



EMN Ad-Hoc Query on Ad-Hoc Query on the application of Sovereignty Clause in Dublin procedure

Requested by Suvi TIAINEN on 15th February 2016

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (24 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.



Background information:



Referring to the Ad-Hoc query requested by FI EMN NCP on 11th February 2014, Finland would like to request an update on the application of the Sovereignty Clause in Dublin procedure in the current situation of increased influx of asylum seekers to Europe. According to Council Regulation (EC) No 343/2003 article 3.2 (called the Sovereignty Clause) and Council Regulation (EU) No 604/2013 article 17.1 each Member State may, by way of derogation from Article 3.1, decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.



Questions




1. 1. In which cases does your country apply the sovereignty clause? Do you apply the sovereignty clause to whole categories of persons or on a case-by-case basis?
2. 2. Does your country have any general rules for implementing the sovereignty clause?
3. 3. Are there any statistics available on this matter? If available, please attach to this template.
4. 4. Have there been any changes to the application of the sovereignty clause in your member state during the latest period of increased influx of asylum seekers?


Responses


	Country	Wider Dissemination	Response
 	Austria	Yes	<p>1. Austria applies the sovereignty clause on a case-by-case basis. If indications are available or provided by the applicant, an Art 3 and /or 8 ECHR assessment is done in every case which also will be reflected in the written decision. Source: Federal Ministry of the Interior.</p> <p>2. Austria does not have general rules for implementing the sovereignty clause. The jurisprudence of the EU and national courts has influenced the decision-making on a case-by-case basis regarding asylum-seekers that refer to problems concerning the reception and living conditions and access to asylum procedure in the receiving member state. The most important impact on the application of article 3.2 (Dublin II Reg.) has been the ruling of the ECtHR in the</p>




			<p>case M.S.S. v Belgium and Greece and the judgment of ECJ in the case C-411/10 NS. Source: Federal Ministry of the Interior.</p> <p>3. At present there are no statistics available. In general, AT informs the originally responsible MS when making use of the sovereignty clause. Source: Federal Ministry of the Interior.</p> <p>4. n/a. Source: Federal Ministry of the Interior.</p>
	Belgium	Yes	<p>1. Belgium applies the sovereignty clause to certain categories of persons and it is also applied on a case-by- case basis. The sovereignty clause is applied on asylum seekers coming from Greece and for whom no other Member State could be identified as responsible for the examination. The sovereignty clause is often applied for families for whom Italy or Hungary is the responsible Member State. The sovereignty clause is also applied on a case-by-case basis to vulnerable cases as well as to cases concerning family ties and to certain medical cases.</p> <p>2. Belgium does not have any general rules for implementing the sovereignty clause. The jurisprudence of the EU and national courts has influenced the decision-making on a case-by-case basis regarding asylum-seekers that refer to problems concerning the reception and living conditions and access to asylum procedure in the receiving member state.</p> <p>3. Belgium started in January 2016 with collecting statistics on the Sovereignty clause. In January 2016 the Sovereignty clause has been applied for 327 persons.</p> <p>4. Yes, we notice an increase in the number of cases where Belgium applied the Sovereignty clause mainly based on family ties.</p>
	Bulgaria	Yes	<p>1. Bulgaria applies the sovereignty clause to certain categories of persons and it is also applied on a case-by-case basis. The sovereignty clause is applied when there are indications that the Member State responsible for examining the application for international protection is the Republic of Greece. Bulgaria applies this clause to all persons with respect to whom there are grounds to consider that their applications should be examined by Greece. When there are</p>




			<p>indications that another Member State is responsible for examining an application for international protection, the sovereignty clause is applied on a case-by-case basis. The sovereignty clause is also applied on a case-by-case basis to unaccompanied minors, as well as to certain medical cases.</p> <p>2. No rules regarding the application of the sovereignty clause have been laid down in the national legislation.</p> <p>3. There are no statistics available on this matter.</p> <p>4. There have not been any changes to the application the sovereignty clause.</p>
	Croatia	Yes	<p>1. Croatia applies the sovereignty clause on a case-by-case basis.</p> <p>2. Considering the fact that most asylum seekers come to Croatia from Greece, the most important impact on the application of article 3.2 has been the ruling of the ECtHR and CJEU jurisprudence.</p> <p>3. Due to the suspension of transfers to Greece on the basis of the Dublin III Regulation in 2015 there have been 41 cases where the sovereignty clause was applied.</p> <p>4. No changes in the application of the of Article 17, section 1 of the new Dublin III Regulation per se. Taking into account the current migration crisis situation the number of decisions based on sovereignty clause is expected to be increased.</p>
	Cyprus	Yes	<p>1. Cyprus applies the sovereignty clause on a case by case basis, taking into account for example vulnerability, family ties, health care, systemic deficiencies, human rights violations, reception conditions.</p> <p>2. No, there are no general rules but similar to FI, the ECtHR and CJEU jurisprudence has affected the decision to transfer applicants especially to Greece. There is however a constant monitoring of possible violation of fundamental rights from Member States as well as reception</p>



			<p>and living conditions and a decision to apply the sovereignty clause and to suspense future transfers is possible.</p> <p>3. Yes, since 2015 records are kept, but since no sovereignty clause was applied, no statistics are practically available.</p> <p>4. No</p>
	Czech Republic	Yes	<p>1. It is applied very rarely. If so, then it is on a case-by-case basis.</p> <p>2. No. Individual assessment is applied.</p> <p>3. Not available.</p> <p>4. No, nothing has changed in this regard.</p>
	Estonia	Yes	<p>1. Estonia applies sovereignty clause on case by case basis.</p> <p>2. Estonia does not have any general rules for implementing the sovereignty clause.</p> <p>3. Unfortunately statistics are not available, but the number of these cases is very low.</p> <p>4. No.</p>
	Finland	Yes	<p>1. Finland applies the sovereignty clause to certain categories of persons and it is also applied on a case-by- case basis. It is applied for example to certain nationalities for procedural reasons. There are national guidelines that are applied categorically in relation to asylum-seekers coming from Greece. The sovereignty clause is also applied on a case-by-case basis to a few vulnerable cases as well as to cases concerning family ties taking into consideration the best interest of the child. Finland has also taken responsibility of some human trafficking cases.</p>




			<p>2. Finland does not have any general rules for implementing the sovereignty clause. We have guidelines concerning Greece. The jurisprudence of the EU and national courts has influenced the decision-making on a case-by-case basis regarding asylum-seekers that refer to problems concerning the reception and living conditions and access to asylum procedure in the receiving member state. The most important impact on the application of article 3.2 has been the ruling of the ECtHR in the case M.S.S. v Belgium and Greece and the judgement of ECJ in the case C-411/10 NS, where the court ruled that a member state is obliged to examine an asylum application if transfer would expose the applicant to a serious risk of violation of fundamental rights.</p> <p>3. At the moment there are no exact statistics available concerning Finland.</p> <p>4. There have been no significant changes except numerically. The sovereignty clause is applied on a case-by-case basis taking into consideration the vulnerable cases and family unity. If the applications of family members that do not fall within the definitions of article 2 (g) should be processed in two different member states, the cases can be handled by one member state if otherwise the situation would be considered unreasonable. The number of applicants meeting the criteria of being considered vulnerable persons has diminished. In appeal cases the Administrative Court has also tightened the criteria for vulnerable cases.</p>
	France	Yes	<p>1. France can apply the sovereignty clause when it is not possible to process the migrant's transfer according to Article 3-2 of the Dublin regulation or on a case by case basis for reasons linked to the migrant's interest, in particular if s/he has special links with France.</p> <p>2. There is no general rule for implementing the sovereignty clause in France which is processed on a case by case basis. The decision to apply this clause depends on the "préfet" competent for the application. For Article 3-.2, for example Greece, instructions apply to all prefectures.</p> <p>3. see attached</p> <p>4. No change</p>



	Germany	Yes	<p>1. 1. The German Federal Office has not carried out any transfers to Greece since January of 2011. In all cases where some reference to Greece prevails, that is where a transfer to Greece might have to be applied, the German Federal Office does not carry out any transfers to Greece in accordance with Article 3, section 2 Dublin III Regulation, due to systemic shortcomings existing in Greece. This procedure will be applicable until 30 June 2016 and is subject to a different assessment that might be made within the European Union. Only a limited number of persons has been transferred to Malta since 2009. Persons requiring particular protection (e.g. pregnant women, persons over the age of 65 years, families with small children, unaccompanied minors, sick persons and those requiring care) are not being transferred to Malta. In such cases, too, the sovereignty clause is applied in order to alleviate the burden on the asylum system of Malta. Furthermore and in individual cases vulnerable persons are not transferred to Bulgaria either. Families with children under the age of 16 years are not transferred to Italy in accordance with the decision taken by the ECHR dated 04 November 2014 (legal case Tarakhel / Switzerland) as Italy does not deliver individual assurances regarding accommodation fit for children. Only a limited number of transfers to Hungary take place because of the quota as fixed (e.g. only 12 persons per day from Monday to Thursday by means of air travel to Budapest, this figure applying to all of the Member States together. Transfers to all other Member States take place without any limitation. However, the sovereignty clause may be applied in individual cases depending on the circumstances prevailing in such individual cases.</p> <p>2. 2. The application of the sovereignty clause is subject to a restrictive use as otherwise the system of jurisdiction jointly agreed in the Dublin Regulation would be undermined. The application of the sovereignty clause may also be appropriate prior to the request for transfer. Reasons for applying the sovereignty clause may be the avoidance of special humanitarian hardship. Here the German Federal Office always carries out a case-by-case assessment. The application of the sovereignty clause always depends on the individual situation of each person. The duration of the stay in Germany or of the attendance of schools as well as the integration efforts are not covered by the scope of application governed by Article 17, section 1 of the new Dublin III Regulation.</p> <p>3. 3. Due to the suspension of transfers to Greece on the basis of the Dublin III Regulation there have been 5.436 cases where the sovereignty clause was applied. In 2015 the sovereignty clause</p>
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			<p>was applied for 55 persons with regard to Malta, for 572 persons with regard to Bulgaria and for 999 persons with regard to Italy. The total number of cases where the sovereignty clause was applied in the year 2015 is 10.495 persons.</p> <p>4. No changes in the application of Article 17, section 1 of the new Dublin III Regulation.</p>
	Hungary	Yes	<p>1. In Hungary the sovereignty clause is applied to certain categories of persons and it is also applied on a case-by-case basis. It is applied automatically in relation to asylum seekers coming from Greece, and it is also applied on a case-by-case basis (e.g. in cases of vulnerable persons or because of family reasons).</p> <p>2. Hungary does not have any general rules for implementing the sovereignty clause. The most important impact on the application of the sovereignty clause has been the ruling of the ECtHR in the case M.S.S. v Belgium and Greece.</p> <p>3. At the moment there are no exact statistics available concerning Hungary.</p> <p>4. No.</p>
	Ireland	No	
	Italy	Yes	<p>1. Italy applies the sovereignty clause on a case-by-case basis. A distinction is made between outgoing and incoming cases. For the latter cases, in fact, the acceptance of an application is subject to the discretion of the other Member State. In order to determine the responsibility of Italy under Article 17, reference is made to the usual interpretation adopted by Member States: for instance, “health problems” are no longer considered valid grounds, if they can be treated in all Member States.</p> <p>2. Since the Regulation is immediately enforceable, no specific rules are required regulating the application of the sovereignty clause.</p>

			<p>3. The statistics available on this matter at the moment are Eurostat statistics.</p> <p>4. No, as Italy is a country of first entry.</p>
	Latvia	Yes	<p>1. Latvia applies the sovereignty clause on a case-by-case basis. In the last 2 years the sovereignty clause has been mainly applied in cases concerning Greece.</p> <p>2. Latvia does not have any general rules for implementing the sovereignty clause. We are taking into account the ruling of the ECHR in the case M.S.S. v Belgium and Greece and UNHCR reports concerning the situation in the Member States.</p> <p>3. In year 2014 the sovereignty clause has been applied in 22 cases. In year 2015 – has not been applied.</p> <p>4. No significant changes so far.</p>
	Lithuania	Yes	<p>1. The sovereignty clause has been applied rarely, on a case-by-case basis, mostly in relation to family ties in Lithuania.</p> <p>2. There are no general rules for implementing the sovereignty clause in Lithuania, decisions have been taken on a case-by-case basis, taking into consideration Art. 8 ECHR and relevant jurisprudence.</p> <p>3. There are no statistics available. There were only a few cases.</p> <p>4. There are no changes to the application of the sovereignty clause in Lithuania. It should be noted that recently the number of asylum seekers in Lithuania has not increased.</p>
	Luxembourg	Yes	<p>1. In general LU applies the sovereignty clause on a case-by-case basis. However for international protection seekers coming from Greece and Hungary, the sovereignty clause is</p>

			<p>applied systematically. The application of the sovereignty clause in relation to Hungary is based on national case law.</p> <p>2. Usually LU does not have any general rules for implementing the sovereignty clause.</p> <p>3. No, LU does not establish statistics on this matter.</p> <p>4. No.</p>
	Netherlands	Yes	<p>1. The Netherlands applies the sovereignty clause restrictively and only on a case-by-case basis (e.g. on humanitarian grounds).</p> <p>2. Legislation mentions two situations wherein this clause can be applied. These are: when there are specific indications that the responsible Member State fails to fulfil its international obligations or when special individual circumstances will lead to disproportionate harshness when transferred.</p> <p>3. At the moment there are no statistics available. Statistics can be requested. An indication will be one case a year.</p> <p>4. There have not been any changes in the application of the sovereignty clause during the latest period of increased influx of asylum seekers.</p>
	Poland	No	
	Slovak Republic	Yes	<p>1. Slovak Republic applies the sovereignty clause on a case-by-case basis. SK respects all relevant judgements of ECJ.</p> <p>2. No, Slovak Republic does not have any general rules.</p>

			<p>3. No, there are no statistics available yet.</p> <p>4. No, there have been no changes applied.</p>
	Slovenia	Yes	<p>1. The sovereignty clause is applied on case by case basis (individually).</p> <p>2. NO</p> <p>3. NO</p> <p>4. NO</p>
	Spain	Yes	<p>1. The criterion of Spain to apply article 17 is to take into consideration the family ties. It does not matter if the person is or not member of family or if the person is married with an EU citizen or has siblings or relatives living in Spain. We study case by case in order to keep together the family which is the main reason to apply this clause.</p> <p>2. See above.</p> <p>3. No</p> <p>4. No</p>
	Sweden	Yes	<p>1. The discretionary clause* is applied in case-to-case-basis where the individual circumstances of the applicant is taken into account. * We have chosen to use the term "discretionary clause" instead of "sovereignty clause" since this is the term used in the latest regulation.</p> <p>2. There is some national jurisprudence (regarding article 3.2 of the old Dublin Regulation which corresponds to article 17.1 of the current regulation). The Swedish Migration Agency also has internal guidelines regarding its application. It is mostly applied in order to keep families</p>

			<p>together where the provisions of articles 8-11 might not be applicable. It might also be used in difficult humanitarian circumstances (life threatening health issues etc.)</p> <p>3. Sweden only started to collect statistics regarding the application of article 17.1 in mid-2014. From May to December 2014 there were 37 cases (this figure might be somewhat misleading since it took a while for the units to routinely register the data). In 2015, the discretionary clause was used in 260 cases. During the same period (i.e. 2015) 5790 transfer decisions were taken in Sweden.</p> <p>4. No changes in the application of the clause per se. However, an increase in numbers because of the rise of the total number of asylum seekers in Sweden in 2015. The total number of asylum seekers rose to 163 000 in 2015 from 80 000 in 2014.</p>
	United Kingdom	Yes	<p>1. With the exception of cases that would otherwise involve transfer to Greece following the rulings in MSS vs Belgium and Greece and NS vs the UK the UK applies the sovereignty clause on a case-by-case basis.</p> <p>2. No, although it is perhaps more likely that cases where we do exercise our discretion to use the sovereignty clause to take responsibility of the case will involve humanitarian issues, such as serious illness/ill-health, individual vulnerability/special needs, exceptional family considerations etc.</p> <p>3. Not at present</p> <p>4. No.</p>
	Norway	Yes	<p>1. NOTE: not many changes since AHQ in 2012 We apply the sovereignty clause to categories of persons and also on a case-by-case basis. • Categories of persons: ¥ Applicants from countries that the UDI deems to be safe. Their applications will be assumed to be without foundation. This is because the authorities of certain home countries normally have both the will and ability to protect applicants if they are subject to persecution or inhumane treatment (The 48-hour</p>

			<p>procedure). ¥ Applicants in cases where Greece is the responsible Member State. ¥ Human trafficking: where the applicant is a witness in a criminal case concerning trafficking or where the police are in need of the person's presence during the police investigation / prosecution concerning trafficking. ¥ Applicants who can easily be returned to their country of origin. • On case-by-case basis: An application for protection shall be examined on its merits if the applicant has a connection with the realm that makes it most logical that Norway examine it. The connection can be close family members in the realm. If the applicant does not have any connection to the realm, the application can only be examined on its merits if there are special grounds for doing so. As a general rule, health factors do not qualify as grounds for this consideration.</p> <p>2. Yes, Norway has a general rule for implementing the sovereignty clause in paragraph 32 (2) in Immigration Act cf. paragraph 7-4 Immigration Regulations.</p> <p>3. 519 cases which were lodged in Norway in 2015 were marked with a specific code showing that Greece was the MS responsible. Due to the fact that this code is registered manually, the actual number of cases in which Greece was the MS responsible may be higher. In 2012 there were 61 cases. see attachment for statistics</p> <p>4. There have been no changes to the application of the sovereignty clause during the period of increased influx of asylum seekers.</p>
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