccompanied Minors (Art. 6)</b>		
<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>	Y	<b>Article 6</b> is rarely applied in practice and it would only be in the situation of ‘taking charge’ of a child whose parents are in Sweden. In considering the best interest of the child the authorities do not apply it to transfer children to another MS where they previously lodged an asylum application but do not have family members.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>		N Limited information is provided.
<b>4. Family Unification (Arts. 7 &amp; 8)</b>		
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>		Only <b>Article 7</b> is being respected in allowing family unification with people who have refugee status in Sweden. <b>Article 8</b> is not being applied for unification with applicants in the asylum procedure except in exceptional circumstances. This has led to situations where families have been separated.
<b>4.2 Do MS inform the applicants about the importance of providing information on family members that may be present in another MS?</b>	Y	Limited information is provided.
<b>4.3 How are family members defined in</b>	Y	The definition of family member is the same as

<b>national law? Is the definition similar to the definition in Article 2 (i)?</b>			the definition in <b>Art. 2 (i)</b> of the Dublin II Regulation.
<b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b>	Y		
<b>5. Time Limits (Arts. 17, 18 &amp; 19)</b>			
<b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b>		N	In general yes, however if an applicant has not been returned within the six-month period ( <b>Art. 19(3)</b> ), the Swedish authorities try to send him/her to the other MS until that other MS refuses to accept them any more. Large numbers of Dublin II applicants go into hiding and therefore transfer is impossible. When the applicants are located the Swedish authorities try to send them to the receiving MS even if 2/3 years have passed in the meantime.
<b>6. Provision of information</b>			
<b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b>		N	According to the limited information available, it appears that Sweden tries to conceal important information if it indicates that Sweden is responsible for the asylum application. If the Swedish authorities have information that the applicant has been out of the Dublin II territory for more than three months or has family members in Sweden, this information is not given to the other MS.
<b>7. Other problems with the application of Dublin II</b>			
<b>7. If you have observed any other problems concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b>		N	
<b>8. EURODAC</b>			
<b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory?).</b>	Y		Swedish authorities apply the EURODAC system thoroughly.

**9. Bilateral agreements (Art. 23)**

<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>	<p>Y</p>		<p>There is a bilateral agreement with Germany. Outside of the scope of Dublin II there is an agreement with Denmark.</p>
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## UNITED KINGDOM

Question	yes	no	Details
<b>A. PRACTICE OF REQUESTING STATES</b>			
<b>1. National Determination Process</b>			
<b>1. At what stage in the asylum procedure is it assessed whether the applicant falls under the Dublin II Regulation?</b>			<p>The assessment is made at the equivalent of the admissibility stage. After claiming refugee status the applicant is usually given a 'Screening Interview' where a decision may be made under <b>paragraph 345 of the Immigration Rules (HC 251)</b> (as amended) to remove the applicant to another Dublin II MS. The Secretary of State for the Home Department (SSHD) relies on domestic legislation to facilitate the removal namely:</p> <ul style="list-style-type: none"> <li>(i) certifying under <b>Schedule 3, Part 2, paragraph 4 of the Asylum and Immigration (Treatment of Claimants) Act 2004</b> that the applicant is not the national or citizen of the relevant Dublin country, and;</li> <li>(ii) Usually setting removal directions under <b>Schedule 2 Immigration Act 1971</b></li> </ul> <p><b>Paragraph 345(2) of the Immigration Rules</b> demand that such a certificate only be issued if:</p> <ul style="list-style-type: none"> <li>(i) the asylum applicant has not arrived in the United Kingdom directly from the country in which he claims to fear persecution and has had an opportunity at the border or within the third country or territory to make contact with the authorities of that third country or territory in order to seek their protection; or</li> <li>(ii) there is other clear evidence of his/her admissibility to a third country or territory.</li> </ul>
<b>2. Detention</b>			
<b>2.1 Are applicants under the DII procedure normally detained while a request is made to another State?</b>	Y		It is common for the applicant to be detained in such circumstances. Immigration Officers or officials acting on behalf of the SSHD have the power to detain ( <b>Immigration Act 1971</b>

			<b>Schedule 2 paragraph 16).</b> However, they also both have the power to grant temporary admission. Additionally, the lawfulness of any detention can be challenged by way of <i>habeas corpus</i> at any time. The applicant may also apply for bail either to a Chief Immigration Officer or to an Immigration Judge after they have been in the UK for 7 days.
<b>2.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>			
<b>3. Reception Conditions</b>			
<b>3. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		According to the limited information available.
<b>4. Challenging/Appealing a DII Decision (Art. 19)</b>			
<b>4.1 Does national legislation allow for any form of challenge or appeal against a DII decision; either</b>		N	The applicant's opportunity to challenge or appeal against a DII decision is severely limited. The only grounds upon which an appeal to the Asylum and Immigration Tribunal (AIT), the quasi-judicial administrative tribunal that has the competence to hear appeals relating to certain sorts of immigration decisions, is permitted are that the removal to the Dublin II country will breach the UK's obligations under the ECHR without considering the possibility of onward removal.
<b>4.1.1 on protection grounds (i.e. on the basis that another Member State is unsafe)?</b>		N	The effect of <b>Schedule 3, Part 2, paragraph 3 of the Asylum and Immigration (Treatment of Claimants) Act 2004</b> is to deem that any of the DII MS are places: (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, (b) from which a person will not be sent to another state in contravention of his Convention rights, and (c) from which a person will not be sent to another state otherwise than in accordance with the Refugee Convention.





		<p>Italy would be disproportionate.</p> <p><b>Ahmadi v SSHD [2005] EWCA Civ 1721</b> The Afghan applicant arrived illegally via Germany and Norway to join his brother in the UK who had been recognised as a refugee. His brother suffered from a particularly severe form of schizophrenia, which would intermittently require compulsory hospitalisation. The SSHD sought to remove the applicant to Germany. The applicant argued that this would violate his and his brother’s rights for respect for their family life. That claim was certified as being clearly unfounded. The medical evidence submitted showed that the applicant’s presence in the UK would considerably improve his brother’s state of health. The Court of Appeal quashed the certification upon the basis that the applicant’s claim was not bound to fail. This allowed the applicant to benefit from a suspensive appeal against removal to Germany (see 4.3 below).</p>
<p><b>4.3 Does the challenge/appeal have suspensive effect (i.e. the transfer is not carried out until the appeal has been decided upon)?</b></p> <p><b>4.3.2 Do applicants get a personal hearing in the challenge/appeals procedure?</b></p>	<p>Y</p>	<p>An appeal to the AIT has suspensive effect (<b>Nationality, Immigration and Asylum Act 2002, s78</b>). However, if the SSHD issues a further certificate that states that in his opinion the claim (i.e. the substance of the appeal) is “clearly unfounded” then the appeal will not have suspensive effect (<b>Nationality, Immigration and Asylum Act 2002, s94</b>). Any “clearly unfounded” certificate can be challenged by way of judicial review. The basic test being whether the claim is arguable or not. The consequence of quashing the certificate would be to allow the applicant to have an appeal with suspensive effect. In any event the statutory deeming of safety provision set out in the answer to Section A Question 4.1.1 above would apply.</p> <p>The applicant is likely to have received an interview during the admissibility procedure.</p>

<p><b>4.4 Do applicants have access to a lawyer/free legal aid in the challenge/appeals procedure? Are there limits to any aid given?</b></p>	<p>Y</p>		<p>Applicants in theory have access to a lawyer. If they have insufficient means to pay for a lawyer public funds will pay for a lawyer. However the amount of legally aided advice that can be given is limited.</p>
<p><b>B. PRACTICE OF RECEIVING MS</b></p>			
<p><b>1. Access to Asylum Procedures</b></p>			
<p><b>1. Do DII returnees have access to the normal asylum procedure and is this respected in practice? If not please describe what special procedures are applied and if they ensure that claims are properly and individually considered.</b></p>	<p>Y</p>		<p>According to the limited information available, it seems that DII returnees do have access to the normal asylum procedure. In the event that the returnee had an asylum application previously considered and dismissed then in order to access the procedure s/he may have to show that he claim is fresh (in essence has some material difference to the earlier claim that gives it a greater prospect of success, and that factor could not have been raised before). Additionally, in-country appeal rights may be limited if the particular point was or could have been considered in respect of an earlier appeal right that arose. If the applicant appealed an initial refusal than the appeal will be deemed to be abandoned as a result of his/her departure (<b>s104(4)(b) 2004 Act</b>). In such circumstances if they return to the UK and claim asylum then the SSHD will consider that claim. If it is refused, the authorities will consider whether it is a fresh claim including any new facts and circumstances in the application.</p>
<p><b>2. Procedural Safeguards</b></p>			
<p><b>2.1 Are DII applicants guaranteed a personal interview?</b></p>	<p>Y</p>		<p>In almost all circumstances, save for their non-compliance, they will be given a personal interview.</p>
<p><b>2.2 Do DII returnees have access to a lawyer/free legal aid?</b></p>		<p>N</p>	<p>On paper they will have access to a lawyer. The same limitations as to legal aid as set out in Section A Question 4.4 apply.</p>
<p><b>3. Detention</b></p>			
<p><b>3.1 Are DII returnees normally detained?</b></p>		<p>N</p>	

<b>3.2 If DII cases are not normally detained, are there any criteria under which certain applicants may be detained?</b>	Y		They may be detained for the same reasons as other asylum seekers may be detained, essentially for reasons of a risk of absconding or in order to facilitate removal at the end of the process. This does not directly relate to whether they are Dublin returnees.
<b>4. Reception Conditions</b>			
<b>4. Do applicants under the DII procedure have the same access to reception conditions (food, clothing, housing, health care) as applicants under the normal procedure?</b>	Y		According to the limited information available, they are not treated any differently to other asylum seekers. Consequently, they will have access to the specified reception conditions save if they had alternative means of support, or in the unlikely event that they were deemed not to have claimed refugee status as soon as reasonably practicable and there were grounds to think that they would not be destitute as a result of the refusal to provide them with social assistance.  In the event that the returnee has had their asylum claim previously dismissed they will not be eligible for housing and income support until their claim has been accepted as new (See the answer to Section B 1 above). Their ability to access secondary medical care may be limited. Primary, emergency and urgent medical treatment is presently accessible.
<b>C. APPLICATION OF SELECTED PROVISIONS BY MS</b>			
<b>1. Sovereignty Clause (Art. 3 (2))</b>			
<b>1. The sovereignty clause enables a MS to take over responsibility for an asylum application lodged with it, even where another state is responsible under the Regulation. Is the sovereignty clause being applied and if yes, in what cases (e.g. where the responsible State is not considered safe-please refer to case law or provide examples)?</b>			Yes. No information available.
<b>2. Humanitarian Clause (Art. 15)</b>			
<b>2.1 Is the humanitarian clause being applied and if it is, in which cases? In particular, is the clause used to help ensure family</b>	Y		The humanitarian clause has being applied with regards to challenging removal under the Dublin II procedure, however it is not often

reunification?			invoked successfully. For further information, see the case cited above in Section A Question 4.2.2 <b>G v SSHD</b> .
<b>2.2. Are applicants informed about the importance of providing information that could justify the application of the humanitarian clause, e.g. on family members present in another MS?</b>			No information available.
<b>3. Unaccompanied Minors (Art. 6)</b>			
<b>3.1 Is Article 6 being respected requiring unaccompanied minors to be examined in MS where family members are present (if this is in the best interest of the child), and if there are no family members, where a claim is first lodged?</b>			The UK authorities are applying <b>Article 6</b> strictly in returning unaccompanied minors to mainly Greece even though there are protection concerns for asylum seekers there. Additionally sometimes minors are transferred to other MS before having received an age assessment and some unaccompanied minors may not even be aware that they previously applied for asylum in another MS.
<b>3.2 Are unaccompanied minors informed of the importance of providing information on family members that may be present in another MS?</b>			No information available.
<b>4. Family Unification (Arts. 7 &amp; 8)</b>			
<b>4.1 Are Articles 7 and 8 being respected, according to which asylum seekers should be processed in MS where they have family members (both when receiving and requesting)?</b>			No information available.
<b>4.2 Are applicants informed about the importance of providing information on family members that may be present in another MS?</b>			No information available.
<b>4.3 How are family members defined in national law? Is the definition similar to the definition in Article 2 (i)?</b>			No information available.

<p><b>4.4 Are unmarried couples treated the same as married couples in relation to the application of DII?</b></p>			<p>No information available.</p>
<p><b>5. Time Limits (Arts. 17, 18 &amp; 19)</b></p>			
<p><b>5. Are the time limits being respected by states both when receiving and requesting transfers?</b></p>			<p>No information available.</p>
<p><b>6. Provision of information</b></p>			
<p><b>6. As requesting state, does the MS provide all the necessary information enabling the requested state to decide upon its responsibility?</b></p>			<p>No information available.</p>
<p><b>7. Other problems with the application of Dublin II</b></p>			
<p><b>7. If you have observed any other problems concerning the application of the Dublin II Regulation please describe them here (referring to case law and studies and examples):</b></p>			<p>See Annex 5 for the UK Case Studies on separated children illustrating the problems in applying the Dublin II Regulation to such children.</p>
<p><b>8. EURODAC</b></p>			
<p><b>8. Please provide any observations in relation to the application of the EURODAC System (e.g. are fingerprints being taken of all applicants entering the territory).</b></p>			
<p><b>9. Bilateral agreements (Art. 23)</b></p>			
<p><b>9. Art. 23 allows for the establishment of bilateral agreements concerning the practical implementation of the Dublin II Regulation. Are such bilateral agreements in place between your country and another MS?</b></p>			<p>No information available.</p>

## SUMMARY OF FINDINGS

Section 1 of this section addresses access to an asylum procedure within the Dublin II system. The application of selected provisions of the Regulation by Member States is explored in Section 2. Section 3 considers the practice of detention within the Dublin II procedure. Cooperation and exchange of information between Member States in applying the Regulation is analysed in Section 4. Section 5 focuses on the possibility to challenge a Dublin II decision to transfer, whilst Section 6 illustrates the experience of Chechen asylum seekers in the Dublin II procedure. The report ends with some concluding comments.

### 1. ACCESS TO AN ASYLUM PROCEDURE

The Dublin II system is premised on the assumption that a single Member State will take responsibility for the substantive examination of an asylum application. In the Tampere Conclusions<sup>34</sup> it was emphasised that such a system of allocating responsibility should guarantee effective access to the procedure for determining refugee status in a single Member State and reaffirmed the absolute respect of the right to seek asylum. However, this survey indicates that in reality some Dublin returnees are being denied access to an asylum procedure in the responsible state, the result being that many individuals transferred do not have their asylum claims properly considered. Some may even be denied access to a determination procedure altogether, as is most strikingly evident in the Greek practice of ‘interrupting’ claims. Such state practice is not consistent with the Regulation’s aim and is in conflict with the objective of ensuring full observance of the right to asylum guaranteed by Article 18 of the Charter of Fundamental Rights.<sup>35</sup>

#### 1.1 The Practice in Greece

Since early 2004 the Greek authorities have been interrupting the examination of asylum applications for persons who have been returned to *Greece* under the Dublin II procedure.<sup>36</sup> The basis of these interruption decisions is Article 2(8) of the Presidential Decree 61/99,<sup>37</sup> which allows the Ministry of Public Order to interrupt the examination of an asylum claim when the applicant ‘arbitrarily leaves his/her stated place of residence’. In practice, the Greek authorities use this provision to ‘interrupt’ the asylum claims of individuals having transited illegally to other Member States and subsequently use this as a justification for denying these individuals access to an asylum procedure when returned to *Greece* under Dublin. The most striking aspect of this practice is that even when Greek authorities have accepted

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<sup>34</sup> European Council, Tampere Presidency Conclusions, 15/16 October 1999, para. 13/14; See also 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 Member State by a third-country national, Preamble, para. 2/3.

<sup>35</sup> Charter of Fundamental Rights of the European Union 2000/C 364/01) Official Journal of the European Communities, C364/1; Dublin II Regulation, Preamble, para. 15.

<sup>36</sup> For a full description and analysis of this practice see P.N. Papadimitriou & I.F. Papageorgiou, *The New ‘Dubliners’: Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek Authorities*, Journal of Refugee Studies Vol. 18, No. 3 2005.

<sup>37</sup> For further information on this Article see UNHCR note on access to the asylum procedure of asylum seekers returned to Greece, *inter alia*, under the arrangements to transfer responsibility with respect to determining an asylum claim or pursuant to application of the safe third country concept, November 2004.

responsibility for the asylum claim following a request by another state, an interruption decision is subsequently issued prior to transfer to *Greece*. Thus, when the applicant is returned to *Greece*, upon arrival they are informed of the interruption decision, issued with a deportation order and are detained prior to expulsion.

This practice by the Greek authorities has led to concerns from UNHCR,<sup>38</sup> NGOs<sup>39</sup> and academics<sup>40</sup> regarding its legality in light of international human rights law and the international obligation of *non-refoulement*. On the basis that *Greece* does not constitute a safe third country, there have been successful challenges to returns to Greece in a number of Member States including *Austria, Finland, France, Italy, the Netherlands, Norway* and *Sweden*.

## 1.2 The Practice in Other Member States

Similar to the Greek practice, a number of other Member States restrict or deny access to a procedure to individuals returned under Dublin II. Particularly affected are applicants ‘taken back’<sup>41</sup> (having previously left the responsible state) depending on the stage of the procedure reached in the first Member State.<sup>42</sup> This is in contrast to the situation for ‘take charge’<sup>43</sup> cases where Member States appear to respect Article 16(1)(b) of the Regulation, which explicitly requires that the responsible Member State complete the examination of the application for asylum.

Applicants who left the responsible state may find it difficult or impossible to have their cases re-opened if a decision was made in their absence. Many states close a case if the applicant is deemed to have implicitly withdrawn or abandoned an asylum application.<sup>44</sup> This happens in *Belgium, France, Ireland, Italy, the Netherlands* and *Slovenia* and *Spain*. Some states do not allow the re-opening of the case thus leaving the applicant with no option but to try to make a subsequent (second) application. This becomes problematic where a subsequent asylum application is only permitted subject to strict criteria, such as the establishment of new facts or circumstances, as is

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<sup>38</sup> UNHCR News Stories, How a man from Darfur cannot get his asylum claim heard in Europe today, 6 Dec 2005; UNHCR Position on Important Aspects of Refugee Protection in Greece, November 2004; UNHCR, the Dublin II Regulation: Updated Memorandum on the Law and Practice of Greece, 30 November 2005.

<sup>39</sup> Greek Council for Refugees, *Greek authorities’ practice concerning the asylum seekers who are transferred to Greece from other EU countries under Article 13 of Council Regulation 343/2003*, by K. Migirou, Legal Assistance Unit.

<sup>40</sup> P.N. Papadimitriou & I.F. Papageorgiou, *The New ‘Dubliners’: Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek Authorities*, *Journal of Refugee Studies* Vol. 18, No. 3 2005; Skordas and Sitaropoulos, ‘*Why Greece is not a Safe Host Country for Refugees*’, *International Journal of Refugee Law* 2004; 16: 25-52.

<sup>41</sup> This refers to asylum seekers whose application is under examination and who is in the territory of another Member State without permission, or an applicant who has withdrawn the application and made an application in another Member State or a third-country national whose application it has rejected and who is in the territory of another Member State without permission.

<sup>42</sup> For example, pre-initial decision stage on the asylum claim, pre-appeal or following a final refusal decision.

<sup>43</sup> This refers to Member States which are obliged to take charge of an asylum seeker who has lodged an application for asylum in a different Member State under the conditions laid down in Articles 17 to 19 of the Dublin II Regulation.

<sup>44</sup> Actions that indicate abandonment of an asylum claim include not being present for registration at certain intervals of the procedure or at the assigned place of residence within a certain time period.

the situation in **Belgium, Hungary, the Netherlands, Slovenia, Sweden** and the **UK**.<sup>45</sup> In reality, most applicants will not have new circumstances since leaving the responsible (first) state, cannot fulfil these restrictive conditions and thus their cases are never substantively examined in breach of international law and the principle of *non refoulement*. In **Ireland** asylum claims are only re-opened at the discretion of the Minister for Justice. In practice this has led to some cases not being substantively examined.

Similar problems arise where applicants leave the first state after receiving an initial decision but without having had an appeal, for example **Sweden, Germany** (if the applicant does not return within three months) and **Lithuania** (if the applicant does not return within 7 days) will not usually allow the case to be re-opened unless there are new facts or circumstances. This can be contrasted with the practice of **Spain** which extends the time limits for submitting an appeal.

The survey has revealed that even where it is possible for the asylum seeker to make a subsequent (second) asylum application, a fair examination may be compromised by state practice such as the use of fast track procedures. In **France**, subsequent asylum applications are examined as manifestly unfounded in accelerated procedures with no suspensive appeal provision. In **Lithuania** applicants who received an initial refusal decision and did not appeal before leaving the territory are similarly subject to a fast track accelerated procedure on return unless they can show new facts or circumstances.

ECRE believes that upon return under the Dublin procedure, implicit withdrawal or abandonment of a previous claim should never prevent the re-opening of the file in order for an asylum seeker to receive a substantive examination of their asylum claim. Applicants who left before a final decision on their asylum claim should be re-admitted to the procedure at the stage they left and must be given the opportunity to have their case examined substantively, taking into account any new facts or circumstances. Where applicants have received an initial refusal decision then the time limits for lodging an appeal should be extended. ECRE believes that otherwise operation of the Dublin II system may put states in conflict with their obligations not to return a person to a situation where they face persecution, torture, inhuman or degrading treatment or punishment.

Asylum seekers who have previously received a final refusal decision are typically prevented from submitting a new claim and are placed in the expulsion procedure. While ECRE accepts that such cases should not automatically have their cases re-opened, in light of states' obligations to avoid *refoulement*, ECRE believes that such applicants should at least be given the opportunity to submit fresh claims based on any new information since the refusal of their original asylum claim, and should have access to higher courts to challenge removal where a real risk of *refoulement* can be demonstrated.

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<sup>45</sup> In this context it is worth noting provisions under Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ('the Procedures Directive'). While article 32 (3) of the Directive permits Member States to impose special procedures for subsequent applications including requirement on new facts/circumstances, article 34 (2) states that such conditions for subsequent applications should not render access to a new procedure impossible nor result in the severe curtailment of such access.



### **Recommendation 1**

**Article 16 should be amended to explicitly require that the responsible Member State complete a substantive examination of the asylum application when taking back an asylum seeker, if the applicant has not previously received a final decision on their claim.**

### **Recommendation 2**

**Applicants who have received a previous final refusal decision should be given the opportunity to submit fresh claims if new information has arisen since the refusal of their original asylum claim, and should have access to higher courts to challenge removal if a real risk of *refoulement* can be demonstrated.**

## **1.3 Procedural Safeguards**

To ensure fundamental rights are safeguarded, a personal interview and free legal assistance should be available for all Dublin II applicants. Free legal assistance is not provided for Dublin cases in *Greece, Poland* and *Sweden*. In other Member States conditions or limitations may be placed upon receiving legal aid.<sup>46</sup> In *Italy*, applicants do not receive an initial interview by the Dublin unit prior to determining the state responsible for the asylum application. This prevents claimants informing officials of the presence of family in other Member States. Access to a personal interview for returnees is clearly dependent on whether an applicant is able to access the asylum procedure at all in the responsible Member State. The opportunity for an interview may additionally be restricted in *Germany*. In *Finland*, a problem in practice is that the interview may not be substantive and be carried out by border officials.

## **1.4 Reception Conditions**

Adequate reception conditions are essential if asylum seekers are to have a dignified standard of living during the procedure and not face destitution. This is necessary both for applicants facing transfer and those who have been returned. However, reception conditions are denied for returnees who are forced to make subsequent asylum applications - for example in the *Netherlands* (but only if new facts and circumstances have not been shown) - and for those channelled into accelerated procedures, for example in *France*.<sup>47</sup> There may also be limitations in providing reception conditions for returnees in *Spain*<sup>48</sup> and the *UK*<sup>49</sup> depending on the applicant's status there. Prior to transfer to another Member State, applicants in *Belgium* and *France* are denied access to basic reception conditions except for urgent medical care.

Aside from the issue of total denial of reception conditions, also of concern is the wide divergence among Member States as to what applicants receive in the form of

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<sup>46</sup> For example in Norway legal aid for Dublin II returnees is provided at a reduced time rate compared to other asylum seekers.

<sup>47</sup> Reception conditions in France are denied on the basis that asylum applicants are placed in an accelerated procedure on their second application for asylum.

<sup>48</sup> In Spain, reception conditions may be withdrawn if the applicant receives a refusal or inadmissibility decision.

<sup>49</sup> In the UK, if the returnee has had their asylum claim previously dismissed they will not be eligible for housing and income support until their claim has been accepted as new. Their ability to access secondary medical care may also be limited.

accommodation, material benefits and access to health care.<sup>50</sup> For example, there are currently no or extremely limited psychiatric health care facilities for torture/trauma survivors in the *Czech Republic*, *Hungary* and *Poland*. In this regard Member States are reminded of their obligation to abide by the provisions of the Reception Directive<sup>51</sup> in providing reception conditions for asylum seekers within the Dublin II procedure. However, the continuing unequal level of facilities highlights the flawed nature of the Regulation in failing to take proper account of these divergences, which has a severely detrimental effect on individuals who have already suffered highly traumatic experiences.

### **Recommendation 3**

**Member States in applying the Dublin II Regulation should recall their obligations under the Reception Directive to provide proper reception facilities for all asylum seekers.**

## **2. SELECTED PROVISIONS**

This section will focus on the application of the following provisions by Member States: the sovereignty clause (Article 3(2)), the provision for unaccompanied minors/separated children (Article 6), the family unification clauses (Articles 7 & 8) and the humanitarian clause (Article 15).

### **2.1 The Sovereignty Clause (Article 3 (2))**

Article 3(2) of the Dublin II Regulation, commonly referred to as the ‘sovereignty’ or ‘opt-out’ clause enables Member States to examine an application for asylum lodged with it, even if it is not its responsibility under the Regulation’s criteria. Unlike the equivalent provision in the Dublin Convention, Article 3(2) does not require the explicit agreement of the asylum seeker if a state opts to examine the asylum application, hence Article 3(2) may be used both to the advantage and disadvantage of asylum seekers. *Germany*, *the Netherlands*, and *Norway* apply this clause even if it is against the applicant’s wishes.

The survey reveals that at present states apply this clause inconsistently and for a variety of reasons, including cases raising protection reasons, humanitarian reasons and family unity issues. However, some states take responsibility in order to put certain cases through accelerated and/or manifestly unfounded procedures.

#### **2.1.1 Protection Reasons**

Both *Norway* and *Sweden* have suspended Dublin II removals to *Greece* and assumed responsibility for the examination of such asylum applications under this clause.<sup>52</sup> In view of current divergences in the quality of determination systems and in particular the problems documented on granting access to a procedure in section 1 above, it is

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<sup>50</sup> For further information on Reception Conditions in Europe see ECRE Report, *The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving Material Support and Access to Employment in accordance with European legislation*, November 2005; Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English).

<sup>51</sup> Council Directive 2003/9/EC of 27 January 2003, Laying down minimum standards for the reception of asylum seekers O.J. 6.2.2003 L 31/18.

<sup>52</sup> Finland and the Netherlands also previously suspended removals to Greece on the basis of protection concerns.

regrettable that more Member States do not apply the sovereignty clause. ECRE recommends that other Member States should follow the Norwegian and Swedish practice where there is a demonstrable risk of *refoulement* such as the Greek practice of ‘interrupting’ claims. In some states considerable jurisprudence has developed concerning court challenges to removal to *Greece* on protection grounds.<sup>53</sup> However, states voluntarily applying the sovereignty clause in such cases could usefully reduce resources expended in protracted legal proceedings.

#### **Recommendation 4**

**Whilst protection gaps exist within Europe and there is a demonstrable risk of onward *refoulement* following return to the responsible Member State, ECRE recommends that Member States apply the sovereignty clause to prevent transfer in such cases.**

#### **2.1.2 Humanitarian/Compassionate Reasons**

The sovereignty clause is also applied for a range of humanitarian reasons and to prevent the break-up of extended family members, as is the practice in *Austria, the Czech Republic, France, Italy, the Netherlands, Norway, Spain* and *Sweden*. Until very recently *Austria* applied the clause to take responsibility for traumatised asylum seekers suffering from psychological illnesses on the basis that transfer to another State under the Dublin II Regulation would constitute additional, inhumane strain.<sup>54</sup> ECRE regrets that since January 2006 this provision is no longer applied in *Austria*<sup>55</sup> as this practice should be adopted by all states where transfer would expose an applicant to inhumane strain, exacerbate an existing condition and/or result in denial of access to existing treatment. Member States should also suspend transfer where it would be incompatible with their obligations under Article 3 or Article 8 of the European Convention on Human Rights.<sup>56</sup>

#### **Recommendation 5**

**Member States should use the sovereignty clause more widely to avoid removal where incompatible with their obligations under international law, including the European Convention on Human Rights.**

#### **Recommendation 6**

**The sovereignty clause should automatically be invoked to examine the asylum applications of traumatised asylum seekers where removal to the responsible Member State would exacerbate the condition and/or deny existing medical treatment.**

#### **2.1.3 Use in accelerated/manifently unfounded procedures**

Some states apply Article 3(2) if it is viewed as more expedient and economic to process a claim designated as manifestly unfounded through an accelerated procedure in that state, rather than initiating a request under the Dublin II procedure, or waiting for a response once a request has been initiated. Such practice occurs in *Germany* and

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<sup>53</sup> For example Austria, Finland, France, Italy, the Netherlands, Slovenia, and the UK.

<sup>54</sup> See final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, Austria p. 87. This provision is under the Austrian Asylum Amendment 2003.

<sup>55</sup> Austrian Asylum Act 2006 Article 30.

<sup>56</sup> Council of Europe, European Convention on Human Rights and Fundamental Freedoms, 5 November, 1950.

*Norway*<sup>57</sup> where the national authorities will examine an asylum claim in a fast-tracked procedure if designated as a ‘safe country of origin’ or ‘safe third country’. Additionally, *Austria* may also utilise the sovereignty clause in this manner if an application is considered manifestly unfounded by the national authorities. ECRE is concerned that such accelerated procedures often lack essential safeguards<sup>58</sup> and regrets the use of the sovereignty clause for this purpose.

#### **2.1.4 Inconsistency and/or lack of application**

Available information suggests that the national authorities in *Belgium, Greece, Lithuania*,<sup>59</sup> *Luxembourg, Poland, Portugal*, and *Slovenia* do not apply the sovereignty clause at all, or else very rarely. No clear guidance has been provided in the Regulation at the European level regarding the applicability of this clause and therefore it is being invoked inconsistently on a case-by-case basis.<sup>60</sup> Whilst positively noting the discretionary nature of the sovereignty clause, ECRE considers that more guidance is needed at the European level to ensure its more uniform and consistent application. The increased use of this clause is important to address the complex and varying situations in which many asylum applicants find themselves.

#### **2.2 Separated Children (Article 6)**

Article 6 of the Dublin II Regulation sets out the criteria for dealing with separated children whereby an application for asylum should be examined in the Member State where a member of his/her family is present, provided this is in the best interests of the minor, or in the absence of a family member, in the Member State where the application was first lodged. Member States are technically complying with this provision in transferring a child, in the absence of family members, to the Member State where he/she first applied for asylum. However, as demonstrated in case studies collected,<sup>61</sup> Article 6 in its current formulation creates hardship and sometimes fails to protect the best interests of the child within the Dublin II procedure. ECRE considers that Article 6 is intrinsically flawed, as the best interests of children will rarely be served by being uprooted and transferred back to a state where they have no ties or family members.

The survey illustrates that in applying Article 6, separated children need to be more clearly informed of the possibility of unification with family in other Member States. At present the amount of information provided to children varies greatly among Member States as shown in Section 2.5 below. However, there are some examples of good practice. For example, the Lithuanian authorities are very proactive in assisting separated children by requesting that the Lithuanian Red Cross trace other family members within the EU through the Red Cross network. A similar positive practice

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<sup>57</sup> The sovereignty clause is applied for 48 hour/category 1 cases, which is used for asylum seekers from certain safe countries (Safe Third Country and Safe Country of Origin), among other grounds.

<sup>58</sup> For further information on ECRE’s views of accelerated procedures see *The Way Forward, Europe’s role in the global refugee protection system, Towards Fair and Efficient Asylum Systems in Europe*, Sept 2005, p. 14.

<sup>59</sup> However, there was one case in Lithuania where the authorities applied the sovereignty clause to examine a manifestly unfounded application rather than transfer the applicant to Germany.

<sup>60</sup> *ILPA Scoreboard on the Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged on one of the Member States by a third country national*, February 2005, pp.4

<sup>61</sup> See Annex 3 of the extended ELENA Report on the application of the Dublin II Regulation in Europe.

also exists in *Poland* where the national authorities assist separated children in locating family members in other Member States. Due to the special vulnerability of children and the need for family support, it is recommended that all Member States follow these positive practices in assisting children to locate family members' whereabouts.

### **Recommendation 7**

**Member States should actively assist separated children in locating family members in other Member States in order that transfer can occur where this is in the best interests of the child.**

#### **2.2.1 UK Case Studies**

Annex 5 contains a series of case studies on separated children in the *UK*, which highlight the inherent problems of applying the Dublin system to children. Cases have been observed where children have been transferred to other Member States without being even aware they previously applied for asylum there, kept in detention for long periods and then deported back to their country of origin. The case studies from the *UK* also indicate several cases of separated children being detained in *Greece* for prolonged periods of time and being released from detention only on condition that they agree to leave *Greece* immediately. Additionally the *UK* national authorities have transferred age-disputed children to other Member States before an age assessment has been carried out to verify whether or not they are children. Such instances highlight both states' misapplication of Article 6 and the inherent flaws within the provision itself, which does not adequately consider the best interests of the child.

### **Recommendation 8**

**Member States should ensure that age disputes regarding children are resolved prior to transfer under Dublin II.**

#### **2.2.2 The Practice in other Member States**

Bad practice in relation to children is not only occurring in the *UK*. The French authorities make no distinction between adults and children within the Dublin II procedure, therefore, they may be violating Article 6 by not reuniting minors with family members in other Member States. The survey has revealed a Dutch case, which indicates that Article 6 is not always respected by the Dutch authorities at first instance.<sup>62</sup> In addition, there is a recent German case where the court held that the German authorities must apply Article 6 before proceeding to assign responsibility under Article 13 as had been the practice in the case before the court.<sup>63</sup>

However, there are some instances of positive practices notably in *Norway* and *Finland*, where Article 6 is only applied on the basis of family unification and the Dublin II procedure is not applied to children in transferring them to a Member State where they previously lodged an asylum application. ECRE urges all Member States to follow this practice.

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<sup>62</sup> In the Netherlands there is jurisprudence (district court Zwolle AWB 03/22224, 2003) regarding a child who was to be transferred to Spain despite the presence of the child's mother in the Netherlands and hence Article 6 would have applied indicating the Netherlands' responsibility.

<sup>63</sup> Administrative Court Gießen of 23 February 2005, 2E 1131/04.A.

ECRE believes that the best interests of separated children must always be at the forefront of decision-making within the Dublin II procedure. Therefore, ECRE proposes that Article 6 should be amended to prevent children being removed to another Member State except on the basis of family unification, providing that it is in the best interest of the child. Such an amendment would prevent the trauma of minors being uprooted and removed to another Member State where they may feel isolated due to language or cultural differences. Furthermore, the narrow definition of family member in Article 2(i)(iii) of the Regulation fails to address the differing cultural associations of families and excludes extended and *de facto* family members such as siblings. In light of the unique vulnerability of separated children, ECRE believes a broader and more inclusive concept of the family unit needs to be adopted.<sup>64</sup>

### **Recommendation 9**

**Article 6 should be amended to require that in considering the best interests of the separated child, the Member State responsible for examining the application shall be that where a member of his or her family is present, provided that the persons concerned so desire. In the absence of a family member, the Member State responsible for examining the application shall be that where the child has currently lodged his/her application for asylum.**

### **Recommendation 10**

**ECRE calls for a more flexible and inclusive definition of family members for separated children enabling unification with siblings and other extended family members.**

### **2.3 Family Unification (Articles 7 & 8)**

The family unification provisions, (Articles 7 & 8)<sup>65</sup> seem to be broadly respected by Member States but ECRE is concerned that because of the way these articles are framed, they too often fail to facilitate family unification. Article 7 appears to be more readily invoked by Member States than Article 8. Whereas Article 7 permits reunification with a recognised refugee, Article 8 permits unification with a family member who is an asylum seeker in another Member State, who has not yet received an initial decision on his/her claim. In some states, such as *the Netherlands* and *Norway*,<sup>66</sup> decisions are often taken extremely quickly, under accelerated procedures (48 hours), so the likelihood of qualifying for unification under Article 8 is minimal.

The survey has revealed instances where Member States do not appear to be properly applying Article 8. In particular, there is evidence that the Swedish authorities do not apply Article 8 leading to the separation of families in practice. Similarly, in *Ireland*, according to the limited information available, the right to family unity under the

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<sup>64</sup> The amended definition of family in Article 2(i) should be similar in content to the definition of family provided for in Article 15(1) of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for 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, Official Journal L 212, 07/08/2001 P, 0012-0023.

<sup>65</sup> Article 7 enables family unification with family members who have refugee status in a Member State, whilst Article 8 allows applicants to be united with family members whose asylum application has not yet been the subject of a first decision regarding substance.

<sup>66</sup> In Norway, 48 hour/category 1 cases, are used for asylum seekers from certain safe countries (Safe Third Country and Safe Country of Origin), among other grounds.

Regulation is not always respected in practice and in *Luxembourg* the family unification clauses are rarely invoked.

According to Article 2(i)(i), unmarried partners may be treated as family members depending on national aliens legislation. Therefore, in *Finland, France, Ireland, Lithuania*,<sup>67</sup> *Portugal, the Netherlands, Norway*, and *Sweden* unmarried couples may be united but not in the other countries surveyed.<sup>68</sup> ECRE recommends that more Member States exercise their discretion to unite unmarried partners within the Dublin II procedure, as this would accommodate the differing cultural associations with partnership and marriage. Some states interpret family unification restrictively by excluding naturalised persons who were formerly refugees. In a strikingly inhumane judgement, a Dutch court ruled that an Iraqi asylum seeker could not join her husband in Sweden who was a naturalised citizen there. It found that the Regulation did not apply to naturalised persons, as legally they were no longer refugees.<sup>69</sup> The survey revealed that family unification can be frustrated where states insist on excessively high standards of evidence such as DNA testing. For example, this is the case in *Ireland*.

The survey does reveal some examples of good practice. Extended family unification provisions are available in *the Netherlands* and *Norway*, where it is possible for applicants to be united with family members with subsidiary protection status and for siblings with legal residency respectively. A broader definition of family members exists also in *Portugal*<sup>70</sup> and *Italy*.<sup>71</sup> Additionally, *Belgium* enables unification under Article 8 with family members beyond first instance up to and including the appeal level. ECRE considers that the right to family unity should be extended in Article 8 to include all stages of the procedure for examining an asylum application until a final decision is taken, and urges all Member States to follow this practice.<sup>72</sup>

Family unification is in the interest of both asylum seekers and Member States as it allows for consistent and thorough processing of asylum applications by national authorities, while reducing secondary movement incentives and ensuring asylum seekers receive family support which is key to their integration. It is welcome that the family unification clauses appear to be more readily applied than under the Dublin Convention where states did not often exercise their discretion to reunite families.<sup>73</sup>

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<sup>67</sup> According to Article 2 of the Law on the Legal Status of Aliens, unmarried partners who have concluded a partnership agreement are treated similarly to married couples in Lithuania.

<sup>68</sup> In Germany only same sex partnerships and not heterosexual partnerships are treated similarly to married couples for the purposes of family unification.

<sup>69</sup> Dutch case AWB 05/13491 District Court Harlem 12 April 2005.

<sup>70</sup> Article 4 Asylum Law defines family members to include spouse, minor, adopted or disabled children, and in the case of minor refugees, father, mother and minor siblings of whom he/she is the sole supporter. No reference is made to the fact that the family had to already exist in the country of origin.

<sup>71</sup> Italy expands the family members' definition to include handicapped eldest child and dependent parents.

<sup>72</sup> This reiterates ECRE's previous recommendation in Comments on the Proposal for a Council Regulation 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, December 2001.

<sup>73</sup> ECRE Comments on the European Commission staff working paper revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member States, June 2000.

However, beyond the difficulty of strict criteria under Article 8, additional problems persist. For example, national authorities do not always inform applicants of the possibility of family unification and of the importance of providing information on family members.<sup>74</sup>

The Dublin II Regulation contains a narrow definition of family insofar as the family already existed in the country of origin, which fails to take into account the differing cultural associations of family and the specific circumstances of refugees whose family life is disrupted through their reasons for seeking asylum. ECRE proposes not only that the right to family unification is extended to applicants with family members who are legally resident in Member States on other grounds than that which the present Dublin system provides for, including those granted subsidiary protection or naturalised refugees, but also that a more flexible and inclusive definition of family itself is provided for in the Regulation.<sup>75</sup>

#### **Recommendation 11**

**The right to family re-unification should be extended to those persons who have a family member who has been allowed to legally reside in a Member State on other protection grounds, or who otherwise is legally residing in that State. Article 7 should be amended accordingly.**

#### **Recommendation 12**

**ECRE recommends that the right to family unity in Article 8 be amended to permit family unification at any stage of the asylum procedure up to a final refusal decision.**

#### **Recommendation 13**

**The definition of family in Article 2(i) should be amended to include other close relatives who lived together as part of the family unit in the country of origin.**

### **2.4 The Humanitarian Clause (Article 15)**

The humanitarian clause enables the unification of extended family members on humanitarian grounds based, in particular, on family or cultural considerations.<sup>76</sup> *Austria, the Czech Republic, Finland, Italy, the Netherlands* and *Spain* apply the humanitarian clause variously on the following grounds: if removal would be in violation of Article 8 ECHR; for unification of dependent extended family members and elderly or ill people for whom a transfer under the Dublin procedure would be detrimental to their health. Additionally, *Italy* applies this clause in relation to pregnant asylum seekers and those with newborn children. *Greece, Poland* and *Portugal* have requested other Member States to take over responsibility for asylum applications on the basis of the humanitarian clause but the requested states have usually rejected these requests. This is disappointing as it fails to reflect the spirit of

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<sup>74</sup> This divergence in information received by applicants is further explored below in Section 2.5.

<sup>75</sup> The amended definition of family in Article 2(i) should be similar in content to the definition of family provided for in Article 15(1) of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for 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, Official Journal L 212, 07/08/2001 P, 0012-0023.

<sup>76</sup> Under this provision Member States can request one another to examine the application for asylum of the person concerned on those grounds with the person's consent.



solidarity envisaged in the preamble of the Regulation in light of the fact that *Greece* and *Poland* receive proportionately higher numbers of Dublin returnees than other Member State.<sup>77</sup> Member States were reluctant to apply the provision and interpreted it in a restrictive manner in relation to the Regulations predecessor, the Dublin Convention.<sup>78</sup> Unfortunately the experience under the Dublin II Regulation is that this clause is still rarely applied in *Belgium, France, Germany, Ireland, Luxembourg, Norway*, and *Sweden*, and has yet to be applied in *Lithuania* and *Slovenia*. Given the harshness caused by the relatively strict criteria in the Regulation for mandatory family unification, it is regrettable that Member States do not apply this clause more frequently for keeping families together.

#### **Recommendation 14**

**ECRE urges Member States to apply Article 15 in a humane, unrestrictive and flexible way that takes into account the various situations of asylum seekers and their best interests.**

#### **2.5 Provision of Information**

For the Regulation to operate effectively, particularly in relation to application of the family reunification, humanitarian and sovereignty clauses, it is important that asylum seekers are properly informed of the need to divulge information about family members elsewhere in the EU. The amount and quality of information provided to asylum seekers varies significantly among Member States. *Finland, Greece, Lithuania, the Netherlands, Poland, Spain* and *Slovenia* ask about the existence of family members during the preliminary interview but do not explain the significance of such information. Insufficient emphasis is placed on the importance of providing information, which could justify the application of specific clauses. While the situation is partially remedied by the presence of refugee-assisting NGOs in a number of Member States,<sup>79</sup> this should not negate the importance of states providing this information directly. However, it is welcome that some Member States provide information leaflets on Dublin to all applicants as noted in *Austria, Germany, Ireland, Norway* and *Poland*.<sup>80</sup> Unfortunately, the beneficial use of such leaflets is somewhat hindered by the use of complicated and sometimes misleading information as evidenced in *Austria, Germany* and *Ireland*. *Norway* meets the specific needs of illiterate asylum seekers by providing an information film in a number of languages. ECRE believes that all Member States should follow these examples of good practice while also catering for the specific needs of illiterate asylum seekers. Additionally, separated children should receive such information in an age-appropriate manner in a language that they clearly understand.

#### **Recommendation 15**

**Applicants within the Dublin II procedure should receive information, including in the form of guidance leaflets, in a language they understand, containing clear**

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<sup>77</sup> For further information see Annex 3 in this report regarding Member States Dublin II Regulation statistics.

<sup>78</sup> Danish Refugee Council: The Dublin Convention. Study on its Implementation in the 15 Member States of the European Union, January 2001, p. 83.

<sup>79</sup> Refugee assisting NGOs often provide or complement information in Finland, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden.

<sup>80</sup> Similarly, previously in Belgium, applicants received an information leaflet which referred to the Dublin II procedure. However, this leaflet is no longer available and is being renewed.

**and concise information on the Dublin procedure and the applicability of provisions such as family unification and the discretionary clause. Furthermore, separated children should receive such information in an age-appropriate manner in a language that they understand.**

### **3. DETENTION**

Though there is no specific provision for detention in the Dublin II Regulation, ECRE is concerned that a number of Member States have resorted to the increased use of this measure for the effective transfer of asylum seekers to the responsible Member State. This practice is evident in *Belgium*,<sup>81</sup> *the Czech Republic*, *Finland*, *Austria*,<sup>82</sup> *the Netherlands*, *UK* and *Luxembourg*. Detention may also be imposed upon returnees in a number of Member States including *Germany*<sup>83</sup>, *the Czech Republic*<sup>84</sup>, *Luxembourg*, *Belgium* and *Greece*.<sup>85</sup> Furthermore, applicants may also be detained if national legislation provides for criminal sanctions for illegal entry, as is the practice in *Lithuania*.<sup>86</sup> It is particularly concerning that a number of Member States have recently announced legislative proposals for an increase in the detention of Dublin II applicants.<sup>87</sup> This is worrying in that asylum seekers in detention frequently do not have access to essential procedural safeguards such as legal assistance or advice.<sup>88</sup> ECRE has always advocated that detention should only be used in exceptional cases, and full procedural safeguards should always be ensured.<sup>89</sup> Additionally, asylum seekers may have already suffered imprisonment and torture in the country from which they have fled. Therefore, the consequences of detention may be particularly serious, causing severe emotional and psychological stress and may amount to inhuman and degrading treatment.<sup>90</sup> Detention should therefore be avoided as much as possible, taking into consideration the needs of such applicants. Alternative, non-custodial measures such as reporting requirements should always be considered before resorting to detention and unaccompanied minors should never be detained under any circumstances.

#### **Recommendation 16**

**Applicants under Dublin procedures should only ever be detained as a last resort where non-custodial measures have been demonstrated not to work on an individual basis. Detention must be subject to procedural safeguards, and limited**

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<sup>81</sup> NGOs have expressed concerns in Belgium that the maximum time limit for detention is not always adhered to by national authorities if there are delays in the transfer procedure.

<sup>82</sup> Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English). Austria, p. 78.

<sup>83</sup> Ibid Germany, pp.52.

<sup>84</sup> Ibid Czech Republic, p. 116.

<sup>85</sup> Such detention may be imposed on a number of grounds: for example, submitting multiple asylum applications, previously absconding, receiving a previous refusal decision on an asylum claim and to assist in the effective deportation of the application to a third country.

<sup>86</sup> Germany provides for criminal sanctions on similar grounds, however, in practice the asylum seeker is fined for illegal entry instead of being detained.

<sup>87</sup> Austria, Germany and Belgium have recently proposed measures which will increase the grounds for detention of asylum seekers within the Dublin procedure.

<sup>88</sup> For further information on the detention of asylum seekers in Europe please see Jesuit Refugee Service – Europe, Caring for Detainees, *Detention in Europe, Administrative Detention of Asylum Seekers and Irregular Migrants*, 17 October 2005.

<sup>89</sup> For further information see ECRE's position paper on the Detention of Asylum Seekers, 1996.

<sup>90</sup> Ibid.

**to the minimum time required to meet its lawful purpose. Separated children should never be detained under any circumstances.**

#### **4. CO-OPERATION BETWEEN MEMBER STATES**

Co-operation between Member States is a necessary precondition for the efficient functioning of the Dublin II system. Co-operation is necessary both with respect to time limits set out in Articles 17-20 of the Regulation and the exchange of information between Member States as provided for in Article 21.

##### **4.1 Time Limits**

In conducting the survey the experience has been that it is very difficult for NGOs and legal representatives to know whether time limits are being complied with by Member States, as often it is an internal procedure between the national authorities.<sup>91</sup> According to the limited information available, time limits are broadly being respected by Member States though there are exceptions to this practice and time delays in a number of States including *Italy*,<sup>92</sup> *Poland*,<sup>93</sup> and *Sweden*.<sup>94</sup> The fact that some examples of non-compliance have been discovered suggests more comprehensive research needs to be undertaken concerning the average length of the Dublin II procedure and whether it can be said to meet the objective of efficiency identified in the Preamble to the Regulation.<sup>95</sup>

##### **4.2 Exchange of Information between Member States**

Due to the overall lack of transparency in the Dublin II procedure it is difficult for lawyers and NGOs to comprehensively assess the information exchange between Member States, but there are examples in a number of states where authorities provided inaccurate or incomplete information, which would have resulted in a different Member State bearing responsibility for the asylum application. The Norwegian authorities have sent requests to other Member States, despite being aware that the applicants had been outside the territory of the Member States for more than three months, hence responsibility of the application had ceased according to Article 16(3). In addition, the Norwegian authorities have not always provided relevant information on the expiry date of visas, which would mean the other State's responsibility has ceased according to Article 9(4). In *Sweden* there have been cases where the national authorities send applicants to other Member States even if they have been in *Sweden* for up to three years, hence violating Article 19(4) of the Regulation.

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<sup>91</sup> This lack of transparency also makes it problematic for lawyers to challenge Dublin II decisions on the basis of failure to adhere to the Regulation's time limits.

<sup>92</sup> Sometimes Italy fails to respond to requests in accordance with Article 18(1) of the Regulation and therefore assumes responsibility under Article 18(7).

<sup>93</sup> There have been instances where Member States do not reply to requests from the Polish authorities to take charge of applicants according to Article 18(1) and hence these Member States assume responsibility under Article 18(7).

<sup>94</sup> In Sweden, the national authorities may not always respect Article 19(4) by sending applicants to other Member States even if the applicants have been in Sweden for up to 2/3 years.

<sup>95</sup> Dublin II Regulation, Preamble, para. 4.

A most striking example of state failure to provide all the relevant information for determining responsibility is evidenced in a recent case in *the Netherlands* involving a separated child being transferred to *Spain* on the basis of the Regulation's criteria, however *the Netherlands* failed to inform the Spanish authorities of the presence of the child's mother in *the Netherlands* which would have indicated its responsibility in accordance with Article 6. Additionally, the Italian authorities do not always provide information to other Member States on the health concerns of Dublin II transferees. States' failure to communicate is further shown in a case involving an asylum seeker who was transferred from the *UK* to *Italy* due to mistaken identity. Such examples highlight states' failure to correctly apply the Dublin II Regulation.

#### **Recommendation 17**

**ECRE calls upon Member States to engage in a frank and full exchange of information enabling a clear determination of the Member State responsible for the examination of an asylum application.**

#### **4.3 Bilateral Agreements**

Article 23 of the Dublin II Regulation allows for the establishment of bilateral agreements making it possible to simplify and accelerate Dublin procedures in certain circumstances. According to the limited information available, such agreements exist between Austria and a number of states including *Hungary, Slovenia* and the *Slovak Republic*.<sup>96</sup> *Germany* also has established bilateral agreements according to Article 23 with *Austria, the Czech Republic* and *Sweden* and a diplomatic agreement exists between Germany and Switzerland regarding the Dublin II Regulation.<sup>97</sup> Additionally, *Italy* has a number of agreements with other Member States. As accelerated time limits are often an integral part of such bilateral agreements, ECRE is concerned that applicants may not have full access to necessary legal aid and to their rights of appeal to the decision to transfer.

#### **Recommendation 18**

**ECRE calls upon Member States to ensure that bilateral agreements do not infringe asylum applicants' procedural rights.**

#### **4.4 Use of readmission agreements/informal border procedures**

There is also evidence of states returning asylum seekers to other Member States outside the context of the Dublin II Regulation through informal border procedures or readmission agreements. Such practice is evident at the German – Czech border, French and the Swiss/Italian borders, *Austria* and the *Czech Republic*, and between *Italy* and *Greece*. *Greece* also has readmission agreements with *France, Hungary, Italy, Lithuania, Latvia, Poland* and *Slovenia* outside of the Dublin system. The precedence of EC law and the direct effect of the Dublin II Regulation means that such informal procedures should never take place instead of determining the Member State responsible in accordance with the Dublin II criteria. As well as undermining the Dublin system as a whole, such accelerated procedures may deny applicants essential safeguards and place them at risk of *refoulement*. States should therefore desist from such practices.

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<sup>96</sup> ECRE Country Report 2004, Austria, p.40

<sup>97</sup> Switzerland is currently in the process of joining the Dublin II Regulation in order for it to be operative there in 2007/2008.

### **Recommendation 19**

**ECRE reminds Member States of the primacy of the Dublin II Regulation when applying readmission agreements with other Member States. States should ensure that all aspects of their asylum procedures fully respect fundamental human rights standards and safeguards.**

## **5. THE APPEAL PROCEDURE**

In view of the serious protection concerns and divergences between the asylum systems of different Member States, ECRE considers it crucial that individual claimants have the opportunity to challenge a Dublin II transfer. While there is a lack of harmonisation in the asylum systems among Member States and restrictions on access to asylum procedures and the availability of procedural safeguards in certain states, removal to another Member State may amount to *refoulement* of asylum applicants. Therefore, Member States must respect their international human rights obligations in applying the Dublin II Regulation. In the *TI* case the European Court of Human Rights emphasised that entering into international agreements may not absolve states from the requirement of observing their obligations under international human rights law, and more specifically, the application of the safe third country concept does not absolve Member States from the obligation of *non-refoulement* under Article 3 ECHR.<sup>98</sup> As the Dublin system does not address current divergences in protection standards in Member States, it is an essential safeguard that applicants have the opportunity to appeal a decision to transfer as provided for in Article 19(2) of the Regulation.

ECRE considers that a linked issue, which requires attention, is how to better enable individuals to themselves invoke the application of the Dublin II Regulation where another state is responsible under the hierarchy of criteria under the Regulation but the host state is failing to request or initiate transfer. For example, where an applicant in one state is entitled to be re-united with a family member in another state in accordance with Articles 7 or 8 of the Regulation. At present there is no mechanism available to an individual to enforce transfer in such circumstances or indeed in situations where it might be the responsible (requested) state that is frustrating removal. Such a safeguard is required in addition to a right of appeal against an actual decision to transfer where this has been made in error (for example in cases of mistaken identity or where the applicant in fact has family members in a third Member State which would instead indicate its responsibility under the provisions of the Regulation).

### **5.1 Successful challenges to Dublin II decisions**

There is a significant amount of jurisprudence on challenges to Dublin II transfers based on the following grounds: protection concerns, humanitarian reasons, family unity (Article 8 ECHR) and in respect of time limits. Such challenges highlight concerns in both the way Member States are applying the Regulation<sup>99</sup> and also inherent flaws in the Regulation itself.<sup>100</sup>

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<sup>98</sup> ECHR: *T.I. v U.K.*, Application No. 43844/98, Admissibility Decision of 7 March 2000.

<sup>99</sup> As shown in Member States failure to invoke the sovereignty and humanitarian clause where appropriate and failure to abide by the time limits in the regulation for requests and transfers.

<sup>100</sup> Most notably the failure of the regulation itself to address the divergence in protection and reception conditions among Member States.

Regarding jurisprudence on protection grounds there have been successful challenges against decisions to transfer applicants to *Greece* due to the Greek practice of ‘interrupting decisions’ in *Austria, Finland, France,<sup>101</sup> the Netherlands,<sup>102</sup> Slovenia, Sweden* and the *UK* and in administrative challenges in *Italy* and *Norway*. Such case law highlights the failed assumption in the Dublin II system that all Member States offer equal protection for asylum seekers. Additionally, the fallibility of such an assumption is shown by the fact that a number of the new Member States were, prior to their accession, not considered safe third countries for asylum seekers.<sup>103</sup> However at present some states do not permit challenges on protection grounds such as *Germany, Greece, Hungary* and the *UK*. As demonstrated in the *TI* case<sup>104</sup> such practice may come into conflict with states’ obligation not to *chain-refoule* asylum seekers.

According to the information available, challenges based on humanitarian reasons often concern traumatised asylum seekers or applicants with severe health problems. This is shown in the case law of *Finland, Ireland,<sup>105</sup> Germany<sup>106</sup> Norway,<sup>107</sup> Sweden* and particularly the recent House of Lords decision in the case of *Razgar* in the *UK*.<sup>108</sup> In considering such challenges courts consider states’ obligations under the ECHR in determining whether the transfer would be detrimental to the applicant’s physical and mental health. National courts have also considered the provisions of Article 8 ECHR in challenging decisions that have implications for family unity and have ordered the application of the sovereignty clause for certain situations where a violation would occur in *Austria<sup>109</sup>* and *Belgium*.<sup>110</sup> Additionally, there have been challenges in *France,<sup>111</sup> Luxembourg* and *Norway* on the basis of states not respecting the time limits in the Regulation for request and transfers.

### 5.1 Constraints on the Right to Appeal

The right of appeal is limited both through Member States actions and the intrinsic failure of the Regulation itself in not explicitly requiring suspensive effect. A suspensive right of appeal is vital to ensure that protection or other concerns are addressed prior to transfer otherwise the effect of an appeal is rendered meaningless. Portugal is the only Member State which automatically provides for a suspensive right

<sup>101</sup> CE No 278805 24 March 2005, CE, 24 March 2003.

<sup>102</sup> Judgement of September 29, 2004 (AWB 04/30154); Judgement of February 10, 2005 (AWB 04/57933)

<sup>103</sup> For example in Austria, prior to May 2004, the Slovak Republic, the Czech Republic, Hungary and Slovenia were not considered safe third countries for asylum seekers. The Finnish authorities unofficially only considered Estonia and the Czech Republic safe prior to May 2004.

<sup>104</sup> *TI v the UK*, ECHR, admissibility decision, application no. 43844/98, 7 March 2000

<sup>105</sup> *M v Minister for Justice, Equality and Law Reform* [2005 No. 98 JR], (*unreported*, 15 November 2005).

<sup>106</sup> Higher Administrative Court Meckelenburg-Vorpommern, decision of 29.11.2004.

<sup>107</sup> The Alien Jury’s The Immigration Appeal Board’s Yearbook, 2003, published 10.06.04.

<sup>108</sup> *R (Razgar) v SSHD* [2004] UKHL 27, [2004] 3 WLR 58. This case involved an Iraqi asylum seeker who was to be transferred to Germany under the Dublin II procedure. The transfer was successfully challenged on the basis of Article 8 ECHR. It was held that the transfer would be detrimental to the applicant’s physical and mental health and that the possibility of suicide could not be ruled out.

<sup>109</sup> Independent Asylum Senate, 248.247/0-III/07/04, April 2004

<sup>110</sup> CE N° 100.572, 7<sup>th</sup> November 2001, CE N° 97.769, 12<sup>th</sup> July 2001 CE N° 101.547, 6 December 2001, CE N° 103.762, 20<sup>th</sup> February 2002, CE N° 105.432, 9<sup>th</sup> April 2002, CE N° 105.521, 16<sup>th</sup> April 2002, CE N° 109.650, 2<sup>nd</sup> August 2002; Under the Dublin Convention but the reasoning behind the court decision should be transferable.

<sup>111</sup> CE No 267360 14<sup>th</sup> May 2004.

of appeal for Dublin II applicants. The other Member States do not automatically guarantee suspensive effect. However in a large number of states including *Austria, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Spain* and the *UK* it is possible, subject to conditions, for applicants to suspend the decision to transfer through the granting of an injunction in court proceedings or under the general administrative law. ECRE recommends the amendment of Article 20(1)(e) to guarantee a suspensive right of appeal in relation to all Dublin transfers.

Member States also hinder access to appeal proceedings in a number of ways. Some Member States only inform asylum seekers of the decision to transfer them shortly or immediately prior to the actual transfer. This practice is demonstrated in *Austria*,<sup>112</sup> *the Czech Republic, Finland, Germany*,<sup>113</sup> *Hungary, Lithuania* and *Luxembourg*. The opportunity to access free legal assistance may also be curtailed in certain Member States, for example, in *France* and *Germany* free legal aid is only available if the challenge has a high chance of success. More concerning is the fact that legal aid is unavailable for appeals in *Austria, Greece* and *Sweden*. Procedural measures such as detention and airport fast-track procedures may also limit an applicant's opportunity to access legal aid/assistance in order to effectively challenge procedural errors or where removal would breach state obligations under international law.

#### **Recommendation 20**

**All appeals against a transfer to another state should automatically suspend state action regarding the transfer until a decision has been reached.**

#### **Recommendation 21**

**ECRE urges Member States to enable asylum seekers to effectively challenge a transfer decision by allowing applicants access to legal advice and sufficient time to raise all relevant grounds that would prevent transfer.**

### **6. THE EXPERIENCE OF CHECHEN ASYLUM SEEKERS**

A brief snapshot of the drastic consequences the Dublin system can have on asylum seekers is demonstrated by the experience of Chechens, one of the largest groups of asylum seekers in Europe.<sup>114</sup> The recognition rate for Chechen asylum seekers varies from one Member State to another resulting in a 'protection lottery'. High recognition rates exist in *Austria*,<sup>115</sup> *Belgium*<sup>116</sup> and *France*,<sup>117</sup> however it is more difficult for Chechens to be granted refugee status in *Finland, the Czech Republic*,<sup>118</sup> *Poland*,<sup>119</sup>

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<sup>112</sup> Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English). Austria, p 75.

<sup>113</sup> Asylum seekers are only informed in German of the decision to transfer them to another Member State.

<sup>114</sup> For further information see ECRE Guidelines on the Treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers & Refugees in Europe, June 2005; Norwegian Refugee Council *Report on the Protection of Internally Displaced Persons, Asylum Seekers and Refugees from Chechnya*, April 2005.

<sup>115</sup> ECRE Country Report 2004, Austria, p. 37.

<sup>116</sup> *Ibid*, Belgium, p. 51.

<sup>117</sup> Note that this information is based on data in 2003: Norwegian Refugee Council *Report on the Protection of Internally Displaced Persons, Asylum Seekers and Refugees from Chechnya*, April 2005, p. 40.

<sup>118</sup> Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English). Czech Republic, p. 109.

**Sweden, Germany** and the **Slovak Republic**. The great differences in recognition rates show that for many Chechens, the outcome of their asylum application largely depends on the country in which their application is processed. The accession of the new Member States in May 2004 has led to a rise in the number of Chechens returned to these Eastern European Member States, particularly to **Poland** in accordance with the Dublin II Regulation. This is of concern in view of the variation in recognition rates and the generally less developed asylum systems, both in terms of determination procedures and the rights/facilities provided to recognised individuals. Also of major concern are allegations of Chechens being *chain-refouled* back to Russia via the **Slovak Republic**.<sup>120</sup> Chechen asylum seekers are routinely detained in **Belgium, Czech Republic**<sup>121</sup> and **Germany**<sup>122</sup> to prevent them absconding prior to Dublin II transfers to **Poland**. The lack of adequate reception facilities as well as a poor system of integration for recognised refugees, means that most Chechen asylum seekers prefer to leave **Poland** for other Member States where there are better support facilities.<sup>123</sup> ECRE therefore advocates the increased application of the sovereignty and humanitarian clauses to facilitate greater responsibility-sharing and respect for individual rights.<sup>124</sup>

### **Recommendation 22**

**ECRE urges Member States to support new Member States receiving high numbers of refugees from Chechnya by using the sovereignty clause and humanitarian clause where appropriate to take over responsibility for asylum applications.**

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<sup>119</sup> Ibid Poland, p. 88.

<sup>120</sup> Norwegian Refugee Council *Report on the Protection of Internally Displaced Persons, Asylum Seekers and Refugees from Chechnya*, April 2005, p. 57.

<sup>121</sup> Ibid.

<sup>122</sup> Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English). Germany, p. 41.

<sup>123</sup> Esser, Barbara and Gladysch, Barbara: *Die Situation tschetschenischer Asylbewerber und Flüchtlinge in Polen und Auswirkungen der EU-Verordnung Dublin II*, February 2005, p. 3.

<sup>124</sup> ECRE Guidelines on the Treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers & Refugees in Europe, June 2005.



## CONCLUSION

The Dublin II Regulation is based on an erroneous presumption that an asylum seeker will receive equivalent access to protection in whichever Member State a claim is lodged. It is directly binding, unlike the other asylum directives forming the four ‘building blocs’ set out in the Tampere conclusions,<sup>125</sup> which were adopted on the basis of minimum standards allowing national derogations and periods of transition. It was therefore inevitable that the contradictions between European and national asylum rules would be most sharply apparent in the application of the Dublin system. Huge disparities remain in relation to the quality of protection provided across the EU. This fact along with other measures adopted by different Member States has led to the result that many individuals transferred under Dublin do not have their claims properly considered or may even be denied access to a procedure altogether, as evidenced by the Greek practice of ‘interrupting’ claims. Even those individuals eventually recognised often face huge disparities in relation to the integration possibilities available in different Member States.

ECRE has consistently argued that linking entry controls with the allocation of responsibility under Article 10 (1) of the Dublin Regulation creates unequal burdens depending on a state’s geographical location.<sup>126</sup> The logical consequence of the Dublin system is that increased numbers of asylum seekers will be returned to Member States on the periphery of the European Union.<sup>127</sup> Although comprehensive up to date statistics are not yet available,<sup>128</sup> figures for 2004 suggest that Poland, Hungary, Italy and Greece are receiving high numbers of incoming requests relative to the number of outgoing requests they are making,<sup>129</sup> albeit in the context of a general drop in the number of asylum applications across the EU.<sup>130</sup> The Dublin system works as a disincentive for states on the EU’s external borders to give full access to fair asylum procedures or even to their territories. There is also evidence emerging to suggest that the Regulation acts as an incentive for states to resort to the increased use of detention in order to secure the transfer of Dublin cases.

ECRE considers that action is needed on three levels in order to correct current flaws and ultimately ensure the provision of a genuine responsibility-sharing system for asylum processing in the European Union. Firstly, states must more fully respect their existing obligations under the Regulation. Secondly, ECRE calls upon the

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<sup>125</sup> European Council, Tampere Presidency Conclusions, 15/16 October 1999.

<sup>126</sup> ECRE: Comments from the European Council on Refugees and Exiles on the Proposal for a Council Regulation 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, December 2001.

<sup>127</sup> Alternatively, individuals may simply choose not to lodge formal protection claims but instead resort to further onward and illegal transit after having entered EU territory.

<sup>128</sup> See Annex 3 for the limited statistical information collected as part of this report. It should be noted that these do not cover all states and are mainly limited to the period up until Dec 2004.

<sup>129</sup> It should be noted that not all of these requests have resulted in actual transfers. There is no empirical data available on the reasons for this but possible explanations include states taking responsibility after having originally requested transfer (e.g. on humanitarian grounds), states making multiple requests to other states, or applicants absconding.

<sup>130</sup> See UNHCR, *Asylum Levels and Trends in Industrialised Countries*, 2004 at <http://www.unhcr.ch>.

Commission to propose amendments in its forthcoming review that would provide interim solutions for some of the intrinsic problems with the Regulation. Finally, ECRE advocates for the eventual abolition and replacement of the Dublin Regulation, as part of the development of a future Common European Asylum System, following the scheduled comprehensive analysis of all the first phase instruments envisaged under the Hague Programme.<sup>131</sup>

This report has highlighted a number of areas where Member States are not properly applying existing provisions of the Regulation. For example, states are failing to fully co-operate or share information with each other thereby frustrating the objective of the Regulation to quickly and correctly determine the Member State responsible. The failure of some states to grant returnees access to an asylum procedure also undermines the workings of the system and is in conflict with its objectives as outlined in the Tampere Conclusions and the Preamble to the Regulation.<sup>132</sup> Additionally, there is a lack of consistency in the application of the discretionary provisions. The sovereignty and humanitarian clauses could be better used by states to alleviate some of the injustice and hardship caused by the Regulation. A related problem here is the failure of states to adequately inform applicants about the workings of the Regulation or proactively assist in correctly identifying the responsible state. This report sets out recommendations as to how Member States could improve their current practices in this regard.

Secondly, the report has addressed intrinsic failings with the Regulation that risk violating individual rights or prevent identification of the responsible state. The report therefore includes recommendations for amended or new provisions that better guarantee access to an asylum procedure on return and enable applicants to more effectively challenge removal where decisions to transfer are made in error or would result in breach of state obligations under international law. Further reforms are proposed to better ensure family unification and to protect the best interests of vulnerable groups such as separated children and torture survivors.

Such interim reforms will improve the application of the Dublin II Regulation in the short term. However, ECRE believes that ultimately the current Dublin system must be abolished altogether. By linking responsibility for asylum applications with responsibility for entry controls, the Dublin system is in conflict with the aim of burden-sharing as envisaged in the Amsterdam Treaty objectives<sup>133</sup> and does not provide a balanced way of addressing flows of asylum seekers. As well as placing individual asylum seekers at risk of *refoulement*, the Dublin system is inefficient and resource-intensive.

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<sup>131</sup> The Hague Programme, *Strengthening freedom, security and justice in the European Union*, Annex 1 to the Presidency Conclusions, European Council, 4/5 November 2004.

<sup>132</sup> European Council, Tampere Presidency Conclusions, 15/16 October 1999, para. 13/14; See also 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 Member State by a third-country national, Preamble, para. 2/3.

<sup>133</sup> Article 63(2)(b) promotes a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons.

ECRE has therefore proposed<sup>134</sup> an alternative system for allocating responsibility based on two criteria: 1) the Member State where the asylum seeker has a family member is responsible, provided he or she agrees with a transfer to that state; or 2) the Member State where the asylum request was first lodged is responsible, unless there are compelling humanitarian considerations to preclude this.

ECRE recommends that its proposed system for allocating state responsibility for hearing an asylum claim should contain mechanisms to share responsibility by supporting those Member States that receive disproportionately high numbers of asylum seekers.<sup>135</sup> A well-resourced financial burden sharing instrument based on the real costs of hosting and processing asylum claims could compensate Member States receiving higher numbers as well as helping states with less developed asylum systems to bring their infrastructure up to the level of more developed states. A well-resourced Integration Fund could promote the integration of refugees and a well-resourced Return Fund would help facilitate the efficient and sustainable return of those found not to be in need of international protection.

ECRE considers that a crucial, linked reform would be the adoption of EC legislation granting freedom of movement within the Union to all persons recognised as being in need of international protection.<sup>136</sup> As a result of their escape from persecution, refugees, unlike other third-country nationals, often have been forced to migrate and have had very little choice about where they reside in Europe. There is a natural logic that refugees will integrate more easily and most naturally into those countries where they have extended family members, social networks, employment opportunities/good labour market conditions, and cultural or linguistic ties. In a market-based economy as within the European Union, where the mobility and flexibility of labour is increasingly important, there is much to be said for giving persons granted protection status freedom of choice as to where to reside.

ECRE acknowledges that some of these proposals will require incremental development and be dependent on progress in securing commitment to achieve greater harmonisation and approximation of national asylum systems as envisaged under the Hague Programme. Notwithstanding this, it is hoped that the forthcoming review of the Dublin II Regulation by the Commission will provide an opportunity to start debate on these and other proposals to achieve genuine responsibility-sharing among EU Member States in a future Common European Asylum System. However, in addition to consideration of longer-term perspectives, there remains an urgent need for immediate reform of the Regulation in order to address the major injustices caused by its current application.

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<sup>134</sup> ECRE, *The Way Forward. Europe's role in the global refugee protection system. Towards Fair and Efficient Asylum Systems in Europe*, September 2005. Section 3.1, pp 29-31.

<sup>135</sup> *Ibid.* Section 3.2, pp 31-34.

<sup>136</sup> *Ibid.* Section 3.3, pp 34-37.

## ANNEXES

### ANNEX 1 List of Recommendations

#### **Recommendation 1**

Article 16 should be amended to explicitly require that the responsible Member State complete a substantive examination of the asylum application when taking back an asylum seeker, if the applicant has not previously received a final decision on their claim.

#### **Recommendation 2**

Applicants who have received a previous final refusal decision should be given the opportunity to submit fresh claims if new information has arisen since the refusal of their original asylum claim, and should have access to higher courts to challenge removal if a real risk of *refoulement* can be demonstrated.

#### **Recommendation 3**

Member States in applying the Dublin II Regulation should recall their obligations under the Reception Directive to provide proper reception facilities for all asylum seekers.

#### **Recommendation 4**

Whilst protection gaps exist within Europe and there is a demonstrable risk of onward *refoulement* following return to the responsible Member State, ECRE recommends that Member States apply the sovereignty clause to prevent transfer in such cases.

#### **Recommendation 5**

Member States should use the sovereignty clause more widely to avoid removal where incompatible with their obligations under international law, including the European Convention on Human Rights.

#### **Recommendation 6**

The sovereignty clause should automatically be invoked to examine the asylum applications of traumatised asylum seekers where removal to the responsible Member State would exacerbate the condition and/or deny existing medical treatment.

#### **Recommendation 7**

Member States should actively assist separated children in locating family members in other Member States in order that transfer can occur where this is in the best interests of the child.

#### **Recommendation 8**

Member States should ensure that age-disputes regarding children are resolved prior to transfer under Dublin II.

#### **Recommendation 9**

Article 6 should be amended to require that in considering the best interests of the separated child, the Member State responsible for examining the application shall be that where a member of his or her family is present, provided that the persons concerned so desire. In the absence of a family member, the Member State

responsible for examining the application shall be that where the child has currently lodged his/her application for asylum.

**Recommendation 10**

ECRE calls for a more flexible and inclusive definition of family members for separated children enabling unification with siblings and other extended family members.

**Recommendation 11**

The right to family re-unification should be extended to those persons who have a family member who has been allowed to legally reside in a Member State on other protection grounds, or who otherwise is legally residing in that State. Article 7 should be amended accordingly.

**Recommendation 12**

ECRE recommends that the right to family unity in Article 8 be amended to permit family re-unification at any stage of the asylum procedure up to a final refusal decision.

**Recommendation 13**

The definition of family in Article 2(i) should be amended to include other close relatives who lived together as part of the family unit in the country of origin.

**Recommendation 14**

ECRE urges Member States to apply Article 15 in a humane, unrestrictive and flexible way that takes into account the various situations of asylum seekers and their best interests.

**Recommendation 15**

Applicants within the Dublin II procedure should receive information, including in the form of guidance leaflets, in a language they understand, containing clear and concise information on the procedure and the applicability of provisions such as family unification and the discretionary clause. Furthermore, separated children should receive such information in an age-appropriate manner in a language that they understand.

**Recommendation 16**

Applicants under Dublin procedures should only ever be detained as a last resort where non-custodial measures have been demonstrated not to work on an individual basis. Detention must be subject to procedural safeguards, and limited to the minimum time required to meet its lawful purpose. Separated children should never be detained under any circumstances.

**Recommendation 17**

ECRE calls upon Member States to engage in a frank and full exchange of information enabling a clear determination of the Member State responsible for the examination of an asylum application.

**Recommendation 18**

ECRE calls upon Member States to ensure that bilateral agreements do not infringe asylum applicants' procedural rights.

**Recommendation 19**

ECRE reminds Member States of the primacy of the Dublin II Regulation when applying readmission agreements with other Member States. States should ensure that all aspects of their asylum procedures fully respect fundamental human rights standards and safeguards.

**Recommendation 20**

All appeals against a transfer to another state should automatically suspend state action regarding the transfer until a decision has been reached.

**Recommendation 21**

ECRE urges Member States to enable asylum seekers to effectively challenge a transfer decision by allowing applicants access to legal advice and sufficient time to raise all relevant grounds that would prevent transfer.

**Recommendation 22**

ECRE urges Member States to support new Member States receiving high numbers of refugees from Chechnya by using the sovereignty clause and humanitarian clause where appropriate to take over responsibility for asylum applications.

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**ANNEX 3 Dublin II Regulation Statistics****Table 1: Incoming Requests for 2004**

<b>STATISTICS</b>					
<b>Incoming Requests 2004</b>					
<b>Member State</b>	<b>A Total Number</b>	<b>B EURODAC</b>	<b>C Total No. Accepted</b>	<b>D Total No. Refused</b>	<b>E Total No. Transferred</b>
<b>Austria</b>	1831	1066	1107	670	361
<b>Cz. Republic</b>	386				36
<b>Finland</b>	456				120
<b>Germany</b>	7463		6009	1517	2681
<b>Greece</b>	1351	787	1112	127	404
<b>Hungary</b>	392	143	303		71
<b>Ireland</b>	133	61	87	32	59
<b>Italy</b>	2701				
<b>Lithuania</b>	21				6
<b>Luxembourg</b>	182				63
<b>Netherlands</b>	3385				
<b>Norway</b>	2180				612
<b>Poland</b>	1320	1052	1182	104	356
<b>Portugal</b>	60		43	27	17
<b>Slovenia</b>	100	52			8
<b>Spain</b>	68				111
<b>Sweden</b>	3596		2642		

**Comments:**

- Statistical information was only available for the countries included above.
- The Austrian and Polish statistics are for the time period July-December 2004.
- The statistics for Slovenia and Hungary are for the time period May-December 2004.
- In Norway the Directorate of Immigration assumes that 60% of total numbers of requests are based upon hits in EURODAC. The high number of incoming requests is predominantly from Sweden, Finland and Germany.
- According to EURODAC information for Finland in 2004: 2701 fingerprints were registered into the EURODAC; 1507 of which were hits. Regarding the Finnish statistics the number of actual transfers is an approximate value.

**Table 2: Outgoing Requests for 2004**

<b>STATISTICS</b>					
<b>Outgoing Requests 2004</b>					
<b>Member State</b>	<b>A Total Number</b>	<b>B EURODAC</b>	<b>C Total No. Accepted</b>	<b>D Total No. Refused</b>	<b>E Total No. Transferred</b>
<b>Austria</b>	3212	2295	2283	693	324
<b>Cz. Republic</b>	325				159
<b>Finland</b>	1566				1500
<b>Germany</b>	6536		5110	1068	2765
<b>Greece</b>	18	3	10	5	5
<b>Hungary</b>	25		13		1
<b>Ireland</b>	292	247	261	27	74
<b>Italy</b>	616				
<b>Lithuania</b>	1				0
<b>Luxembourg</b>	475				370
<b>Netherlands</b>	1862				
<b>Norway</b>	3175				2099
<b>Poland</b>	54	12	22	13	10
<b>Portugal</b>	15		15	1	2
<b>Slovenia</b>	53	45			7
<b>Spain</b>	238				10
<b>Sweden</b>	6188		5242		4225

**Comments:**

- Statistical information was only available for the countries included above.
- The Austrian and Polish statistics are for the time period July-December 2004.
- The statistics for Slovenia and Hungary are for the time period May-December 2004.
- In relation to the Finnish statistics the number of actual transfers is an approximate value.

**ANNEX 4 Comprehensive Country Statistics****Table 1: Statistical Data on the Application of the Dublin II Regulation in Austria****Time Period: 1 July-31 December 2004****Incoming Requests for Austria**

Submitted by:		Submitted		C Total number accepted	D Total number refused	E Total number transferred
		A Total number of requests	B EURODAC			
Belgium	BE	103	63	69	17	6
Czech Republic	CZ	20	10	8	11	1
Germany	DE	724	482	522	180	242
Estonia	EE	0	0	0	0	0
Greece	EL	0	0	0	0	0
Spain	ES	7	6	6	1	0
France	FR	375	204	167	207	27
Ireland	IE	6	4	4	2	0
Italy	IT	115	2	1	113	0
Cyprus	CY	0	0	0	0	0
Latvia	LV	0	0	0	0	0
Lithuania	LT	0	0	0	0	0
Luxembourg	LU	17	11	16	1	0
Hungary	HU	5	3	2	3	0
Malta	MT	0	0	0	0	0
Netherlands	NL	62	38	45	12	7
Poland	PL	13	0	5	6	0
Portugal	PT	2	1	1	1	0
Slovenia	SI	2	2	1	1	0
Slovak Republic	SK	24	15	7	19	1
Finland	FI	32	21	25	6	2
Sweden	SE	117	67	80	34	31
United Kingdom	UK	155	114	111	44	24
Iceland	IS	0	0	0	0	1
Norway	NO	52	23	37	12	19

### Outgoing Requests for Austria

Submitted to:		Submitted		C Total number accepted by	D Total number refused by	E Total number transferred to
		A Total number of requests	B EURODAC			
Belgium	BE	32	12	13	9	8
Czech Republic	CZ	219	113	140	65	19
Germany	DE	290	135	202	96	63
Estonia	EE	0	0	0	0	0
Greece	EL	20	6	15	4	3
Spain	ES	67	43	55	17	16
France	FR	70	29	36	24	15
Ireland	IE	0	0	0	0	0
Italy	IT	127	14	22	107	14
Cyprus	CY	4	0	4	0	0
Latvia	LV	0	0	0	0	0
Lithuania	LT	1	0	0	1	0
Luxembourg	LU	14	11	9	3	3
Hungary	HU	240	95	183	45	24
Malta	MT	0	0	0	0	0
Netherlands	NL	21	8	8	14	7
Poland	PL	529	476	297	56	15
Portugal	PT	3	1	2	2	1
Slovenia	SI	33	5	9	24	1
Slovak Republic	SK	1441	1301	1259	170	120
Finland	FI	8	3	4	1	5
Sweden	SE	60	25	11	32	7
United Kingdom	UK	13	4	3	10	0
Iceland	IS	0	0	0	0	0
Norway	NO	20	14	11	13	3

**Table 2: Statistical Data on the Application of the Dublin II Regulation in Germany****Time Period: 2004****Incoming Requests for Germany**

Submitted to:		Submitted		C Total number accepted by	D Total number refused by	E Total number transferred to
		A Total number of requests	B EURODAC			
Belgium	BE	977		771	207	304
Czech Republic	CZ	34		13	21	5
Greece	EL	5		4	1	3
Spain	ES	54		32	22	2
France	FR	1447		940	512	315
Ireland	IE	24		19	5	1
Italy	IT	66		9	56	2
Luxembourg	LU	140		130	13	87
Hungary	HU	3		1	1	
Netherlands	NL	395		339	48	140
Austria	AT	478		359	123	141
Poland	PL	12		5	6	2
Portugal	PT	7		6	2	2
Slovenia	SI	18		6	12	1
Slovak Republic	SK	16		3	13	
Finland	FI	386		354	36	163
Sweden	SE	1857		1668	226	780
United Kingdom	UK	643		576	67	300
Iceland	IS	7		6	2	3
Norway	NO	894		768	144	430
<b>Total</b>		<b>7463</b>		<b>6009</b>	<b>1517</b>	<b>2681</b>

### Outgoing Requests for Germany

Submitted to:		Submitted		C Total number accepted by	D Total number refused by	E Total number transferred to
		A Total number of requests	B EURODAC			
Belgium	BE	580		468	65	249
Czech Republic	CZ	117		47	40	15
Estonia	EE	2	2			
Greece	EL	254		247	21	126
Spain	ES	170		113	37	45
France	FR	673		477	128	247
Ireland	IE	4			2	
Italy	IT	423		252	95	134
Cyprus	CY	1				
Lithuania	LT	6		4		
Luxembourg	LU	57		30	23	15
Hungary	HU	49		34	3	17
Netherlands	NL	573		460	116	311
Austria	AT	1253		1260	140	897
Poland	PL	658		481	15	90
Portugal	PT	13		3	13	2
Slovenia	SI	22		19	1	3
Slovak Republic	SK	409		338	16	102
Finland	FI	70		49	14	26
Sweden	SE	780		552	217	336
United Kingdom	UK	64		37	25	21
Iceland	IS	2			1	
Norway	NO	356		239	94	128
<b>Total</b>		<b>6536</b>		<b>5110</b>	<b>1068</b>	<b>2765</b>

**Table 3: Statistical Data on the Application of the Dublin II Regulation in Greece  
Time Period: 2004**

Submitted to:		Submitted		C Total number refused by	D Outgoing Requests	E Accepted	F Refused
		A Incoming Requests	B Total number accepted by				
Belgium	BE	76	59	7	1	1	0
Spain	ES	7	5	1	1	0	0
France	FR	132	89	24	4	3	0
Ireland	IE	10	10	0	0	0	0
Italy	IT	100	74	24	0	0	0
Luxembourg	LU	9	9	0	0	0	0
Netherlands	NL	76	52	4	0	0	0
Austria	AT	31	23	6	3	1	2
Finland	FI	51	43	2	2	0	2
Sweden	SE	194	130	18	1	1	0
United Kingdom	UK	337	319	5	1	0	0
Norway	NO	141	126	14	0	0	0
Germany	DE	182	167	18	5	4	1

2004	Total Outgoing Requests	Total Incoming Requests
Requests presented	18	1351
% of requests in total number of applications	0.4%	30.02%
Requests accepted	10	1112
% of requests accepted in requests presented	55.6%	82.3%
Total number of persons transferred	5	404

Requests pending	3	112
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**Table 4: Statistical Data on the Application of the Dublin II Regulation in Ireland**

**Time Period: 2004**

### Incoming Requests for Ireland

Submitted to:		Submitted		C Total number accepted by	D Total number refused by	E Total number transferred to
		A Total number of requests	B EURODAC			
Belgium	BE	9	2	4	7	3
Czech Republic	CZ					
Germany	DE	3	2		2	
Spain	ES	4	1	4		
France	FR	6	3	2	3	
Italy	IT	1	1		1	
Netherlands	NL	7	4	2		3
Austria	AT	1	1		1	
Poland	PL	1				
Sweden	SE	4	2	3	1	1
United Kingdom	UK	95	48	69	15	51
Iceland	IS	1	1	1		
Norway	NO	1				

### Outgoing Requests for Ireland

Submitted to:		Submitted		C Total number accepted by	D Total number refused by	E Total number transferred to
		A Total number of requests	B EURODAC			
Belgium	BE	19	18	16	1	6
Germany	DE	22	22	19	3	2
Greece	EL	6	6	5		1
Spain	ES	2	2	1		
France	FR	21	21	23	2	2
Italy	IT	18	6	14		3
Luxembourg	LU	8	4	8		6
Malta	MT	6	6	4		
Netherlands	NL	15	9	13	1	5
Austria	AT	6	6	5	1	2
Finland	FI	1	1	1		
Sweden	SE	16	16	13	4	2
United Kingdom	UK	143	122	135	8	44
Norway	NO	9	8	4	7	1



**Table 5: Statistical Data on the Application of the Dublin II Regulation in Poland  
Time Period: 1 July-31 December 2004****Incoming Requests for Poland**

Submitted by:		Submitted		C	D	E
		A Total number of requests	B EURODAC	Total number accepted	Total number refused	Total number transferred
Belgium	BE	180	154	170	10	3
Czech Republic	CZ	158	162	144	11	173
Germany	DE	432	336	395	28	126
Estonia	EE					
Greece	EL					
Spain	ES					
France	FR	153	140	140	6	14
Ireland	IE					
Italy	IT					
Cyprus	CY					
Latvia	LV					
Lithuania	LT					
Luxembourg	LU					
Hungary	HU	1	0	1	0	0
Malta	MT					
Netherlands	NL	7	3	4	3	0
Austria	AT	320	202	266	40	21
Poland	PL					
Portugal	PT					
Slovenia	SI					
Slovak Republic	SK	4	1	1	3	0
Finland	FI	3	3	3	0	1
Sweden	SE	26	17	22	3	3
United Kingdom	UK	5	3	5	0	3
Iceland	IS					
Norway	NO	31	31	31	0	12

### Outgoing Requests for Poland

Submitted to:		Submitted		C Total number accepted by	D Total number refused by	E Total number transferred to
		A Total number of requests	B EURODAC			
Belgium	BE	4	0	1	0	0
Czech Republic	CZ	4	0	0	4	0
Germany	DE	8	2	3	0	3
Estonia	EE					
Greece	EL					
Spain	ES					
France	FR	11	2	4	2	2
Ireland	IE	1	0	0	0	0
Italy	IT					
Cyprus	CY					
Latvia	LV					
Lithuania	LT	11	7	9	0	4
Luxembourg	LU					
Hungary	HU	3	0	0	3	0
Malta	MT					
Netherlands	NL	1	0	0	1	0
Austria	AT	9	0	4	3	0
Poland	PL					
Portugal	PT					
Slovenia	SI					
Slovak Republic	SK					
Finland	FI					
Sweden	SE					
United Kingdom	UK	1	0	0	0	0
Iceland	IS					
Norway	NO	1	1	1	0	1

**Table 6: Statistical Data on the Application of the Dublin II Regulation in Spain  
Time Period: 2002-2004**

Country Information		Submitted						C Number of Actual Transfers to another MS			D Number of Actual Transfers from another MS		
		A			B								
		Outgoing Requests			Incoming Requests			2002	2003	2004	2002	2003	2004
Years		2002	2003	2004	2002	2003	2004	2002	2003	2004	2002	2003	2004
<b>Belgium</b>	<b>BE</b>	3	1	13	48	54	6	0	0		6	3	10
<b>Germany</b>	<b>DE</b>	41	31	48	195	97	4	2	7	1	22	14	19
<b>Greece</b>	<b>EL</b>	4	16	6	0	0		0	3		0	0	
<b>Ireland</b>	<b>IE</b>	0	0	3	5	5	1	0	0		0	0	
<b>Italy</b>	<b>IT</b>	10	5	10	29	19	0	0	1		1	1	
<b>Luxembourg</b>	<b>LU</b>	0	4	2	2	4	11	0	0		0	2	14
<b>Netherlands</b>	<b>NL</b>	9	11	21	28	38	3	0	1	2	2	3	3
<b>Austria</b>	<b>AT</b>	8	3	21	21	26	4	0	0		1	2	8
<b>Portugal</b>	<b>PT</b>	10	14	4	6	2	0	0	0		2	1	
<b>Finland</b>	<b>FI</b>	4	9	5	12	16	1	2	0	1	4	3	2
<b>United Kingdom</b>	<b>UK</b>	5	15	5	49	45	2	0	0		2	13	6
<b>Iceland</b>	<b>IS</b>	1	0	16	1			0		0			
<b>Norway</b>	<b>NO</b>	2	6	5	57	52	5	0	0		1	8	7
<b>Total</b>		<b>156</b>	<b>144</b>	<b>238</b>	<b>634</b>	<b>518</b>	<b>68</b>	<b>4</b>	<b>19</b>	<b>10</b>	<b>48</b>	<b>102</b>	<b>101</b>

## **ANNEX 5 UK Separated Children Case Studies**

The Refugee Council UK has kindly provided these case studies.

In order to protect the anonymity of the children in these case studies they are described simply as **Child X**.

### **Case 1:**

A Somalia unaccompanied minor arrived in the UK from Ethiopia in March 2005 and applied for asylum the subsequent day. The immigration authorities designated him as a 'third country' case and detained him in Haslar detention centre.

The UK immigration's position was that Child X had already applied for asylum in Italy and a request was sent there under the Dublin II Regulation to take responsibility for examination of the asylum application. Child X maintained that he had applied for asylum in Italy in 2002 and that his case had been determined as refused and subsequently he had been deported to Ethiopia in 2002.

The Italian Ministry for the Interior sent a document to UK immigration authorities stating that Child X had been refused refugee status but had been granted a permit of stay on humanitarian grounds until 2005. In that document they agreed to Child X being removed from the UK to Italy. However, the document contained no date in 2005 for when the permit of stay expired.

Consequently Child X was removed from the UK to Italy. However, within two days of his removal to Italy, Child X sent an email to the Refugee Council from Ethiopia. After corresponding with Child X via email, the Refugee Council were able to ascertain that Child X was removed from Italy to Ethiopia the day after he arrived in Italy.

### **Case 2**

Child X is an unaccompanied minor from Iran. The Refugee Council was not able to get information from the UK immigration authorities confirming his date of arrival in the UK or the date he claimed asylum in the UK. However UK immigration said he was a third country case and he was detained in the Dover removal centre.

The UK immigration's position was that Child X had already applied for asylum in Greece and they started the process of returning him to Greece in accordance with the Dublin II Regulation. Child X consistently asserted that he had been held in detention in Greece for approximately three months and was then told he would be released only if he agreed to leave Greece immediately. In order to be released from detention he agreed to this. When he was released he came to the UK and claimed asylum.

Child X maintains that throughout his time in detention in Greece, he did not have access to a determination on his asylum claim. Having claimed asylum he was detained, then released and told to leave Greece. However, due to him having been in Greece and the co-operation between the UK and Greek authorities in relation to the Dublin II Regulation, Child X was removed from the UK to Greece. The Refugee Council has had no news of Child X since he was sent back to Greece.

### **Case 3**

Child X is an unaccompanied minor from Iran. The Refugee Council was not able to get information from UK immigration confirming his date of arrival in the UK or the date he claimed asylum in the UK. However UK immigration said he was a third country case and he was detained in Dover removal centre upon arrival.

The UK immigration's position was that Child X had already applied for asylum in Greece and they started the process of returning him to Greece in accordance with the Dublin II Regulation. Child X maintained that he is 16 years old. Therefore the Refugee Council's Children's Section made an appointment to visit him at the detention centre, with a view to referring him to social services for a Child in Need Assessment in line with the Childrens Act 1989 and in order to get him legal representation.

When the Children's Section member of staff arrived at Dover removal centre for the booked appointment, they were informed that Child X had been moved to Harmondsworth detention centre (in Heathrow, London.) The authorities had given no notice of this. The Children's Section member of staff contacted Harmondsworth detention centre and was told that Child X had already been removed to Greece.

Therefore, a potential child was not given the opportunity to be seen by the Refugee Council's Children's section; was not allowed to undergo a Social Services' Child in Need Assessment and was never given access to legal representation. All of this happened in the space of two days over one weekend.

### **Case 4**

Child X is an age-disputed unaccompanied minor from Afghanistan. He arrived in the UK in May 2005 and applied for asylum on the same day. UK immigration's position was that Child X had already applied for asylum in Greece and they started the process of returning him to Greece in accordance with the Dublin II Regulation. Child X consistently asserted that he had been held in detention in Greece for approximately three months and was then told he would be released only if he agreed to leave Greece immediately. In order to be released from detention he agreed to this. When he was released he came to the UK and claimed asylum.

The Refugee Council engaged legal representation for Child X but due to social services assessing him to be an adult, the Children's Section could not continue supporting him. Therefore the Refugee Council does not know the outcome of his case.

### **Case 5**

Child X is an unaccompanied minor from Iran. The Refugee Council was not able to get information from UK immigration confirming his date of arrival in the UK or the date he claimed asylum in the UK. When he was initially detained in the Greater Manchester area in police custody he attempted to commit suicide prior to being transferred to the detention centre. Child X was referred to social services for an age assessment. The day the social services were due to assess his age, Child X was transferred to Harmondsworth detention centre. Hillingdon social services assessed him to be a minor and he was released from detention.

The UK's immigration position was that Child X had already applied for asylum in Greece and the Dublin II procedure was initiated to transfer Child X to Greece. Child X asserted that he was detained in Greece for approximately three months and was then told he would be released only if he agreed to leave Greece immediately. In order to be released from detention he agreed to this. When he was released he came to the UK and applied for asylum.

His legal representative referred him to a psychiatrist who did a detailed and extensive report concluding he was suicidal and suffering from post-traumatic stress disorder. The solicitor began procedures to judicially review the decision by the UK authorities to return Child X to Greece. This review was successful and the UK is currently in the process of considering his asylum application.

### **Case 6**

Child X's date of birth is 1/11/1989 and he is an unaccompanied minor from Afghanistan. He arrived in the UK in June 2005, claiming asylum on the next day and was age disputed. Child X was referred to a local authority for an assessment as a child in need. The local authority also disputed his age, however the Children's Panel of the Refugee Council were shown a document, certified by the Afghan embassy proving the Child X's date of birth. Therefore the Refugee Council were in the process of assisting him to prove his age via a medical assessment by a paediatrician when the UK authorities transferred him to Greece.

The UK immigration's position was that Child X was a third country case and had previously applied for asylum in Greece. In a letter dated 4 August 2005 the Greek authorities confirmed that they accepted responsibility for examining the IA's application for asylum. Child X had told the Refugee Council that he was stopped by the police in Greece and was fingerprinted. The Refugee Council is unsure whether Child X was aware he was claiming asylum or not.

Prior to his removal from the UK Child X was detained for a week. His solicitors made presentations on their concerns about the handling of asylum applications by the Greek authorities, making reference to the reports by UNHCR<sup>137</sup> and a decision in "*R v Secretary of State for the Home Department ex parte Bouheraova and ex parte Kerkeb*" which essentially found Greece an unsafe country for refugees. After his removal to Greece, Child X phoned the Children's Panel several times since then, reporting that when he arrived in Greece he was detained for a week and then released. He said he was asked to either leave the country or provide an address and present it to the police. He is currently homeless although some Afghans are assisting him.

His solicitors are currently pursuing a judicial review arguing that Child X should be returned to the UK for his asylum claim to be properly determined.

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<sup>137</sup>UNHCR Position on important aspects of refugee protection in Greece, November 2004; UNHCR Note on access to the asylum procedure of asylum seekers returned to Greece, *inter alia*, under arrangements to transfer responsibility with respect to determining an asylum claim or pursuant to application of the safe third country concept, November 2004.

## **ANNEX 6 List of Contributors of the Statistical Information**

### **Austria**

Federal Asylum Office  
Republic Osterreich Bundesasylamt

### **Finland**

Directorate of Immigration

### **Greece**

ECRE Country Report 2004

### **Ireland**

ORAC  
Refugee Applications Commissioner

### **Lithuania**

Migration Department

### **Netherlands**

Ministry of Justice

### **Poland**

Polish Dublin Office

### **Slovenia**

Ministry of Interior

### **Sweden**

Swera

### **Czech Republic**

Czech Dublin Unit

### **Germany**

ECRE Country Report 2004

### **Hungary**

Refugee Affairs Directorate  
Office of Immigration & Nationality

### **Italy**

Dublin Unit, Ministry of the Interior

### **Luxembourg**

Ministere Des Affaires Etrangeres,  
Ministry of the Interior

### **Norway**

Norwegian Directorate of Immigration

### **Portugal**

Cristina Barateiro  
Asylum & Refugees Department,  
Aliens & Border Services

### **Spain**

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