



Observations by the UNHCR Regional Representation for the Baltic and Nordic Countries on the proposal to amend the Norwegian Immigration Act in order to implement the Dublin III Regulation

1. The Office of the United Nations High Commissioner for Refugees' (UNHCR) Regional Representation for the Baltic and Nordic Countries would like to thank the Norwegian Ministry of Justice and Public Security for the opportunity to present its observations on the proposal to amend the Immigration Act in order to adopt the Dublin Regulation¹.
2. As the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek permanent solutions to the problems of refugees² and pursuant to the supervisory function for the 1951 Convention and consultative role on EU asylum matters, UNHCR puts forward comments and observations on EU legislative and policy proposals related to asylum and refugee protection.
3. In March 2009, UNHCR published its observations to the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person ("Dublin II") (COM(2008) 820, 3 December 2008). The non-exhaustive comments below to the Dublin III Regulation should be read in conjunction with this set of observations³.

¹ European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, L 180/31, available at: <http://www.refworld.org/docid/51d298f04.html>

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628>

³ UN High Commissioner for Refugees, *UNHCR comments on the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person ("Dublin II") (COM(2008) 820, 3 December 2008) and the European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for*

4. UNHCR has closely observed the operation of the Dublin II Regulation and associated instruments (together referred to as the “Dublin system”) since their entry into force. While supporting mechanisms to ensure an efficient examination of asylum claims, UNHCR has voiced significant concerns regarding the system’s outcomes for persons seeking international protection in the EU and other participating States. These concerns include the system’s impact in many cases on the legal rights and personal welfare of asylum-seekers, including their rights to a fair claim examination and, where recognized, to effective protection, as well as the uneven distribution of asylum claims among Member States.
5. In highlighting these problems, UNHCR has noted that a basic assumption underlying the Dublin system is not yet fulfilled – namely, the premise that asylum-seekers are able to enjoy generally equivalent levels of procedural and substantive protection, pursuant to harmonized laws and practices, in all Member States. It is widely acknowledged, that even where EU asylum instruments have been transposed into national law, divergences continue between Member States, due in some cases, to inadequate transposition of EU law or, in others, to differing approaches to implementation.
6. In some cases, demonstrated failures to respect the rights of Dublin returnees have been so significant that national courts as well as the Court of the Justice of the European Union (CJEU) have ruled that asylum applicants should not be transferred to certain participating States⁴. Similarly, the European Court of Human Rights has found that transfers would in some cases violate Article 3 of the European Convention of Human Rights⁵.
7. UNHCR welcomed the EC’s initiative to propose amendments to the Dublin instruments in order to ensure that the needs of applicants for international protection are comprehensively addressed, and welcomes the final adoption which overall ensures better protection of the rights of asylum-seekers.
8. UNHCR in particular welcomes the revised definition of family member in Art 2(g), the improved right to information in Art 4, the introduction of a mandatory interview in Art 5, the confirmation that the best interest of the child shall be a primary consideration for Member States with respect to all procedures provided for in the Regulation (Art 6) and the clarification of obligations in relation to dependent persons in Art 16.

the comparison of fingerprints for the effective application of [the Dublin II Regulation] (COM(2008) 825, 3 December 2008), 18 March 2009, available at: <http://www.refworld.org/docid/49c0ca922.html>

⁴ *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011, available at: <http://www.refworld.org/docid/4ef1ed702.html>

⁵ Notably in *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.refworld.org/docid/4d39bc7f2.html>.

9. In addition, UNHCR considers that the introduction of a right to an effective remedy in the form of an appeal in Art 27, and the limitations to the use of detention in Art 28, strengthens the role of the Dublin Regulation as part of a protection system and are of particular importance to ensure that the rights of asylum-seekers are respected.
10. Nevertheless, UNHCR encourages states to ensure that the improvements introduced in the Regulation will be given effect in practice through a correct application, which places primary emphasis on its purpose as an instrument designed to ensure a substantive examination of an asylum claim in a Member State, taking into account individual circumstances in full.
11. Amended Art 3(2) of the Dublin Regulation regulates responsibility in cases where it is impossible to transfer an applicant due to a risk of inhuman and/or degrading treatment. This provision must therefore, in UNHCR's view, be applied not only in conformity with the language of the Regulation itself, but in full compliance with all international and regional protection obligations.
12. Provision of information, as set out in Art 4, and the interview prescribed in Art 5 constitute important new provisions to ensure that all relevant information is gathered in order to make a correct decision in relation to the responsibility, based not only on the hierarchy of criteria in Chapter III of the Regulation, but also with regard to Articles 3, 16 and 17.
13. Similarly, the improved safeguards for minors in Art 6 will require close cooperation among states as well steps at national level to ensure that staff is adequately trained and that best interest of the child is correctly applied.
14. To conclude, UNHCR welcomes the Norwegian Government's efforts to implement the Dublin III Regulation, which represents an important step towards the establishment of a Common European Asylum System, and to ensure effective access to asylum procedures for all persons seeking international protection. UNHCR notes that some provisions in the Regulation may present challenges of interpretation and implementation. A focus on the protection objectives underlying the Regulation will thus be needed to ensure that the letter and spirit of the Regulation, the 1951 Refugee Convention and related standards will be fully implemented. In this regard, UNHCR encourages Norway to use the opportunity of the implementation process to apply more favorable protection standards pursuant to international law, where appropriate.