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NOTE

from:	the Netherlands delegation
Subject:	Pending cases and developments in the case law of the Court of Justice / European Court of Human Rights

The Dublin Regulation

In the Grand Chamber judgment in the case *M.S.S. v Belgium and Greece*, Application no. 30696/09, 21 January 2011, the ECHR holds that there has been a violation of article 3 of the Convention. The Strasbourg Court ruled that by sending back the applicant to Greece pursuant to the Dublin Regulation, he was exposed to the risks linked to the deficiencies in the asylum procedure and the detention and living conditions in that Member State.

As a result of this judgment, several Member States have concluded that a suspension of Dublin transfers to Greece is inevitable until the deficiencies in the Greek asylum system have been solved. This implies that the responsibility for the examination of the application shall lie with another Member State, once the applicant is in the territory of a Member State other than Greece.

The question the Netherlands would like to discuss is: which Member State becomes responsible?

For applicants who *at the time of the judgment* were in the territory of a Member State other than Greece awaiting their Dublin-transfer to Greece, the Netherlands call upon all Member States to take responsibility (as a consequence of the ECHR judgment) for these cases.

For applicants who firstly *after the ECHR judgment* move into the territory of Member State A, the responsibility shall lie with the Member State which the criteria established in the Dublin Regulation indicate is responsible. If this is Greece, Member State A shall refrain from calling upon Greece to take charge of or take back the applicant and take responsibility.

Yet, when more Member States get involved, the picture looks more complex. What to do in case the applicant in the previous example rapidly absconds from Member State A (after having lodged an asylum application there) into the territory of Member State B? Normally, Member State B would call upon Greece to take charge of or take back the applicant (chain rule). The Netherlands would like to propose to now call upon Member State A to take back the applicant. By doing so Member States may prevent that applicants for whom the Dublin Regulation indicates Greece is responsible, will 'escape' the working of the Dublin Regulation and thereby be able to travel around Europe and chose the Member State of their liking.