



## **Ad-Hoc Query on Sovereignty Clause in Dublin procedure**

**Requested by FI EMN NCP on 11<sup>th</sup> February 2014**

**Compilation produced on 14<sup>th</sup> November 2014**

**Responses from Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Sweden, United Kingdom plus Norway (21 in Total)**

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### **1. Background Information**

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.

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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. Does your country have any general rules for implementing the sovereignty clause?
3. Are there any statistics available on this matter? If available, please attach to this template. (Article 17.1.3 requires that the Member State which becomes responsible pursuant to this paragraph, will indicate it in the Eurodac by adding the date when the decision to examine the application was taken).

We would very much appreciate your responses by **7 March 2014**.

## 2. Responses

		Wider Dissemination?	
	<b>Austria</b>	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Belgium</b>	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 also applied on a case-by-case basis to a few 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. At the moment there are no statistics available concerning the application of the sovereignty clause in Belgium.</p>
	<b>Bulgaria</b>	Yes	<p>1. The Republic of Bulgaria applies the sovereignty clause in the cases in which 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 indications that another Member State is responsible for examining a given application for international protection, the application of the sovereignty clause is decided upon on a case-by-case basis.</p> <p>2. No rules regarding the application of the sovereignty clause have been laid down in the Bulgarian legislation.</p>

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			<p>3. No statistics regarding the application of the sovereignty clause are available.</p> <p>The provision under Art.17.1 has not been applied in Bulgaria from 1 January 2014 to the present time.</p> <p>We think that the requirement under Article 17.1.3 should be complied with in accordance with Regulation (EU) № 603/2013. Since this regulation will be implemented starting from 20 July 2015, it follows that the cases in which the sovereignty clause is applied should be indicated in the Eurodac from this moment onwards.</p>
	<b>Cyprus</b>	<b>Yes</b>	<p>1. Cyprus applies the sovereignty clause on a case by case basis i.e vulnerability, family ties, health care.</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 and living conditions and a decision apply the sovereignty clause and to suspense future transfers is possible.</p> <p>3. There are no statistics available</p>
	<b>Czech Republic</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Estonia</b>	<b>Yes</b>	<p>1. So far Estonia hasn't had such cases. Therefore we do not have special category of cases nor the national guidelines.</p> <p>2. According to Act on Granting International Protection to Aliens paragraph 21 the asylum proceedings are terminated by a decision to reject the application for asylum if another country is responsible for reviewing the application for asylum according to a treaty or Regulation (EU) No 604/2013 of the European Parliament and of the Council. So on the one hand our legislation doesn't allow taking the responsibility for another Member State. But in the other hand we aware of the notifications from UNHCR (suspending transfers to Bulgaria) and the ruling of the European Court of Human Rights concerning the case of M.S.S. v. Belgium and Greece. Therefore we share the same opinion and concerning our department we have taken the position that if we have such cases we suspend transfers to Greece and Bulgaria unless we get new information that the situation has improved.</p> <p>3. Since we haven't had such cases, we cannot provide any statistics.</p>
	<b>Finland</b>	<b>Yes</b>	<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</p>

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			<p>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. Please note that this response does not represent the official policy of Finland as this query is posed by an individual researcher.</p>
	<b>France</b>	<b>Yes</b>	<p>1. In France, when the prefectures allow third country nationals to stay on the territory, it is always on a case-by-case basis.</p> <p>2. No, there are no general rules for implementing the sovereignty clause in France.</p> <p>3. The article 17.1.3 is part of the new regulation “Dublin III” in force since January 2014 in France: there are no statistics available at this stage.</p>
	<b>Germany</b>	<b>Yes</b>	<p>1. Since January 2011, no transfers to Greece have been carried out. Instead, all cases with reference to Greece, i.e. cases in which a transfer to Greece would come into consideration, Germany has been exercising the right to assume responsibility. With regard to Malta, only a limited group of persons has been transferred to this country since September 2009. Persons in particular need of protection (such as pregnant women, people over 65, families with small children, unaccompanied minors and people in need of care) are not transferred to Malta. In these cases, Germany is exercising the right to assume responsibility in order to reduce Malta’s burden. All other Member States are subject to unrestricted transfer. However, the right to assume responsibility may be exercised on a case-to-case basis, depending on the individual circumstances.</p> <p>2. The right to assume responsibility is subject to restrictive application so as to prevent undermining the agreed system for the allocation of responsibility laid down in the Dublin Regulation. If necessary, the right to assume responsibility may be exercised even before a transfer request was lodged. The reasons for the assumption of responsibility include the aim to prevent humanitarian hardship. In this context, the Federal Office for Migration and Refugees (BAMF) always carries out an assessment of the individual case. As a rule, assumption of responsibility depends on the individual situation of the person(s) concerned. Neither the duration of stay in Germany nor the length of schooling nor integration efforts are covered by the scope of Article 17(1) of the new Dublin Regulation.</p> <p>3. Due to the suspension of transfers to Greece on the basis of the Dublin Regulation, there were 3,879 cases where Germany assumed responsibility in 2013. With regard to Malta, Germany assumed responsibility for 60 people in 2013. There are no statistics available on other individual cases where responsibility was assumed in 2013.</p>
	<b>Hungary</b>	<b>Yes</b>	<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. (eg. in cases of vulnerable</p>

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			<p>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>
	<b>Ireland</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Latvia</b>	<b>Yes</b>	<p>1. Latvia applies the sovereignty clause on a case-by-case basis. In last 3 years the sovereignty clause has been applied in cases concerning Greece. Taking into account the current situation in Bulgaria the sovereignty clause could to be applied also in cases concerning Bulgaria.</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. Not collected.</p>
	<b>Lithuania</b>	<b>Yes</b>	<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 few cases, moreover the sovereignty clause has not been applied once since Dublin III regulation came into force.</p>
	<b>Luxembourg</b>	<b>Yes</b>	<p>1. In general LU applies the sovereignty clause on a case-by-case basis. However for the asylum seekers coming from Greece, the sovereignty clause is applied systematically, unless they have a residence permit.</p> <p>2. Usually LU does not have any general rules for implementing the sovereignty clause. However, as mentioned in the first response, LU applies the sovereignty clause systematically for the asylum seekers coming from Greece. No, we do not establish statistics on this matter.</p>
	<b>Malta</b>	<b>Yes</b>	<p>1. Malta applies the sovereignty clause on a case-by-case basis. It has been applied for humanitarian reasons and for family reunification. Malta has also applied the sovereignty clause in cases where Greece was identified as the responsible Member State in accordance with the ruling of the ECtHR in the case of MSS vs. Belgium.</p> <p>2. There are no general rules for implementing the sovereignty clause. Each case is considered on its own individual circumstances.</p>

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			3. MT has applied the clause 39 times and did not transfer to Greece.
	<b>Netherlands</b>	<b>Yes</b>	<p>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? We apply the sovereignty clause on a case by case basis.</p> <p>2. Does your country have any general rules for implementing the sovereignty clause? We don't have any other general rules for implementing the sovereignty clause. We apply article 17 of the Dublin Regulation.</p> <p>3. Are there any statistics available on this matter? If available, please attach to this template. (Article 17.1.3 requires that the Member State which becomes responsible pursuant to this paragraph, will indicate it in the Eurodac by adding the date when the decision to examine the application was taken). We don't have any statistics on this matter.</p>
	<b>Portugal</b>	<b>Yes</b>	<p>1. Portugal applies the sovereignty clause on a case-by- case basis.</p> <p>2. There are no national guidelines in this matter. In practice Portugal, always on a case-by-case basis, considers to apply the sovereignty clause in cases of vulnerable applicants or in cases concerning family ties.</p> <p>3. At the moment there are no exact statistics available.</p>
	<b>Slovak Republic</b>	<b>Yes</b>	<p>1. Slovak Republic applies the sovereignty clause on a case-by-case basis. SK respects the decision of the case C-411/10 NS and all relevant judgements of ECJ.</p> <p>2. Slovak Republic does not have any general rules.</p> <p>3. There are no statistics available yet.</p>
	<b>Sweden</b>	<b>Yes</b>	<p>1. The sovereignty clause is used in a case-to-case basis and are based on the specific circumstances of the case at hand.</p> <p>2. As mentioned above, the clause is used on a case-to-case basis. However, the Swedish Migration Board has internal guidelines (based on national and European jurisprudence) according to which special consideration regarding family unity and humanitarian aspects are made when applying the sovereignty/discretionary clause.</p> <p>3. We are unfortunately unable to produce any statistic in this regard since there is no automatic registration of these cases in our system.</p>

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	<b>United Kingdom</b>	<b>Yes</b>	<p>1. With the exception of cases that would otherwise involve transfer to Greece following the rulings in <i>MSS vs Belgium and Greece</i> and <i>NS vs the UK</i> 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>
	<b>Norway</b>	<b>Yes</b>	<p>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?          We apply the sovereignty clause on categories of persons <u>and</u> also on a case-by-case basis.</p> <ul style="list-style-type: none"> <li>• Categories of persons:           <ul style="list-style-type: none"> <li>➤ 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 procedure).</li> <li>➤ Applicants in cases where Greece is the responsible Member State.</li> <li>➤ 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.</li> <li>➤ Criminal applicants, who can easily be returned to their country of origin</li> </ul> </li> </ul> <p>On case-by-case :</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul> <p>2. Does your country have any general rules for implementing the sovereignty clause?          Yes, Norway has a general rule for implementing the sovereignty clause in paragraph 32 (2) in Immigration Act cf. paragraph 4- 7 Immigration Regulation.</p> <p>3. Are there any statistics available on this matter? If available, please attach to this template. (Article 17.1.3 requires that the Member State which becomes responsible pursuant to this paragraph, will indicate it in the Eurodac by adding the date when the decision to examine the application was taken).          The statistics for 2013 are unfortunately not completely ready yet though we do know that we used this clause 161 times towards Greece. We have some figures for 2012 but please note that these are not accurate figures for the number of cases in which Article 3 (2) was applied.</p>

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			<p>The sovereignty clause was applied by the UDI and the Appeals Board on at least 20 applications, including 7 accompanying children, after an individual assessment of the particular facts of the cases. The main reason for the application of Article 3 (2) in these cases was family ties, consideration of the best interests of the child, and the applicant's severe health condition.</p> <p>61 cases of the 9 785 (0, 6%) which were lodged in Norway in 2012 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 these 61 cases, Art 3 (2) was applied</p>
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