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1 March 2019

Third edition of a briefing originally drafted by Detelin Ivanov

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

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# Reform of the Dublin system

The refugee and migrant crisis in Europe has exposed the need for reform of the Common European Asylum System, in general, and of the Dublin rules, in particular. The Commission's proposal of 4 May 2016 to reform the Dublin system would not change the existing criteria for determining which Member State is responsible for examining an asylum application.

Instead of a fundamental overhaul of the Dublin regime, as suggested by Parliament, the Commission proposed to streamline and supplement the current rules with a corrective allocation mechanism. This mechanism would be triggered automatically were a Member State to be faced with disproportionate numbers of asylum-seekers. If a Member State decided not to accept the allocation of asylum-seekers from another one under pressure, a 'solidarity contribution' per applicant would have to be made instead.

An agreement on the balance between responsibility and solidarity regarding the distribution of asylum-seekers will be a cornerstone for the new EU asylum policy. Although Parliament's LIBE committee adopted its position in autumn 2017, the Council has been unable to reach a position on the proposal.

**Proposal for a 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 (recast)**

COM(2016) 270, 4.5.2016 2016/0133(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

Committee responsible:	Civil Liberties, Justice and Home Affairs (LIBE)
Rapporteur:	Cecilia Wikström (ALDE, Sweden)
Shadow rapporteurs:	Alessandra Mussolini (EPP, Italy); Elly Schlein (S&D, Italy); Daniel Dalton (ECR, UK); Cornelia Ernst (GUE/NGL, Germany); Jean Lambert (Greens/EFA, UK); Laura Ferrara (EFDD, Italy)
Next steps expected:	Trilogue negotiations





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## Introduction

In recent years, Europe has had to respond to the most severe migratory challenge since the end of the Second World War. According to [Eurostat](#), 1 204 300 first time asylum-seekers applied for international protection in the EU in 2016, compared with 1 257 000 in 2015 and 526 700 in 2014. In absolute values, the EU Member States to receive the highest number of asylum-seekers in 2016 were Germany (722 300), Italy (112 200), France (76 000), Greece (49 900) and Austria (39 900). As regards migrants' countries of origin, the majority of asylum-seekers in the EU in 2016 came from Syria (334 800), Afghanistan (183 000) and Iraq (127 000).

According to the International Organization for Migration ([IOM](#)), 5 082 migrants lost their lives trying to cross the Mediterranean Sea in 2016, compared with 3 777 in 2015 and 3 279 in 2014. According to [UNHCR](#), the number of dead or missing persons in the Mediterranean is 5 022 in 2016, 3 771 in 2015, and 3 500 in 2014.

Although record-high [migratory flows](#) to the EU witnessed during 2015 and 2016 had subsided by the end of 2017, and did not climb again in 2018, Europe, due to its geographical position and its reputation for stability, generosity and openness, is likely to continue to [represent](#) a cradle of refuge for asylum-seekers and migrants amid growing international and internal conflicts, climate change and global poverty. The EU needs therefore to increase its preparedness for receiving large numbers of people through reforming the Common European Asylum System, in general, and the Dublin rules, in particular, to ensure greater solidarity and fairer sharing of responsibility among Member States.

## Existing situation

The Dublin regime was originally established by the [Dublin Convention](#), signed in Dublin, Ireland, on 15 June 1990. In 2003, the Dublin Convention was replaced by the [Dublin II Regulation](#). In 2013, the [Dublin III Regulation](#) was adopted, replacing the Dublin II Regulation. The Dublin III Regulation has been in force since 1 January 2014.

The Dublin system was not designed with a view to ensure the *sharing* of responsibility; its main purpose from the very beginning was to assign responsibility for processing an asylum application to a single Member State.

The Dublin III Regulation identifies the EU country responsible for examining an asylum application, by using a hierarchy of criteria such as family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry. In practice, however, the most frequently applied criterion is the irregular entry, meaning that the Member State through which the asylum-seeker first entered the EU is responsible for examining his or her asylum claim.

The current migration and refugee crisis has revealed significant structural weaknesses in the design and implementation of the CEAS and of the Dublin regime. This has been confirmed by recent [external studies](#) on the Dublin system and acknowledged by the Commission in its [communication](#) of 6 April 2016.



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## Parliament's starting position

Since 2009, the Parliament has consistently been calling for a binding mechanism for the fair distribution of asylum-seekers among all EU Member States (see EP resolutions of [25 November 2009](#), [11 September 2012](#), [9 October 2013](#), [23 October 2013](#), [17 December 2014](#), [29 April 2015](#), and [10 September 2015](#)).

In its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the Parliament made clear its position on the reform of the Dublin system:

- > The criterion that it is the Member State of first entry that is responsible for the examination of a claim for international protection should be revised.
- > One option for a fundamental overhaul of the Dublin system would be to establish a central collection of applications at Union level – viewing each asylum-seeker as someone seeking asylum in the Union as a whole and not in an individual Member State – and to establish a central system for the allocation of responsibility for anyone seeking asylum in the Union.
- > Such a system could provide for certain thresholds per Member State relative to the number of arrivals, which could conceivably help in deterring secondary movements, as all Member States would be fully involved in the centralised system and no longer have individual responsibility for allocation of applicants to other Member States. Such a system could function on the basis of a number of Union 'hotspots' from where Union distribution should take place.
- > Any new system for allocation of responsibility must incorporate the key concepts of family unity and the best interests of the child.



## Proposal

### Preparation of the proposal

In 2015, the Commission asked an external consultancy (ICF International) to prepare two studies: an [Evaluation of the Implementation of the Dublin III Regulation](#) and an [Evaluation of the Dublin III Regulation](#). These exposed a number of shortcomings in the design and implementation of the Dublin system.

In addition to the external evaluation, the Commission undertook targeted consultations with the coordinators of the political groups on the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, with Member States and with other stakeholders.

### The changes the proposal would bring

While keeping unchanged the existing criteria for determining which EU country is responsible for examining an asylum application, the Commission proposes to streamline and supplement the Dublin system with a corrective allocation mechanism (the so-called 'fairness mechanism'). The main elements of the proposal are:

- > A new **automated system** to monitor the number of asylum applications received and the number of persons effectively resettled by each Member State.
- > A **reference key** to determine when a Member State is under disproportionate asylum pressure.
- > A **fairness mechanism** to address and alleviate that pressure.

#### Automated registration and monitoring system

The development of a new automated registration and monitoring system is proposed. It would consist of a central system, a national interface in each Member State, and communication infrastructure between the central system and the national interface.

The automated system would record each asylum application made in the EU as well as the number of people each Member State effectively resettles. The central system would be run by a new [proposed](#) European Union Agency for Asylum.

#### Determination of a Member State being under disproportionate asylum pressure

A reference key is proposed to show the indicative share of the total number of asylum applications made in the EU that each Member State would receive if they were allocated according to a country's size and wealth.

This reference key would be based on two criteria with equal weighting: the size of the population, and the total gross domestic product (GDP) of a Member State.



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Comparing the reference share to the actual distribution of asylum claims would help determine when one Member State is responsible for a disproportionate amount of asylum applications compared with other Member States.

Resettlements would be included under the number of asylum applications, to acknowledge the importance of efforts to implement legal and safe pathways to Europe.

### Fairness mechanism

It is proposed that a fairness mechanism be applied when Member States are confronted with a disproportionate number of asylum applications. If the number of asylum applications made in a Member State is above 150% of the reference share, the fairness mechanism will be automatically triggered. All new asylum applications made after the triggering of the mechanism will be relocated across the EU.

If a Member State decides not to accept the allocation of asylum applicants from a Member State under pressure, a 'solidarity contribution' of €250 000 per applicant would have to be made.

New arrivals to Member States benefiting from the fairness mechanism will be relocated across the EU until the number of applications falls back below 150% of the country's reference share.

### Budgetary implications

According to the Commission, the financial resources necessary to support implementation of this proposal would total €1 828.6 million for the 2017-2020 period. The Commission asserts that these financial needs are compatible with the current multiannual financial framework.

### Preliminary analysis

The Commission's proposal was analysed in a June 2016 study on [The Reform of the Dublin III Regulation](#), commissioned by EP Policy Department C at the request of the LIBE Committee.

Francesco Maiani, the author of the study, argues that, by retaining the Dublin philosophy and relying on more coercion, the Commission's proposal is unlikely to achieve its objectives, while raising human rights concerns.

He advocates re-centring EU responsibility-allocation schemes on one key objective – quick access to asylum procedures. This would require taking protection-seekers' preferences seriously and de-bureaucratising the process.

According to him, such a reform would need to be accompanied by (a) stepping up the enforcement of refugee rights across the EU, (b) moving solidarity schemes from a logic of capacity-building to one of compensation, and (c) granting protected persons real mobility rights.



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## Views

### Advisory committees

In its [opinion](#) on the reform of the CEAS, adopted on 8 December 2016, the Committee of the Regions (CoR):

- > Considers that the approach taken by the Commission in the proposal to reform the Dublin Regulation is inadequate.
- > Recommends building greater consideration for what asylum applicants have done, their professional experience and what they want, into the proposal, thereby discouraging secondary movements. The CoR stresses that positive incentives should be privileged wherever possible over sanctions in trying to avoid unwanted secondary movements.
- > Suggests that in order to establish a Member State's real and current reception capacity, the number of arrivals in that country should also be taken into account, by incorporating this parameter into the reference key.
- > Welcomes the introduction of a corrective mechanism for the allocation of applicants for international protection. However, the CoR points out that the threshold proposed by the Commission for triggering the mechanism is so high that even in times of crisis, the mechanism might not be triggered and so would be of no structural benefit.

In its [opinion](#) on the reform of the CEAS, adopted on 19 October 2016, the European Economic and Social Committee (EESC):

- > Considers it essential to carry out an efficient and effective reform of the CEAS and improve legal means of accessing the EU based on the principle of respecting persecuted people's human rights.
- > Approves of the proposed objective to improve and speed up the determination procedures in the interest of better efficiency, but believes that protective provisions should be clarified and included on procedural issues, individual treatment of applications, maintenance of discretionary clauses, maintenance of the deadline for the cessation of obligation for a Member State to assume responsibility, the rights of applicants, and the limitation of the corrective relocation mechanism.
- > Stresses that all Member States should be responsible for providing applicants with detailed and up-to-date information regarding the procedures under the Dublin system.
- > Points out that the principle of proportionality should be assured so that the system is sustainable in practice, with regard to applicants' quick access to the asylum procedure and the capacity of Member States' administrations to apply the system.

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## National parliaments

The national parliaments of six Member States (Hungary, Slovakia, Czech Republic, Poland, Romania, and Italy) have [submitted](#) reasoned opinions stating that the Commission proposal does not comply with the principle of subsidiarity.

## Stakeholders' views<sup>1</sup>

In its [comments](#) on the Commission proposal for a Dublin IV Regulation, the **European Council on Refugees and Exiles** (ECRE) makes a number of observations and recommendations as regards the proposed obligation of the Member State of first entry to assess certain grounds for inadmissibility; restricting the scope of the discretionary clauses; the cessation of responsibility after a period of time; provisions related to the obligations of the applicants; the human rights test for suspending Dublin transfers; the proposed expansion of the definition of family members; transfers of unaccompanied children to the country of first application; limitations on the scope of appeals against transfer decisions; and the solidarity mechanism.

In its [opinion](#) on the impact on children of the proposal for a revised Dublin Regulation, the European Union **Agency for Fundamental Rights** (FRA) examines the potential effects on children of the envisaged changes to the Dublin system. The opinion addresses the issues of excluding certain categories of applicants from the Dublin Regulation and its impact on the rights of the child and the right to respect for family life; the impact of sanctions for unauthorised secondary movements; procedural safeguards for children; best interests of the child; and the corrective allocation mechanism and fundamental rights.

In his [opinion](#) on the first reform package on the CEAS (Eurodac, EASO and Dublin Regulations), the **European Data Protection Supervisor** (EDPS) recommends stating in the Dublin Regulation that the introduction of the use of a unique identifier in the Dublin database may not, in any case, be used for other purposes than the purposes described in the Dublin Regulation. The opinion further defines other shortcomings of the different proposals and identifies additional recommendations in terms of data protection and privacy that should be taken in consideration in the legislative process.

In a [briefing paper](#) of September 2016, the **International Commission of Jurists** (ICJ) presents comments on key procedural aspects of the proposed Dublin Regulation. The paper raises concerns at the introduction of excessively short time-limits for asylum-seekers to access an effective remedy. It further opposes the limitation of the material scope of the remedy, and expresses concern at the punitive measures imposed on asylum-seekers, in particular when they lead to the loss of access to their rights.

In its note [CM1609](#), the **Meijers Committee** (CM) raises a number of concerns as regards the proposed reform of the Dublin Regulation. The note covers the issues of effective remedies; obligations of the applicant; cessation of responsibility and deleting the discretionary and sovereignty clauses; unaccompanied minors; first country of asylum and safe third country.

<sup>1</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



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Academic views In a [paper](#) of October 2016, Marcello Di Filippo offers a strong critique of the Commission's proposal for a new Dublin Regulation and presents a set of recommendations on how to address the problem of allocating responsibility for processing asylum applications.





## Legislative process

The Commission adopted its proposal [COM\(2016\) 270 final](#) on 4 May 2016. The proposal would recast the Dublin III Regulation and should be adopted on the same legal basis, namely Article 78, second paragraph, point (e) of the [TFEU](#), in accordance with the ordinary legislative procedure.

### European Parliament

The proposal was [assigned](#) to the Civil Liberties, Justice and Home Affairs Committee (LIBE), with Cecilia Wikström (ALDE, Sweden) appointed as rapporteur. The Committees on Foreign Affairs ([AFET](#)) and on Budgets ([BUDG](#)) adopted opinions on 4 May 2017 and 17 May 2017 respectively.

On 6 November 2017, the European Parliament confirmed a mandate for interinstitutional negotiations with the Council on the basis of the [report](#) adopted by the LIBE committee on 19 October. The main suggestions for a new Dublin Regulation, as confirmed in the report, are:

- > asylum-seekers who have a 'genuine link' with a particular Member State should be transferred to it – the first relocation criteria;
- > asylum-seekers that have no genuine link with a particular Member State will automatically be assigned to a Member State according to a distribution key; that Member State will then be responsible for processing the asylum application;
- > asylum-seekers would be able to choose among the four countries which at that given moment have received the fewest asylum-seekers according to a distribution key;
- > countries of first arrival must register all asylum-seekers, and check their fingerprints as well as the likelihood of an applicant being eligible for international protection;
- > applications from applicants with a very small chance of receiving international protection would be examined in the country of arrival;
- > individual guarantees for minor asylum applicants, and an assessment of their best interests are a priority;
- > faster family procedures should be introduced under which asylum-seekers are immediately transferred to a country in which they claim to have family; furthermore, applications for international protection of a family should be processed together, without prejudice to the right of an applicant to lodge an application individually;
- > a clear system of incentives and disincentives should be introduced for asylum applicants to avoid absconding and secondary movements. Furthermore, the meaning of absconding needs to be clearly defined;



- > frontline Member States that fail to register applicants would see relocation from their territory stop, while Member States refusing to accept relocation of applicants would face limits on their access to EU funds.

According to [Cecilia Wikström](#): 'The European Parliament will only sign off on reforms of the Dublin Regulation that change the situation on the ground [...]. Any new Dublin system must include an automatic relocation system, with the full participation of all Member States, as well as fostering true solidarity between all member states.'

## Council of the EU

The Council has yet to adopt its negotiating mandate for the reform of the Dublin regulation.

The Asylum Working Party (the Council preparatory body responsible for issues relating to the CEAS) started the examination of the Commission proposal for Dublin Regulation recast at its meeting of 26 May 2016. While most Member States have entered general scrutiny reservations, the majority of delegations agreed on the need to reform the current Dublin rules and supported two of the main aims of the Regulation: faster and more efficient determination of the Member State responsible for examination of asylum claims, and prevention of secondary movements.

The main concerns [raised](#) by Member States during the first round of examination of the proposal included:

- > A single Member State responsible for the examination of asylum claims and the removal of the cessation of responsibility.
- > The obligation for Member States where the application was lodged to do certain checks before applying the criteria for determining the Member State responsible.
- > The definition of 'family members'.
- > Amended rules for remedies.
- > Shorter deadlines for detention and transfers.
- > The corrective allocation mechanism and the financial solidarity contribution.
- > Questions of practical, operational and financial nature in relation to the new automated system.

Discussions in the Council between Member States have continued for more than two years. The most controversial aspect in the reform of the Dublin Regulation is the solidarity mechanism and its balance with responsibility. As the Justice and Home Affairs Council [noted](#) in October 2017, the aim was to reach a compromise between the principles of solidarity and responsibility in the Dublin system.



According to the Commission's [contribution](#) to the Leaders' meeting of December 2017:

'Agreement on the right balance between responsibility and solidarity should be achieved in the following steps:

- > The broad outlines for an agreement are identified by April 2018;
- > Agreement is reached on the right balance between responsibility and solidarity at the meeting of the EU Leaders in Sofia in May 2018 which is swiftly translated into a negotiating mandate for the Council on the Dublin Regulation;
- > Political agreement is reached in the June European Council on the overall reform of the Common European Asylum System.'

From early in the discussions, a small number of countries have been blocking the unanimity desired to give a mandate to the Presidency to enter into interinstitutional negotiations with the European Parliament. For example, on 15 February 2018 the Hungarian government [announced](#) that it would propose alternative amendments to the Dublin Regulation based on security and a strict expulsion policy, and rejection of any kind of mandatory admittance quota. Furthermore, several Member States submitted a [position paper](#) arguing for the reduction of the 'fair share', which indicates the number of applicants that each Member State could be expected to handle, and alleviation of procedural burdens for the frontline Member States under pressure.

The Bulgarian Presidency's plans to reach a general approach in the Council by June 2018 were based on the discussions of the expert group under the Strategic Committee on Immigration, Frontiers and Asylum. The main elements for the balance between responsibility and solidarity were presented in May 2018 as a [compromise proposal](#), which was afterwards submitted to the JHA Council for debate. Critics of the proposed plan, such as ECRE and the Meijers Committee, were already vocal in [January](#) and [March](#) 2018, when the first outline of the Presidency's proposal became known. They claimed that the proposal represented a 'deterioration in the rights of refugees and asylum-seekers', while making the system too complex, with a 'set of different, partly overlapping procedures in different Member States'.

At the European Council of June 2018, and at each subsequent meeting, in October 2018 and December 2018, however, EU leaders failed to achieve a breakthrough on internal aspects of migration and the EU's asylum policy, showing remaining differences among Member States as regards, in particular, the reform of the Dublin Regulation.



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