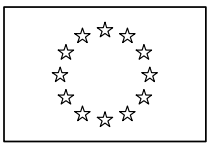

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the evaluation of the Dublin system

{SEC(2007) 742}

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1. INTRODUCTION

1.1. The Dublin system

The "Dublin system" aims to determine which Member State is responsible for examining an asylum application lodged by a third-country national on the territory of one of the Member States of the EU, Norway and Iceland[1].

It comprises 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 of the Member States by a third-country national (the Dublin Regulation)[2] and its Implementing Regulation[3] and Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (the EURODAC Regulation)[4] and its Implementing Regulation[5].

The territorial scope of the Dublin system has been extended to Switzerland, through an international agreement, which is until now only provisionally applicable.

1.2. Scope and objectives of the Report

The Dublin and EURODAC Regulations require the Commission to report to the European Parliament and to the Council on their application after three years of operation and to propose, where appropriate, the necessary amendments. Since the EURODAC Regulation establishes a tool for the efficient application of the Dublin Regulation, it was decided to merge the two evaluations in one comprehensive report.

This report aims to assess the application of both Regulations, from their respective entry into force until the end of 2005 ("the reference period"). It further seeks to measure Dublin flows in comparison to the overall asylum seekers' population in the Member States. It comprises two documents: a **Report**, which presents the main findings and conclusions of the analysis carried out by the Commission services, and a **Commission staff working document**[6], which contains the details of such an analysis.

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1 Until 21 February 2006, Denmark did not take part in the Dublin Regulation. Therefore, Member States in this report means all Member States of the EU except Denmark, plus Norway and Iceland.

2 OJ L 50, 25.2.2003.

3 Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 (OJ L 222, 5.9.2003).

4 OJ L 316, 15.12.2000.

5 Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Council Regulation (EC) No 2725/2000 (OJ L 62 of 5.3.2002).

6 SEC(2007) 742.

The results of this report will feed into the process of evaluation of EU policies on Freedom, Security and Justice, as detailed in the Commission Communication of 28 June 2006[7].

2. APPLICATION OF THE DUBLIN SYSTEM

2.1. Introduction

In accordance with the **Dublin Regulation**, Member States have to assess, on the basis of objective and hierarchical criteria, which Member State is responsible for examining an asylum application lodged on their territory. If the analysis of these criteria designates another Member State as being responsible, they can decide to request the other Member State to "take charge" of the asylum seeker and consequently to examine the application. If the other Member State recognises its responsibility, the first Member State has to transfer the asylum seeker to the other Member State.

In the case where a Member State has already examined or started the examination of an asylum application, it can be requested to "take back" the asylum seeker who is in another Member State without permission, in order to complete the examination of the asylum application or to take appropriate measures to return the asylum seeker to his/her country of origin. If the aforementioned Member State recognises its responsibility, the Member State in which the asylum seeker resides without permission has to transfer him/her to the responsible Member State.

The **EURODAC Regulation** has established a tool for facilitating the application of the Dublin Regulation, by registering and comparing fingerprints of asylum seekers. Member States have to take the fingerprints of each third-country national above 14 years of age who applies for asylum on their territory or who is apprehended when irregularly crossing their external border. They can also take the fingerprints of aliens found illegally staying on their territory in order to check whether they have applied for asylum (on their territory or that of another Member State). They have to send these data promptly to the EURODAC Central Unit, managed by the Commission, which will register them in the Central database and compare them with already stored data. Such comparison can produce "hits", when the data introduced match with already stored data. Where hits reveal that an asylum seeker has already applied for asylum or that she/he entered the territory irregularly in another Member State, the Member States together can act in accordance with the Dublin Regulation.

2.2. Figures and overall findings

As far as the application of the Dublin Regulation is concerned, the analysis of the **statistics** provided by the Member States proved extremely difficult. As explained more in detail in the working document, one of the main problems is the significant mismatch between the numbers of requests and decisions that each Member State reports to have received from other Member States (incoming data) and numbers of requests and decisions that each Member State reports to have sent to other Member States (outgoing data). The two sets of data should in principle be the same, but, due to different interpretations of the definitions for registration and the incompleteness of certain data, the two numbers do not coincide. In order to avoid confusion, the present Report is based only on the outgoing data, while in the working

[7] COM(2006) 332.

document a distinction between incoming data, on the one hand, and outgoing data, on the other, has been made.

This problem underlines the importance to have a commonly agreed statistical framework in the field of asylum and immigration which the Regulation on Community statistics on migration and international protection[8] once adopted will contribute to achieve.

Application of the Dublin Regulation September 2003-December 2005	
Requests	55.310[1]
EURODAC based requests	28.393[2]
Acceptances	40.180[1]
Refusals	10.536[1]
Transfers	16.842[3]

[1] For IT, UK, LU and ES data available since 01.2004 . For FR no data available.
[2] For IT, UK and ES data available since 01.2004. For FR, LU and SE: no data available.
[3] For IT, UK, LU and ES data available since 01.2004. For FR, SE and BE: no data available

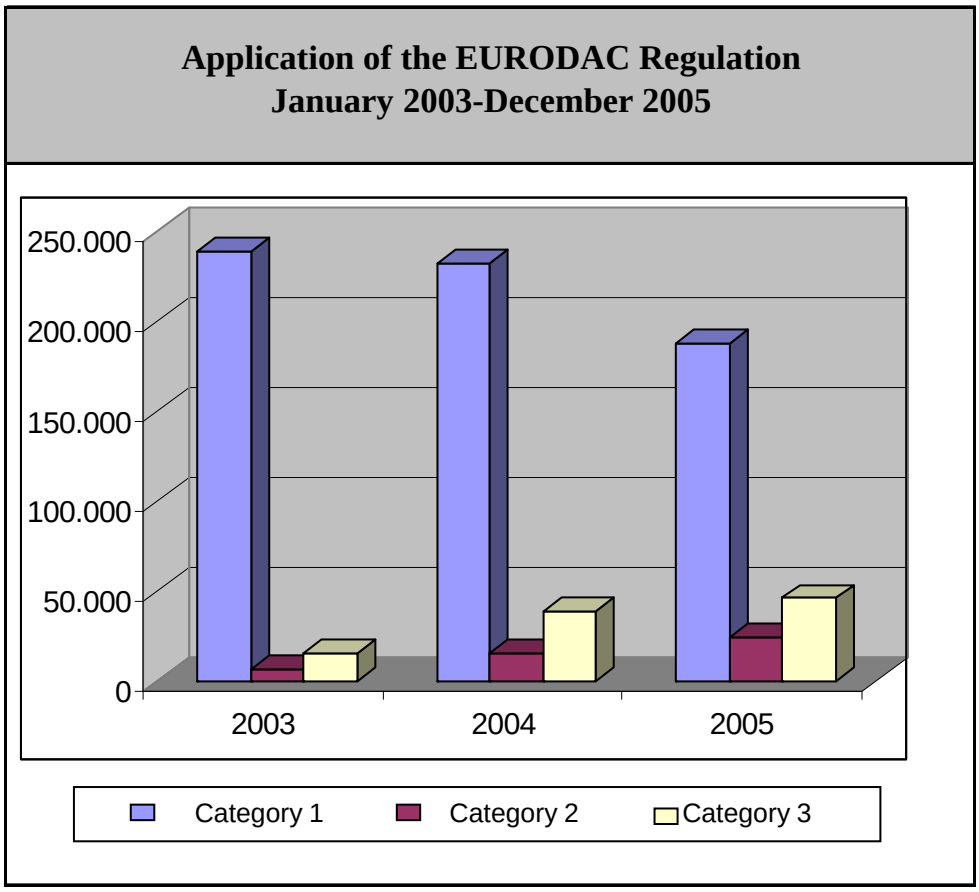
According to the data transmitted by the Member States, more than 55 300 **requests** for transfer were sent out (11.5% of the total number of asylum applications –589 499- *in all Member States* for the same period).

Of the requests, 72% were **accepted**; in other words, in 40 180 cases another Member State accepted to take responsibility for an asylum applicant.

However, only 16 842 asylum applicants were actually **transferred** by the Member States (more details on this figure and what it represents as a percentage of the total number of acceptances are given in the working docment). The issue of transfers of asylum seekers could, therefore, be regarded as one of the main problems for the efficient application of the Dublin system.

As far as EURODAC is concerned, the statistics are much more reliable, since data were provided by automatic reports from the Central Unit. The table below shows the evolution of the three types of transactions Member States send to the EURODAC Central Unit.

[8] COM(2005) 375, 14.9.2005.



In the reference period, data on 657 753 asylum applicants **("category 1 transactions")** were successfully sent. The number of such transactions has consistently decreased (2003: 238 325; 2004: 232 205; 2005: 187 223). This decrease is even more significant when one considers that as of 1 May 2004, 10 new Member States started applying the EURODAC Regulation and that these numbers do not include only "new" asylum applications (multiple applications are also included). This reflects the general drop of asylum applications observed in the EU for some years.

In 2005, a comparison of new asylum applicant data with stored asylum applicant data, showed that 16% of the cases were **"multiple applications"**, i.e. an asylum applicant had previously lodged an asylum application either in the same or another Member State.

In the same reference period, data on 48 657 third-country nationals apprehended in connection with the irregular crossing of an external border **("category 2 transactions")** were registered in the Central database. The number of such transactions has been considerably increasing each year, but it is still surprisingly low when one considers the strong irregular migratory pressures at the external borders of the EU.

Again for the reference period, data on 101.884 third-country nationals found illegally present on the territory of a Member State **("category 3 transactions")** were registered. This figure has been increasing each year, demonstrating a growing interest from the Member States to make use of such a checking possibility.

2.3. Practical implementation and possible improvements

2.3.1. Application of the Dublin Regulation

The evaluation has shown that the Dublin Regulation is in general being applied in a satisfactory manner and that it does provide a workable system for determining responsibility for the examination of asylum applications. However, certain issues in its application, which are outlined here below and detailed further in the working document, have been identified.

Effective access to procedures

The Dublin Regulation places on the Member State determined as responsible an obligation to examine the asylum application. While most Member States correctly interpret this provision as an obligation to proceed to the full assessment of the protection needs of the asylum applicant, to the knowledge of the Commission, one Member State does not carry out, under certain circumstances, such an assessment when taking back asylum seekers from other Member States.

It should be reminded that the notion of an "examination of an asylum application" as defined in the Dublin Regulation should be interpreted, without any exceptions, as implying the assessment whether the applicant in question qualifies as a refugee in accordance with the Qualification directive[9].

Consistency with EU asylum acquis

The Dublin Regulation does not apply to applicants for (or beneficiaries of) subsidiary protection. This has particularly negative consequences for those asylum seekers who cannot be reunited with family members granted subsidiary protection in another Member State. The main reason why subsidiary protection was not included in the Dublin Regulation was that at the time of its adoption, such a concept was not yet part of the EU asylum *acquis*. However with the adoption of the Qualification Directive such a concept has become an integral part of the EU legislative framework on asylum which should be reflected in all asylum instruments.

The Commission intends to propose to extend the scope of the Dublin Regulation to include subsidiary protection.

Uniform application

A uniform application of the rules and criteria established by the Dublin Regulation is essential for its proper functioning. However, Member States do not always agree on the circumstances under which certain provisions should apply.

Such diverging interpretations have in particular been observed in the application of the **sovereignty clause** (Article 3(2) Dublin Regulation), which allows Member States to take responsibility, even if the Dublin criteria would designate another Member State; and the **humanitarian clause** (Article 15 Dublin Regulation), which allows Member States to bring together family members, whereas the strict application of the criteria would separate them.

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[9] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004, p. 12).

Member States apply the sovereignty clause for different reasons, ranging from humanitarian to purely practical.

The application of the sovereignty clause for humanitarian reasons should be encouraged, as this appears to correspond to the underlying objective of this provision.

In the current text of the Dublin Regulation, the consent of the asylum seeker is not required for the application of the sovereignty clause. This has had, in certain circumstances, negative consequences, notably when this has prevented asylum seekers to rejoin family members in other Member States.

As far as the humanitarian clause is concerned, the precise circumstances for its application are, in certain cases, not specified, in particular whether it can be applied at the request of an asylum seeker and whether deadlines should apply to requests sent by a Member State to another.

The Commission will propose to better specify the circumstances and procedures for applying both the sovereignty and humanitarian clause, notably to set deadlines applicable to requests and to introduce the requirement for the consent of the asylum seeker concerned by the application of the sovereignty clause.

Some Member States have encountered difficulties in the application of the provisions for ending responsibility (Articles 10(1), 16(3) and (4), 20(2) Dublin Regulation). In this respect a clarification of the relevant provisions might help to overcome these difficulties.

The Commission will propose to clarify the circumstances under which the responsibility of a Member State ceases.

Finally, some diverging interpretations exist with regard to requests to take back an unaccompanied minor who has previously applied for asylum in another Member State (Article 6 Dublin Regulation). Some Member States refrain from requesting to take back an unaccompanied minor.

While the application of take back requests should not be ruled out in the case of unaccompanied minors, the best interest of the child should always prevail.

The Commission will further clarify the applicability of the Dublin rules to unaccompanied minors.

Evidence

The evidence required for accepting to take charge of an asylum seeker is often difficult to provide. This has had particularly negative effects on the application of the family unity criteria, thus undermining the practical implementation of one of the most important provisions of the Dublin Regulation.

A similar difficulty has been observed regarding the application of the criterion of illegal entry to the EU territory (Article 10(1) Dublin Regulation), where only EURODAC evidence tends to be accepted.

Member States have nevertheless agreed on a list of means of proof and a list of circumstantial evidence, which have been annexed to the Implementing Regulation.

While understanding the importance of clear evidence in order to avoid abuse of the system, in particular in view of family reunification, the Commission considers that Member States should apply the Dublin Regulation and its Implementing Rules in their entirety, using all means of proofs foreseen, including credible and verifiable statements of the asylum seeker.

Deadlines

Several Member States consider the absence of time-limits for requesting to "take back" an asylum seeker to be counterproductive for the efficiency of the system.

In addition, Member States are not satisfied with the six-week deadline for replying to requests for **information**, which is considered too long for such essential evidence.

The Commission will propose time limits for "take back" requests and to shorten the deadline for replying to requests for information to 4 weeks.

Transfers

The low rate of effected transfers of asylum seekers compared to accepted ones undermines considerably the effectiveness of the system. Member States indicate as a reason for this the fact that asylum seekers often disappear upon reception of a transfer decision.

Statistics have revealed that certain Member States transfer similar numbers of asylum seekers between themselves. The possibility for Member States to set up mechanisms for limiting the number of transfers could reduce the workload and operating costs of the departments responsible for transfers. It could also avoid further secondary movements following transfers.

The Commission will examine the possibility to allow Member States to conclude bilateral arrangements concerning "annulment" of the exchange of equal numbers of asylum seekers in well-defined circumstances.

Increase in custodial measures

Member States increasingly introduce custodial measures for persons subject to a transfer decision in order to prevent them from absconding before the transfer is carried out.

The Commission recalls that while recognising the need to find ways of improving the effectiveness of transfers, custodial measures should be only used as a last resort, when all other non-custodial measures are not expected to bring satisfactory results and because there are objective reasons to believe that there is a high risk of the asylum seeker absconding. In any event, due account should always be taken of the situation of families, persons with medical needs, women and unaccompanied minors.

Incorrect application

The incorrect application of the Regulation has been observed mainly in relation to procedural aspects, notably when **time-limits** for requesting or for reacting are not respected.

Member States should strictly respect the time-limits set in the Dublin Regulation, bearing in mind the sanction of implicit acceptance when no answer to a request is given within the requested time-limits, and the possibility for asylum applicants to challenge Member States authorities for not respecting a deadline.

Another issue concerns the non systematic use by certain Member States of the secured bilateral communication tool, called **DubliNet**. Due to the nature of the information transmitted, this might raise some data protection problems.

The Commission recalls that the use of DubliNet is always compulsory safe for the exceptions defined in Article 15(1), second subparagraph.

2.3.2. Application of the EURODAC Regulation

As far as the EURODAC Regulation is concerned, while all Member States apply it in a generally satisfactory manner, the practical application of some provisions remains problematic.

Deadlines

The EURODAC Regulation requests Member States to send their data promptly to the EURODAC Central Unit (Articles 4(1) and 8(1)). It appears that it takes sometimes over 30 days to do this. As such a delay in transmission can lead to the wrong determination of the responsible Member State, it is extremely important that Member States reduce this delay.

The Commission will propose a clear deadline for transmitting data to the EURODAC Central Unit.

Collection of data

As stated before, the Commission considers the number of registered **illegal entrants** (48 657) to be surprisingly low. This raises questions on the effective application of the obligation to fingerprint all illegal entrants at the borders of the Union. As such information is crucial for the effective application of one of the Dublin criteria, Member States should strictly comply with this obligation.

Systematic non compliance with the obligation to fingerprint illegal entrants could be taken into account by the Commission when reviewing the implementation of the Solidarity and Management Migration Flows Framework Programme in 2010 and in particular the relevant distribution criteria applicable for the different funds.

Quality

Statistics revealed that 6% of data is rejected because of its low quality. The quality of the data sent to the EURODAC Central Unit could still be improved via specific training, local quality checks and the use of state-of-the-art equipment, such as live scanners. Member States are encouraged to use available Community funding to this end.

The Commission will organise training seminars for Member State administrations to improve the quality of data.

Deletion

Respect of the obligation to delete certain data (Articles 7 and 10(2) EURODAC Regulation), e.g. in cases where an asylum seeker acquires citizenship, is also problematic. Unfortunately, such deletion is not done routinely, namely because the Member State that introduced the data is not aware of the change of status.

The Commission will propose the introduction of specific codes for each type of deletion, in order to better monitor the respect of this obligation, as well as systematic means for exchange of information in the event of change in the status of an asylum seeker.

Data protection

Other concerns relate to the correct application of the rules for the respect of personal data, notably those allowing data subjects to request Member States to check information on their own data in the EURODAC database (using so-called "special searches", Article 18 EURODAC Regulation). During the reference period, more then 3 700 of such special searches have taken place, which is a surprisingly high number.

The Commission recalls that such searches are strictly limited to the application of data protection rules.

2.3.3. EURODAC's support to the Dublin Regulation

The objective of the EURODAC Regulation is to facilitate the application of the Dublin Regulation. It is, therefore, interesting to examine whether EURODAC has indeed contributed to the achievement of the Dublin Regulation objectives.

As noted previously, in 2005 16% of asylum applications were in fact **multiple applications**. This might indicate that the Dublin system did not have the expected deterrent effect against the "asylum shopping" phenomenon. Many asylum seekers continue trying to obtain a favourable decision for their case by lodging more than one asylum application. The provision of correct information to asylum seekers about the consequences of subsequent applications could be one of the measures which could help prevent this phenomenon.

As far as **evidence of illegal entry** is concerned, it should be stressed again that only if all Member States comply with the obligation to collect data of each alien who enters the EU illegally, will the EURODAC Regulation facilitate effectively the application of the Dublin Regulation.

Finally, it has been observed that Member States receive quite often results from the EURODAC Central Unit containing **multiple hits**, meaning that the asylum seeker's data have been registered by several Member States. On the basis of such information, it is not always obvious to determine which Member State bears the responsibility for examining the asylum claim, notably within the imposed time-limits.

In order to simplify the analysis of multiple hits, the Commission will propose mechanisms for Member States to keep each other informed of the status of EURODAC data subjects, as well as technical amendments to the transmission mechanism of data to the EURODAC Central Unit, notably in order to introduce more information about the status of asylum seekers.

2.3.4. Possible future developments of the EURODAC Regulation

The main objective of the EURODAC Regulation is to provide support for the quick identification of the Member State responsible for an asylum application. However, the information contained in the EURODAC database could also have other useful applications such as contributing to the prevention of the abuse of the asylum system.

Whilst Member States are obliged to store the fingerprints of aliens found illegally crossing their external border they are not required to store the same data for those found illegally staying on their territory.

However, Member States are already demonstrating a growing interest in using the details of third-country nationals found illegally on their territory as the figures for the period 2003-2005 evidence. Furthermore, there is a significant discrepancy between those found illegally present on a State's territory (101 884) and those apprehended in connection with irregular crossing of an external border (48 657). It is therefore proposed to store data relating to persons apprehended when illegally staying on a Member State's territory. This data will be useful when examining asylum applications, for example to assist in the prevention of abuse by verifying statements made by asylum applicants. Such data could be stored, in line with what happens with illegal border crossers, for an initial period of two years. The storage period could be extended in case the person is apprehended again.

The Commission intends to propose the storage of data of persons apprehended when illegally staying on the EU territory.

Furthermore, the Commission will explore, on the basis of further analysis and full impact assessment, the possibility to extend the scope of EURODAC with a view to use its data for law enforcement purposes and as a means to contribute to the fight against illegal immigration.

3. ANALYSIS OF DUBLIN FLOWS

Dublin flows in 2005			
		incoming transfers	**outgoing transfers**
1.	DE	2716	2748
2.	PL	1196	148
3.	NL	862	982
4.	SK	453	32
5.	IT	419	47
6.	UK	366	1824
7.	GR	350	6
8.	ES	315	52
9.	AT	805	589
10.	HU	160	6
11.	CZ	114	359
12.	SI	87	5
13.	LU	72	257
14.	IE	45	262
15.	MT	39	1
16.	PT	16	5
17.	LT	15	4
18.	LT	2	0
19.	CY	2	0
20.	EE	1	1
21.	IS	1	19
22.	BE	180	N/A
23.	FI	N/A	735
24.	SE	N/A	N/A
25.	NO	N/A	848
26.	FR	N/A	N/A

Contrary to a widely shared supposition that the majority of transfers are directed towards the Member States located at an external border, it appears that the overall allocation between border and non-border Member States is actually rather balanced. In 2005, the total number of all transfers to EU external border Member States was 3 055, while there were 5 161 transfers to non-border Member States.

The working document contains a detailed analysis attempting to determine to what extent these Dublin flows have affected the overall asylum seeker population in the Member States. In a nutshell, it appears that Dublin transfers did not increase or decrease the total number of asylum seekers by more than 5% in most Member States. However, in the case of Poland, the increase was around 20% and in the case of Slovakia, Lithuania, Latvia, Hungary and Portugal, around 10%. On the other hand, in the case of Luxembourg and Iceland, the number of asylum seekers decreased by around 20%.

Such a trend was also confirmed in the hypothetical case where all accepted transfers would be carried out, though with a much higher impact in the case of Hungary, Poland and Slovakia (increase of around 40%). Nevertheless, even in this case, there would be more transfers to non-border Member States (13 968) than to EU border ones (7 829).

It should be noted, however, that the majority of transfers correspond to "take back" cases[10], which, for the most part, do not correspond to new asylum applications for the destination Member States, since the applications were already registered in the asylum statistics and the examination of the application had already started.

It is worth noting also that results of searches of "category 1 transactions" against "category 2 transactions" show that those asylum seekers who had entered EU territory illegally before lodging their application, transited mainly via Spain, Italy and Greece. However, most persons apprehended at the border of these Member States subsequently applied for asylum in the same state they entered irregularly. On the other hand, those who did not apply for asylum and travelled further, headed mainly for the UK and France.

4. CONCLUSIONS

Overall, the objectives of the Dublin system, notably to establish a clear and workable mechanism for determining responsibility for asylum applications, have, to a large extent, been achieved.

Owing to the lack of precise data, it was not possible to evaluate one important element of the Dublin system, namely its cost. However, Member States consider the fulfilling of the political objectives of the system as very important, regardless of its financial implications.

Nevertheless some concerns remain, both on the practical application and the effectiveness of the system. The Commission will, therefore, propose the necessary measures in order to resolve these issues and further improve its effectiveness.

The present evaluation represents the first step in launching a debate on the future of the Common European Asylum Policy, which will start with the publication of a comprehensive Green Paper by the Commission in June 2007.

[10] See Table 2 of the working document.