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# Dublin Regulation on international protection applications

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European  
Implementation  
Assessment

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STUDY

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Ex-Post Evaluation Unit  
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# Dublin Regulation on international protection applications

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## Study

In November 2019, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs launched an implementation report on the Dublin Regulation 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 (604/2013). Fabienne Keller (Renew, France) was appointed Rapporteur.

Implementation reports by European Parliament committees are routinely accompanied by European Implementation Assessments, drawn up by the Ex-Post Evaluation Unit of the European Parliament's Directorate-General for Parliamentary Research Services (EPRS).

The Dublin Regulation aims at determining which Member State is responsible for examining an asylum application and ensuring that each claim gets a fair examination in one Member State. In 2015, asylum application numbers increased considerably, putting a strain on the Common European Asylum System (CEAS). In this context, the procedures engendered by the application of the Regulation have been put to an unprecedented test.

This study presents an analysis of the implementation of the various provisions of the Regulation. It shows many weaknesses in their current application. In particular, the initial aim of the Regulation (i.e. swift and fair access to asylum procedure in a single Member State) is not being achieved and the extent to which the rights of asylum-seekers are ensured is far from satisfactory.

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## List of acronyms

<b>AIDA</b>	Asylum Information Database
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>CoE</b>	Council of Europe
<b>EASO</b>	European Asylum Support Office
<b>ECA</b>	European Court of Auditors
<b>ECtHR</b>	European Court of Human Rights
<b>ECRE</b>	European Council on Refugees and Exiles
<b>EDAL</b>	European Database of Asylum Law
<b>EMN</b>	European Migration Network
<b>EPRS</b>	European Parliament Directorate-General for Parliamentary Research Services
<b>FRA</b>	EU Agency for Fundamental Rights
<b>Frontex</b>	European Border and Coast Guard Agency
<b>IOM</b>	International Organization for Migration
<b>NGO</b>	non-governmental organisation
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UN</b>	United Nations
<b>UNHCR</b>	Office of the United Nations High Commissioner for Refugees

## List of country codes<sup>1</sup>

<b>AT</b>	Austria
<b>BE</b>	Belgium
<b>BG</b>	Bulgaria
<b>CH</b>	Switzerland
<b>CY</b>	Cyprus
<b>CZ</b>	Czechia
<b>DE</b>	Germany
<b>DK</b>	Denmark
<b>EE</b>	Estonia
<b>EL</b>	Greece
<b>ES</b>	Spain
<b>FI</b>	Finland
<b>FR</b>	France
<b>HR</b>	Croatia
<b>HU</b>	Hungary
<b>IE</b>	Ireland
<b>IS</b>	Iceland
<b>IT</b>	Italy
<b>LI</b>	Liechtenstein
<b>LT</b>	Lithuania
<b>LU</b>	Luxembourg
<b>LV</b>	Latvia
<b>MT</b>	Malta
<b>NL</b>	Netherlands
<b>NO</b>	Norway
<b>PL</b>	Poland
<b>PT</b>	Portugal
<b>RO</b>	Romania
<b>SE</b>	Sweden
<b>SI</b>	Slovenia
<b>SK</b>	Slovakia
<b>UK</b>	United Kingdom

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<sup>1</sup> The list refers to the states bound by the Dublin Regulation, which are the EU Member States plus four associated countries: Norway, Iceland, Switzerland and Liechtenstein. While the UK left the EU on 31 January 2020, it is still, in principle, bound by the Regulation during the transition phase.

## Methodological note

This European Implementation Assessment was prepared to support the Committee on Civil Liberties, Justice and Home Affairs (LIBE)'s work on an implementation report on the Dublin Regulation. The Dublin Regulation (currently referred to as Dublin III, following previous reforms) was adopted in 2013. It was devised to prevent multiple applications by the same person in different Member States and to determine rapidly – by providing fair and objective criteria in the determination of responsibilities – the Member State responsible for an asylum claim.

The assessment is divided in two parts: an opening analysis, prepared in-house by the European Parliamentary Research Service (EPRS) (Part I) and an external study (Part II), prepared by the European Council on Refugees and Exiles (ECRE), an alliance of 105 NGOs working with asylum-seekers across 40 European countries.

The first part of the analysis presents the main principles of the Dublin Regulation and the procedures it entails. It also provides background information (notably on the humanitarian crisis that resulted from the rapid increase in the number of asylum-seekers and irregular migrants arriving in the EU in 2015) that is key to understanding the environment in which the implementation of the Regulation is currently being discussed. Finally, it gives an overview of the various evaluations that have been conducted on Dublin III since its entry into force and outlines the main weaknesses found. It focuses in particular on the following key reports: the two evaluations conducted by a global consulting services company (ICF) at the request of the European Commission in 2015 and 2016,<sup>2</sup> and one prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 2017.<sup>3</sup> In addition, it draws from various policy papers and studies, including those prepared by the European Parliament.<sup>4</sup> This first part thus aims at providing the state of play as regards the implementation of Dublin III, a Regulation that has been put under unprecedented pressure since 2015 and that has been highly controversial in the context of the reform of the Common European Asylum System (CEAS).

The external study in Part II aims to provide the European Parliament with accurate and up-to-date information regarding the implementation of the Dublin Regulation. Given the short timeframe available for the preparation of this supporting analysis and in accordance with the European Parliament Secretariat's directions, the study focuses on selected aspects of the Regulation:

- the organisational structure of the units responsible at national level for procedures related to the Dublin Regulation (the 'Dublin Units'),
- the cooperation between these units at EU level and the support provided by the EU
- the procedural rights of the asylum applicants,
- the registration process in the database that stores and processes the fingerprints of asylum applicants who have entered the EU (i.e., EURODAC),
- the specific context of hotspots (i.e., first reception facilities for migrants and/or refugees in Greece and Italy that receive EU support),

<sup>2</sup> ICF, [Evaluation of the Dublin III Regulation](#), 2015; [Evaluation of the Implementation of the Dublin III Regulation](#), 2016.

<sup>3</sup> UNHCR, [Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation](#), 2017.

<sup>4</sup> In particular: Gertrud Malmersjö and Milan Remáč, [Implementation Appraisal of the Dublin Regulation and asylum procedures in Europe](#), European Parliament, EPRS, April 2016; Francesco Maiani, [The Reform of the Dublin III Regulation](#), Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, June 2016; Wouter van Ballegooij and Cecilia Navarra, [The Cost of Non-Europe in Asylum Policy](#), European Parliament, EPRS, October 2018; Anja Radjenovic, [Reform of the Dublin System](#), EPRS, March 2019; European Court of Auditors, [Asylum, relocation and return of migrants: time to step up action to address disparities between objectives and results](#), [Special Report 2019/24](#), November 2019.

- the criteria used to determine responsibility for asylum claims and the discretion allowed to Member States to derogate from these criteria (i.e., the discretionary clauses),
- the issue of unaccompanied children,
- the ways in which transfers of asylum-seekers are processed and implemented,
- the duration of the different stages of the procedures,
- the appeal procedures and the issue of detention.

On the basis of the analysis of these specific aspects, the external study provides transversal conclusions in accordance with the EU's better regulation principles.<sup>5</sup> It is mainly based on desk research. Sources consulted include:

- statistics relevant to the Dublin Regulation made available by Eurostat and by the Asylum Information Database (AIDA),<sup>6</sup>
- qualitative information on national practice extracted from AIDA country reports and comparative reports,
- the European Asylum Support Office (EASO) Annual Reports on the situation of asylum in the European Union,
- Case law from the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR) and domestic courts, made available by the European Database of Asylum Law (EDAL).<sup>7</sup>

There are a number of challenges to providing EU-wide statistics, however, as explained throughout the external study. These inconsistencies mainly stem from the fact that Eurostat's compilation of data relies on the statistics supplied by Member States: Dublin Units continue to provide different figures on the number of requests and transfers they exchange. As a consequence, comprehensive and complete data related to the application of the Dublin Regulation are not currently available across the EU. Bearing these methodological constraints in mind, the statistics provided in the study should be read critically and with caution. Furthermore, a full comparison of the quantitative and qualitative aspects of implementation is not possible as a result of this lack of comparable data. In light of these limitations, the study nevertheless provides information for all the states bound by the Dublin Regulation<sup>8</sup> to the extent that information is available. The analysis focuses on the Member States who initiated a majority of Dublin procedures in recent years.

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<sup>5</sup> The EU better regulation principles require adherence to the following criteria to assess implementation: effectiveness, efficiency, relevance, coherence and EU added value. See toolbox n°47 of the European Commission's [Better regulation guidelines](#).

<sup>6</sup> The [Asylum Information Database](#) (AIDA) is managed by ECRE and provides a mapping of asylum procedures, reception conditions, detention and content of protection in Europe.

<sup>7</sup> The [European Database of Asylum Law](#) (EDAL) is managed by ECRE and contains case law from 22 European states interpreting refugee and asylum law, as well as from the CJEU and ECtHR.

<sup>8</sup> These are the EU Member States plus four associated countries: Norway, Iceland, Switzerland and Liechtenstein. While the UK left the EU on 31 January 2020, it is still, in principle, bound by the Regulation during the transition phase.

## PART I: EPRS Opening analysis

### 1. Key findings

The Dublin Regulation is a key component of the Common European Asylum System (CEAS). Its initial aim was to determine which Member State is responsible for examining an asylum application, in order to avoid multiple applications across the EU.

To function properly, the system requires that asylum-seekers are afforded equal rights across Member States and that each claim gets a fair examination, wherever the claim is lodged within the EU. However, despite efforts at EU level to create greater convergence across the EU, Member States retain considerable discretion on how to organise the asylum procedure at national level.

The various evaluations of the application of the Regulation conducted between 2015 and 2019 have been consistent in their results. In particular, the following elements have been underlined:

- There is a lack of a formal coordination mechanism at national levels to implement the procedures induced by the Dublin Regulation, in addition to very different capacities (staff, funding) across the Member States. These discrepancies result in difficulties in applying the procedures in a coherent and consistent way across the EU. They also lead to considerable delays in reaching decisions on an asylum claim and/or implementing transfer decisions regarding an applicant if necessary – especially when facing higher than usual numbers of claims.
- There is a lack of compliance as regards procedural guarantees and safeguards for asylum applicants, especially for children. Adequate information that applicants can understand is not systematically and consistently provided. Furthermore, interpretations of the best interest of the child and what constitutes a 'family' vary across Member States. As a result, criteria related to family consideration, which in principle are the most important in determining which Member State is responsible for an asylum claim, are not the most frequently used argument at EU level.
- The length of the procedures and their lack of predictable outcomes, coupled with poor reception conditions and social precarity lead to numerous impacts on the wellbeing of asylum applicants, who in many cases have experienced traumatic experiences back home and/or on their way to reach the EU. In this context, the use of detention, which is most commonly used in transfer procedures across the EU, is particularly worrying, from both the point of view of compliance with fundamental rights and in guaranteeing a humane approach to the treatment of applicants.
- Furthermore, because of the many differences across Member States in the ways in which asylum claims are handled and in how applicants are supported throughout the procedure, the application of the Dublin Regulation has so far been unable to prevent secondary movements and to ensure clarity – and fairness – in the process of asylum claims.

Overall, these evaluations concurred in their demonstration that the very purpose of the Regulation (i.e., to provide swift and fair access to asylum procedures in a single Member State), is in practice defeated by the length of the procedures, the lack of implementation of transfer decisions and the lack of compliance with human rights.

## 1.1. Gradual establishment of the Common European Asylum System (CEAS)

The right of asylum is a key component of international law: first recognised in the 1951 Geneva Convention,<sup>9</sup> this right grants international protection to people fleeing persecution in their own country.

At EU level, the constitution of an area of open borders and freedom of movement led to efforts to harmonise the procedures for asylum. In its conclusions of the Tampere Summit of 1999, the European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It agreed to work towards establishing a Common European Asylum System (CEAS), based on the full and inclusive application of the Geneva Convention, thereby ensuring that nobody is sent back to face persecution, i.e. maintaining the principle of non-refoulement.<sup>10</sup>

A first phase of legislative acts thus led to the gradual establishment of a Common European Asylum System (CEAS). These include, inter alia, the Dublin Regulation of 2003<sup>11</sup> (often referred to as 'Dublin II' as it replaced the first Dublin Convention of 1990),<sup>12</sup> the creation of the European Refugee Fund<sup>13</sup> (replaced in 2014 by the Asylum Migration and Integration Fund – AMIF) and the Temporary Protection Directive.<sup>14</sup>

In June 2008, the European Commission presented a policy plan on asylum,<sup>15</sup> articulated around three main pillars: greater harmonisation in standards of protection; effective and well-supported practical cooperation; an increased solidarity and sense of responsibility among EU Member States, and between the EU and non-EU countries.

The Treaty of Lisbon, which entered into force in December 2009, moreover provided the legal basis for the development of the second phase of the CEAS, comprising a uniform status and uniform procedures. Article 80 of the TFEU explicitly provided for the principle of solidarity and fair sharing of responsibility, including any financial burdens, between Member States. The Treaty also significantly altered the decision-making procedure on asylum matters, by introducing co-decision as the standard procedure.<sup>16</sup> In addition, the Treaty of Lisbon led to a larger body of case law in the field of asylum developed by the Court of Justice of the European Union (CJEU).

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<sup>9</sup> United Nations, [Geneva Convention relating to the Status of Refugee](#), 1951.

<sup>10</sup> [Presidency Conclusions](#), Tampere, October 1999.

<sup>11</sup> Council Regulation [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.

<sup>12</sup> [Convention](#) determining the state responsible for examining applications for asylum lodged in one of the Member States of the European Communities, 1990. The implementation of the Dublin Convention was based on intergovernmental cooperation. Therefore, the adoption of a Regulation in 2003 provided a legal framework to ensure a higher degree of harmonisation.

<sup>13</sup> European Commission website: [Refugee Fund](#). The fund was initially designed to facilitate the sharing of the financial costs of the reception, integration and voluntary repatriation of refugees amongst EU Member States.

<sup>14</sup> [Directive 2001/55/EC](#) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 2001.

<sup>15</sup> European Commission, [Policy Plan on Asylum](#): an integrated approach to protection across the EU, 17.6.2008 COM(2008) 360 final.

<sup>16</sup> The co-decision procedure is a legislative process introduced by the [Treaty of Maastricht](#) (Treaty on European Union) 1991 and now enshrined in Article 294 TFEU. In the co-decision procedure, the European Parliament and the Council jointly

In this context, the above-mentioned 2008 policy plan on asylum was followed by a second phase in the elaboration of the EU asylum *acquis*, with the recast of several key instruments:

- The Asylum Procedures Directive<sup>17</sup> that sets up common procedures for granting and withdrawing international protection,
- The Reception Conditions Directive<sup>18</sup> that establishes rules on living (or 'reception') conditions for applicants for international protection who are waiting for their application to be examined,
- The Qualification Directive<sup>19</sup> that provides common standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection,
- The Dublin Regulation (Dublin III),<sup>20</sup> which establishes the Member State responsible for examining an asylum application,
- The EURODAC Regulation<sup>21</sup> that aims at facilitating the determination of responsibility for examining an asylum application mentioned above, by comparing the fingerprints of asylum applicants and non-EU/EEA nationals against a central database

This set of EU rules was further complemented by the creation of a European Asylum Support Office (EASO) to facilitate cooperation of Member States and support those under pressure.<sup>22</sup>

The Return Directive<sup>23</sup> on the other hand provides for the return of non-EU nationals who do not or who no longer fulfil the conditions for entry, stay or residence within the territory of any EU Member State.

The establishment of CEAS did not however create one single asylum procedure. In practice, the above-mentioned directives and regulations leave the Member States with considerable discretion on how to organise the asylum procedure at national level.<sup>24</sup> Nevertheless, the EU system aims at guaranteeing that an asylum applicant's application is considered in a fair manner in one of the Member States.

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adopt (i.e. co-decide) legislation. The Parliament now shares legislative authority with the Council. Co-decision requires consensus to be reached between the Council and the Parliament for legislation to be adopted.

<sup>17</sup> [Directive 2013/32/EU](#) on common procedures for granting and withdrawing international protection.

<sup>18</sup> [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

<sup>19</sup> [Directive 2011/95/EU](#) on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

<sup>20</sup> [Regulation \(EU\) No 604/2013](#) 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.

<sup>21</sup> [Regulation \(EU\) No 603/2013](#) on the establishment of EURODAC for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013.

<sup>22</sup> [Regulation \(EU\) No 439/2010](#) establishing a European Asylum Support Office.

<sup>23</sup> [Directive 2008/115/EC](#) on common standards and procedures in Member States for returning illegally staying third-country nationals. An assessment of the implementation of the Return Directive is currently being prepared by EPRS and will be published in summer 2020.

<sup>24</sup> The Asylum Procedure Directive for instance allows the Member States to introduce: an admissibility procedure to check whether a third country might be responsible for granting asylum; a border procedure; accelerated procedures; prioritised or fast-track procedures. See: ECRE, [Accelerated, prioritised and fast-track asylum procedures. Legal frameworks and practice in Europe](#), 2017.

In addition, there are no legislative mechanisms at EU level or under the CEAS that provide for legal pathways to the EU for the purpose of seeking international protection.<sup>25</sup> As a consequence, before arriving at the EU external borders, asylum-seekers are in practice assimilated to the category of 'irregular migrants' and the large majority of them (up to 90 per cent of those subsequently recognised as refugees and beneficiaries of subsidiary protection)<sup>26</sup> reach the EU territory irregularly (i.e., without valid identity documents and/or visas).

## 1.2. Initial aims of the Dublin Regulation and key provisions

Among the instruments mentioned above, the Dublin Regulation was devised to prevent multiple applications by the same person in different Member States and to determine rapidly – by providing fair and objective criteria in the determination of responsibilities – the Member State responsible for an asylum claim.

The law in force since July 2013, called the 'Dublin III' Regulation, replaced the 'Dublin II' Regulation adopted in 2003 (as part of the first phase of the establishment of the CEAS, as described above). As a regulation, it has a direct effect, conferring rights on individuals under EU law, and applies to all the EU Member States. Four countries are in addition associated (i.e., bound by the Regulation): Norway, Iceland, Switzerland and Liechtenstein.

The Regulation requires that asylum-seekers file an application in the Member State upon entry into the Union or in the Member State where they are already present. When someone applies for asylum, no matter where they are in the EU, their fingerprints are taken and transmitted to the EURODAC central system to detect whether they have already been registered as an applicant for international protection or have entered the Union irregularly through another Member State.<sup>27</sup>

The Dublin Regulation applies in principle to all applicants for international protection. The application might lead to a transfer to another Member State, if the criteria set out in the Regulation indicate that another Member State is responsible (see below). In other words, not all individuals

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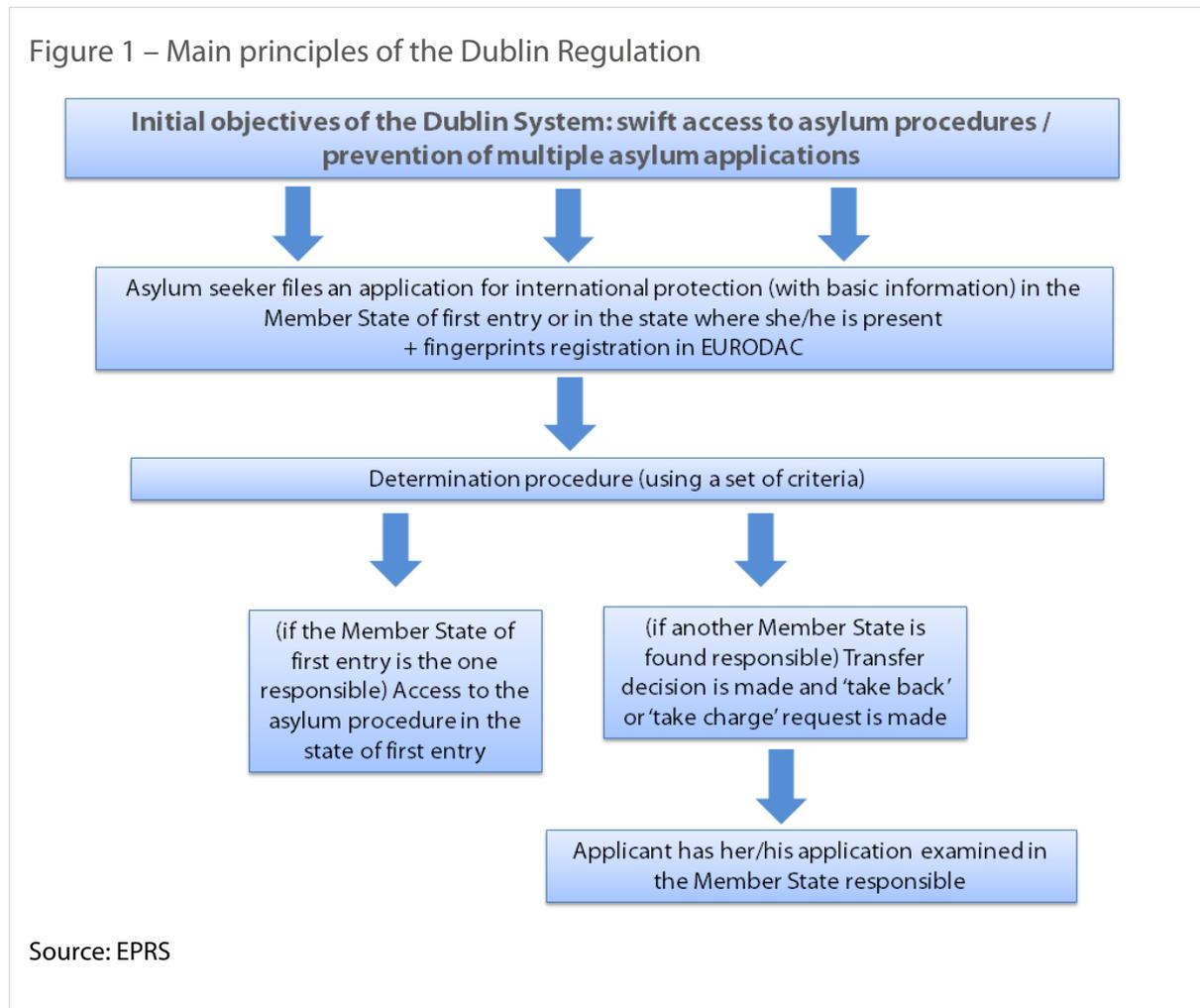
<sup>25</sup> As part of the reform of the CEAS proposed by the European Commission in 2016, the Commission presented a proposal which aimed at providing a permanent framework with standard common procedures for resettlement across the EU. This framework would have complemented current national and multilateral resettlement initiatives. Although a partial provisional agreement on the proposal was reached between the Parliament and Council in summer 2018, the Council has been unable to endorse it, nor agree on a mandate for further negotiations. See: Anja Radjenovic, [Resettlement of refugees: EU framework](#), European Parliament, EPRS, March 2019. Furthermore, possibilities for the adoption of an EU 'Humanitarian visa' were explored during the previous legislature, see for instance: Wouter van Ballegooij and Cecilia Navarra, [Humanitarian visas](#), European Parliament, EPRS, October 2018. The European Parliament adopted an [own-initiative report](#) on Humanitarian Visas at EU level in December 2018.

<sup>26</sup> European Parliament, Report with recommendations to the Commission on Humanitarian Visas, [\(2018/2271\(INL\)\)](#). See also: Wouter van Ballegooij and Cecilia Navarra, [Humanitarian visas](#), European Parliament, EPRS, October 2018.

<sup>27</sup> EURODAC is a large-scale IT system that helps with the management of European asylum applications, by storing and processing the digitalised fingerprints of asylum seekers and irregular migrants who have entered a European country. In this way, the system helps to identify new asylum applications against those already registered in the database. See: [Eurodac Regulation 603/2013](#). Eurodac gathers information for three categories of persons: asylum seekers older than 14 years, persons apprehended in connection with the irregular crossing of an external border and persons illegally on the territory of a Member State. The following data are registered: the Member State of origin, the digital fingerprint, the sex and the reference number used by the Member State of origin. When there is an alert, the data are transferred through the DubliNet system. DubliNet is a secure electronic communication network between the national authorities dealing with asylum applications. The two involved Member States can exchange personal data through DubliNet that differ from Eurodac data, such as name, date of birth, nationality, photo, details of family members and in some cases, addresses.

submitting an asylum application in the EU are necessarily subject to a transfer to another Member State.<sup>28</sup>

Figure 1 – Main principles of the Dublin Regulation



While the Regulation establishes criteria for determining which Member State shall be responsible for an asylum request, it nevertheless gives the Member States discretion to derogate from these criteria, through the use of discretionary clauses (i.e. the 'dependent persons clause' and the 'humanitarian clause').<sup>29</sup>

<sup>28</sup> The term 'dublinised' is often used to design those asylum applicants who are subject to transfers as part of the application of the Dublin Regulation. According to [Eurostat](#), in 2018, there were 646 060 applications for asylum in the EU-28 and 148 021 outgoing requests through the Dublin procedure, a ratio of 1 request to 4.4 applications. In other words, for every 100 applications, 23 resulted in a request from an EU Member State to another Member State to take over responsibility.

<sup>29</sup> See Chapter IV of the Regulation. Article 17(2) provides for instance that a Member State may (at any time before a first decision regarding the substance is taken), request another to take charge of an applicant in order to bring together any family relations on humanitarian grounds. In response to the refugee crisis peak in 2015, Germany suspended the application of the Dublin Regulation for Syrian nationals, by making use of this 'sovereignty clause', to allow an individual to register their claim in Germany, even in cases where another country would have normally been responsible for processing the claim. In 2015 and 2016, over a million people entered the asylum process in Germany in this way. France also used the clause to a much lesser extent in 2017, for over 1 000 people evacuated from Calais. See: CIMADE, [Into the infernal machine of the European Asylum System](#), 2019, p.7 and 24.

### 1.2.1. Criteria for determining responsibility

For those claiming asylum for the first time in the EU, the Regulation establishes a hierarchy of criteria for determining responsibility for an asylum application under Chapter III, which should be examined in the following prescribed order:

- Family reunification is, in principle, the first and foremost criterion to be taken into account: the Member State responsible for the asylum application should be the one in which other family members are already located (the 'nuclear family' for adults and the 'extended family' for isolated minors);
- If this criterion is not applicable, the authorities must verify whether the applicant obtained a residence document or visa through another Member State, in which case that state would then become responsible;
- If the first two criteria do not apply, the Member State where the applicant entered the EU irregularly becomes responsible;
- If an asylum-seeker enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection
- Where the application for international protection is made in the international transit area of an airport of a Member State by an asylum-seeker, that Member State shall be responsible for examining the application

### 1.2.2. Take back/Take charge requests

If fulfilled, the above-mentioned set of criteria can lead to 'take charge' or 'take back' requests to transfer the asylum applicant to the Member State designated as responsible for the claim.

Take charge requests are cases where a first application is lodged and a Member State initiates the procedure to determine which Member State is responsible. A Member State can request another Member State take charge of an applicant, usually due to the presence of family members.

Take back requests relate to cases where the applicant has already lodged one asylum application in a Member State and travels on to another Member State. The latter then initiates proceedings to see which Member State is responsible for 'taking back' the applicant.

In practice, a take back transfer request can be issued if the Member State in which an asylum applicant is present, discovers that the applicant has already claimed asylum in another Member State, which can be checked through the EURODAC database. Upon consultation by a Member State, EURODAC provides results on a 'hit' (match) or 'no hit' (no match) basis, to see whether someone has already lodged an asylum claim in a Member State.

A 'take back' request can also be issued if another Member State has issued a visa or a residence permit to the applicant or has waived the visa requirement for the nationality of the applicant. In this case, that Member State would be asked to take the applicant back.

The modalities of these 'take charge'/'take back' requests are set out in Chapter V of the Regulation.

### 1.2.3. Transfer decisions

If the determining process concludes that another Member State is responsible for examining the asylum claim, the determining Member State must make a take charge request within three months from the date of the asylum application, and the Member State requested to take charge must reply within two months following receipt of the request.

In take back cases, the request must be made within three months following the receipt of a hit on the EURODAC system, or within three months if the Member State became aware of the other Member State's responsibility through evidence other than a search in EURODAC. The Member State requested to take the applicant back must reply within one month following receipt of the request, or within two weeks if the request is based on EURODAC data.

If the Member State requested to take charge or take the applicant back accepts this responsibility, the applicant is notified of this decision and transferred to the country taking responsibility, where her/his application for international protection will be examined. When a transfer decision is made, the Regulation provides that the transfer should take place within six months of acceptance of the request by the other Member State. If the transfer does not take place within this limit, the Member State is relieved of its obligations to take charge or to take back the person concerned and responsibility is transferred to the requesting Member State.<sup>30</sup>

Transfers to a Member State responsible for examining an application may be carried out on a voluntary basis, by supervised departure or under escort. On that matter, the Dublin Regulation specifies that Member States should promote voluntary transfers and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the best interests of the child.<sup>31</sup>

On the other hand, the Regulation provides for detention of an applicant who is subject to a transfer procedure if they are considered to be at 'significant risk of absconding'. However, as the Regulation does not define objective criteria to determine what constitutes a 'risk of absconding', Member States have a wide margin of discretion in how to determine indicators for this risk.<sup>32</sup>

#### 1.2.4. Applicants' rights

For the asylum applicant subject to a Dublin procedure, until a decision has been reached on which Member State is responsible for examining her/his application, the authorities of the Member State in which she/he applied will not consider the substance of the application.

Throughout the Dublin procedure, the Regulation provides for a number of guarantees for applicants. These include:

- the right to information (as soon as an application for international protection is lodged in a Member State, its competent authorities shall inform the applicant of the application of this Regulation – Article 4);
- personal interviews (a personal interview with the applicant should be organised to facilitate the determination of the Member State responsible for examining an application for international protection – Article 5);
- special guarantees for minors, prioritising children's best interests throughout the procedure and increased protection for applicants' children, family members, dependent persons and relatives (Article 6);
- an obligation to guarantee the right to appeal against a transfer decision and legal assistance free of charge upon request at the appeal stage (Article 27).

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<sup>30</sup> Article 29 of the Regulation.

<sup>31</sup> See Recital 24 of the Regulation.

<sup>32</sup> This margin of discretion leads to great discrepancies in the use of detention across the Member States, as detailed in the external study in Part II.

Ensuring that cases are dealt with as expeditiously and fairly as possible is key, particularly in cases involving unaccompanied children. This is not only crucial to complying with fundamental rights principles, but also to preventing too many appeals that delay the procedures considerably.<sup>33</sup>

### 1.3. Context of the humanitarian crisis: Dublin under pressure

In the context of the humanitarian crisis that has impacted the EU in recent years, the CEAS has been put to an unprecedented test.

Outbreak of civil war in Syria, ongoing violence in Afghanistan and Iraq, and other violent conflicts in the Union's neighbourhood, as well as continuous abuse and poverty in many parts of the world, led to a sudden increase in arrivals of migrants and asylum-seekers in the EU and worldwide, with a peak reached in 2015. Many of these individuals arrived in the EU by sea, and since the beginning of 2014, more than 33 000 people have died while attempting to reach EU shores.<sup>34</sup>

In 2015, asylum application numbers doubled compared to the previous year,<sup>35</sup> putting a strain on many Member States' asylum systems and on the CEAS as a whole. The main migration routes, the relative weight of the number of applicants per million inhabitants in the 'country of arrival' (i.e., the EU Member State in which asylum has been requested), and the main origins of the applicants are presented in Annex 1.

Countries of 'first arrivals' on the EU's external borders were particularly impacted. Italy and Greece in particular have struggled to cope with the large numbers of arrivals by sea on their shores, leading to overcrowding in reception centres, disastrous and inadequate reception conditions and months of procedures related to asylum claims.

Furthermore, many asylum seekers who arrive at the Union's external borders (e.g. Hungary, Italy, Greece, Bulgaria) then attempt to reach other Member States (e.g. because of social and family networks, or poor reception or economic conditions in the host country). This phenomenon is commonly referred to as 'secondary movement' (i.e., when an asylum applicant does not remain in the Member State that is responsible for her/his application but moves to another Member State). As a result of secondary movements, some Member States received much higher numbers of asylum requests than others.<sup>36</sup> Between 2008 and 2017, around 90 percent of all asylum applications were concentrated in 10 EU Member States. 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).<sup>37</sup>

This situation led to the activation of emergency measures:

- At the level of Member States and in response to the increase in secondary movements, a number of Schengen states temporarily re-introduced border controls at internal borders.<sup>38</sup> Some of these measures remain in force.

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<sup>33</sup> The study in Part II provides further details on the length of the procedures in various Member States.

<sup>34</sup> Since the beginning of 2014, the deaths of 33 631 people have been recorded, including 2 469 in 2019. See: IOM, [Missing Migrants Project](#).

<sup>35</sup> 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.

<sup>36</sup> Anja Radjenovic, [Reform of the Dublin System](#), EPRS, March 2019.

<sup>37</sup> Ibid.

<sup>38</sup> Since September 2015, border controls have been reintroduced and prolonged almost 50 times. The situation led the Commission to put forward a proposal in 2017 for a regulation amending the Schengen Borders Code as regards the rules

- At EU level, special measures were taken aiming at providing support to Italy and Greece: a relocation mechanism<sup>39</sup> and the adoption of a 'hotspot approach', where identification and registration procedures are coordinated upon arrival at EU external borders and where EASO plays a key role in supporting asylum systems that are facing challenging workloads.<sup>40</sup>

The emergency measures taken at EU level led to unprecedented tensions<sup>41</sup> and raised significant human rights concerns. The latter can be illustrated by the European Commission recommendation, in 2016, for the gradual resumption of transfers of asylum applicants to Greece.<sup>42</sup> This recommendation was taken in a context where transfers of applicants to Greece had been suspended by Member States since 2011, following two European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) judgments. The judgments had identified systemic deficiencies in the Greek asylum system, resulting in a violation of the fundamental rights of applicants.<sup>43</sup> Following the Commission's recommendation and despite the particularly difficult situation in Greece throughout the crisis, requests under the Dublin Regulation could thus be sent again requesting Greece to take back applicants first registered in Greece. In the meantime, the United Nations High Commission for Refugees (UNHCR) called for temporary suspension of transfers to Hungary. The latter calls were made in response to growing concerns over the violation of rights of people in need of protection in Hungary, such as systematic confinement in transit zones and lack of access to legal assistance.<sup>44</sup>

In this context, the CEAS in general and the Dublin procedure in particular have been subject to increasing criticism, including the fact that the system was not fit for purpose for dealing with such an increase in asylum claims, where greater solidarity among all EU Member States would be

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applicable to the temporary reintroduction of border controls at internal borders. See EPRS on the [temporary reintroduction of border control at internal borders](#). The file is part of unfinished business to be carried over to the 2019-2024 legislature, as announced by the President of the European Parliament at the 2019 October II plenary session.

<sup>39</sup> The Council set two initial relocation targets of 40 000 and 120 000 asylum-seekers respectively (160 000 in total). While the Member States ultimately agreed to relocate 98 256 people, only 34 705 (21 999 from Greece and 12 706 from Italy) were relocated in practice. See: European Court of Auditors, *Asylum, relocation and return of migrants: time to step-up action to address disparities between objectives and results*, [Special Report 2019/24](#).

<sup>40</sup> 'Hotspots' designate initial reception facilities for migrants and/or refugees in Greece and Italy that receive EU support. The goal was to support Italy and Greece with identification, registration and fingerprinting, determining protection needs and to support relocation/return. The disastrous living conditions in these reception facilities have been widely documented. For an overview of reception conditions in hotspots, see: Fundamental Rights Agency (FRA), *Update of the 2016 opinion of the FRA on fundamental rights in the 'hotspots' set up in Greece and Italy*, [Opinion 3/2019](#), March 2019. It should be noted that the extent of the tasks performed by EASO in hotspots has been rather controversial, with formal complaints submitted to the European Ombudsman. See: European Ombudsman, [Decision in case 735/2017/MDC](#), July 2018.

<sup>41</sup> As noted by the European Court of Auditors, the targets of the relocation mechanism 'were the result of political negotiation rather than a robust analysis of forecast migratory flows'. The Commission launched infringement procedures against Czechia, Hungary and Poland for non-compliance with its obligations related to the scheme. The cases were referred to the Court of Justice. In October 2019, the ECJ's Advocate General, Eleanor Sharpston released her [opinion](#) on the infringement cases and stated that these three Member States have likely broken EU law. The opinion does not however determine what the court will end up deciding, and the case is still ongoing.

<sup>42</sup> European Commission, [Recommendation addressed to the Member States on the resumption of transfers to Greece under Regulation \(EU\) No. 604/2013](#), 8.12.2016 C(2016) 8525 final.

<sup>43</sup> *M.S.S v Belgium and Greece* (no. 30696/09) and *NS v Secretary of State for the Home Department* C-411/10 & C-493/10.

<sup>44</sup> [UNHCR urges suspension of transfers of asylum-seekers to Hungary under Dublin](#), April 2017. In practice, most Member States' judicial authorities oppose Dublin transfers to Hungary to protect asylum applicants from arbitrary detention in substandard conditions, unfair denial of protection and hostility in the country. Some transfers to Italy were also halted following the legislative reform affecting the country's standards of protection towards asylum-seekers. Police violence in Bulgaria has also been deemed grounds for suspending Dublin transfers. See: ECRE, [To Dublin or not Dublin?](#), Policy Note 16, 2018.

required.<sup>45</sup> Indeed, the process induced by the Dublin Regulation was not originally designed with a view to ensuring the sharing of responsibility among Member States, but merely to assign responsibility for processing an asylum application to a single Member State.<sup>46</sup>

To function properly, the Dublin Regulation furthermore requires that asylum laws and practices afford the same level of protection in all EU Member States and that applicants are afforded equal rights everywhere within the EU.<sup>47</sup> The procedures must thus at the same time be fair and effective throughout the EU. However, asylum practices vary greatly across Member States. The presentation of the evaluations in the following sections aims at providing an overview of the main differences found between EU Member States as regards the application of the Dublin provisions. Practical examples at national level are explained in more detail in the second part (see Part II – external study).

## 1.4. First round of evaluations and the case for reform

In the wake of the humanitarian crisis, and in line with its reporting obligation (set out in Article 46 of the Dublin Regulation), the European Commission commissioned two external evaluations of Dublin III in 2015-2016.<sup>48</sup> The evaluation concluded, *inter alia*, the following:

- In terms of organisational structure and human resources, despite the involvement of many different authorities at national level to deal with the Dublin-related procedures, none of the Member States had yet established a formal coordination mechanism. Furthermore, the authorities' capacities (staff, funding) varied greatly across the Member States and training was lacking.
- As regards procedural guarantees and safeguards for applicants for international protection, information given to applicants was provided by a range of different governmental authorities, at different points in the procedure. Information tailored to the applicant when appropriate, according to the stage of the procedure, was also lacking in some Member States. Furthermore, while personal interviews were conducted in practice in nearly all Member States, in some there were not enough personnel to conduct such interviews.
- In relation to the special guarantees for minors, Member States applied different interpretations of the best interest of the child. Furthermore, whereas minors were appointed a representative in all Member States, some Member States were experiencing increasing difficulties to appoint a representative in the context of the high number of migrant arrivals on their territories. In addition, the type of representatives differed among Member States (e.g. some were specifically trained, others not). While Member States used various methods and organisations to trace family members of unaccompanied minors, significant practical and material limitations occurred, thus preventing the authorities from finding relatives in other Member States.
- As regards the criteria for determining the Member State responsible for a claim, while Member States emphasised that the hierarchy of criteria established by the Regulation was followed, the criteria used most often were those related to documentation and entry reasons. The criteria to reunite a person with family members seemed to be used

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<sup>45</sup> Martin Wagner et al., [The implementation of the Common Asylum System](#), Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Affairs, European Parliament, May 2016.

<sup>46</sup> Anja Radjenovic, [Reform of the Dublin System](#), EPRS, March 2019.

<sup>47</sup> Patrick Weil and Pierre Auriel, [Political asylum and the European Union. Proposals to overcome the impasse](#), *La revue des droits de l'Homme*, 2018.

<sup>48</sup> ICF, [Evaluation of the Dublin III Regulation](#), 2015; [Evaluation of the Implementation of the Dublin III Regulation](#), 2016.

much less frequently, allegedly because of the difficulty of agreeing on evidence that proves a Member State's responsibility.

- The humanitarian crisis, putting increased pressure on asylum agencies, led to an increase in take charge/take back requests. Some Member States deliberately failed to respond to these requests by the deadline as a way of handling a large amount of work in crisis periods.
- Some Member States transferred an equal number of asylum-seekers back and forth with the same Member States, resulting in practice in a limited redistributive effect from Dublin transfers
- Almost all the Member States consulted declared that they systematically notified applicants for international protection of the decision to transfer him or her to the Member State responsible for their claim. Difficulties were however reported in relation to the six month limit set out in the Regulation (Article 29). A majority of Member States resorted to detention in order to carry out transfers in certain circumstances.

Following the above-mentioned evaluation, the Commission presented its proposal for reforming the Dublin Regulation in May 2016,<sup>49</sup> as part of its package on reform of the CEAS.<sup>50</sup> After the publication of the proposal, no further evaluations were carried out by the Commission, despite the provisions under Article 46 of the Dublin Regulation.<sup>51</sup>

As detailed in a previous EPRS briefing on the proposed reform, while maintaining the existing criteria for determining which EU country is responsible for examining an asylum application unchanged, the Commission proposed to streamline and supplement the Dublin Regulation with a corrective allocation mechanism (the 'fairness mechanism').<sup>52</sup>

It should be underlined that the Commission did not present an impact assessment accompanying its proposal. The Commission's proposal was instead analysed in a study commissioned by the European Parliament at the request of the LIBE Committee.<sup>53</sup> The study argued that, by retaining the Dublin philosophy (whereby the choice of destination is not fully made by the asylum applicant but

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<sup>49</sup> European Commission, Proposal for a regulation 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), 4.5.2016 [COM\(2016\) 270 final](#). European Parliament [Procedure File 2016/0133\(COD\)](#). In view of this revision, EPRS prepared an implementation appraisal of the existing instrument: Gertrud Malmersjo and Milan Remáč, [Implementation Appraisal of the Dublin Regulation and asylum procedures in Europe](#), EPRS, European Parliament, April 2016.

<sup>50</sup> A first package of three proposals for reform was submitted to the co-legislators in May 2016, related to the Dublin Regulation, EURODAC and EASO. A second package of three additional proposals for reform was submitted in July 2016, related to the Asylum Procedures Directive, the Qualification Directive and the Reception Conditions Directive. For further details, see [CEAS](#), EPRS.

<sup>51</sup> Article 46 specifies that, after having submitted a first evaluation, the Commission would have to provide an update at the same time as it would submit reports on the implementation of the EURODAC system.

<sup>52</sup> Anja Radjenovic, [Reform of the Dublin System](#), EPRS, March 2019. The corrective allocation mechanism would take resettlement efforts made by a Member State to resettle those in need of international protection direct from a third country into account. This new system would automatically establish when a country is handling a disproportionate number of asylum applications. It would do so by reference to a country's size and wealth. If one country receives disproportionate numbers above and beyond that reference (over 150 % of the reference number), all further new applicants in that country would (regardless of nationality) be relocated, after an admissibility verification of their application, across the EU, until the number of applications returns to below that level. A Member State would also have the option of temporary non-participation in the reallocation. In that case, it would have to make a solidarity contribution of €250 000 for each applicant for whom it would otherwise have been responsible under the fairness mechanism, to the Member State that receives the reallocated person in its place.

<sup>53</sup> [The Reform of the Dublin III Regulation](#), Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Affairs, European Parliament, June 2016.

rather follows the criteria set out in the Dublin procedures), the Commission's proposal was unlikely to achieve its objectives, while raising human rights concerns.

In November 2017, the Parliament – then in its 8th legislature – adopted its position as regards the Commission's proposal and voted to begin interinstitutional negotiations.<sup>54</sup>

## 1.5. Key subsequent evaluations

While negotiations were conducted at EU level on the reform of the Dublin Regulation, a great variety of assessments were conducted after the Commission's first round of evaluation.

Among them, the UNHCR implementation study of Dublin III, published in 2017,<sup>55</sup> confirmed in many ways the above-mentioned identified weaknesses of the Dublin provisions as applied across the EU, thus pointing to a lack of progress on the proper implementation of the Regulation.

For instance, and in relation to the procedural guarantees afforded to the applicants:

- As in the previous evaluation, the UNHCR reported that information provided to applicants during the Dublin procedures was not consistent across the Member States. Information in some Member States was either incomplete, outdated, inaccurate, or simply not available.
- While in principle interviews were held in all Member States, the ways in which they were conducted were often inadequate (i.e., they did not always allow the applicants to fully provide relevant information). In particular, the report noted that best interest assessments regarding children were often not comprehensive in nature.
- The UNHCR report noted that in some cases, family tracing was not carried out in a proactive manner by the relevant authorities and was left to the applicants to instigate (including children). Furthermore, family definitions were applied in a restrictive way.
- In practice, and as result of the above, in the majority of Member States the most frequently used criteria in the determination of responsibilities were not those related to family considerations, but those related to 'entry and/or stay' and the 'issue of residence documents or visas'.
- While the Dublin Regulation promotes the use of voluntary transfers,<sup>56</sup> these were seldom used in practice, with the most common methods being supervised or escorted transfers with only a small number of Member States promoting voluntary transfers in practice.
- Detention was commonly used for a short period of time in transfer procedures. Alternatives to detention were not used sufficiently and the risk of absconding was often given a wide interpretation to justify detention.

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<sup>54</sup> European Parliament, Report on the proposal for a regulation 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), see OEIL procedure [2016/0133\(COD\)](#), Rapporteur: Cecilia Wikström (ALDE, SE).

<sup>55</sup> UNHCR, [Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation](#), 2017. The study is based on the analysis of over 200 Dublin case files, information provided by over 130 national authorities and civil society representatives and the testimonies of over 120 applicants who underwent a Dublin procedure in 9 selected Member States (Denmark, France, Germany, Greece, Italy, Malta, Norway, Poland and the United Kingdom). Whilst the research was conducted between October 2015 and March 2016, the analysis covered the period between the entry into force of the Dublin III Regulation and February 2016.

<sup>56</sup> Recital 24 of the Dublin III Regulation.

On these aspects, the UNHCR emphasised throughout its report its concerns over a lack of compliance as regards procedural guarantees (especially for children) and the compatibility of some measures with European and international law. The report also underlined that such lack of compliance with legal requirements led to numerous appeals in courts,<sup>57</sup> thus creating further delays in the procedures and creating backlogs in the administrative and the justice systems.

Also in relation to the question of efficiency, the report confirmed the trend observed in previous evaluations, i.e. the fact that only a minority of transfer decisions resulted in actual transfers to the responsible Member State. This was due, according to the report, to a variety of reasons, including applicants moving onward by themselves on account of prolonged Dublin procedures (i.e., 'secondary movements', as explained above), expiration of the procedural time limits to carry out a transfer under the Regulation, and insufficient resources to conduct transfers.<sup>58</sup>

The UNHCR concluded that despite Dublin III having a direct effect, the Regulation was not applied in a consistent and coherent manner. These weaknesses not only contributed to both applicants' and Member States' lack of trust in the system. It also reflected negatively on the trust between Member States, within a system that by nature requires inter-state cooperation for its efficient functioning.<sup>59</sup>

These weaknesses have been consistently and repeatedly reported since, with additional key flaws documented.

For example, the extent to which the procedures set out in the Dublin Regulation are cost effective remains uncertain. The data gathered at Member States' level do not allow a clear picture of the costs related to the procedures to emerge.<sup>60</sup> At EU level, the European Court of Auditors recently assessed EASO's operations in Greece and Italy.<sup>61</sup> While the Court recognises the difficulties to assess needs, priorities and related costing at time of crisis and emergency measures precisely, in the absence of clearly prioritised and costed needs, it could not be demonstrated that EASO had targeted its support where it was needed the most.<sup>62</sup>

Furthermore, the Dublin system has been so far unable to prevent secondary movements. Differences in asylum processes, different socio-economic situations in the Member States, results of applications granted or refused that vary between Member States and the fact that individual

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<sup>57</sup> EU-wide statistics on the number of appeals against Dublin transfers decisions are not available. However, in its [evaluation](#) for the Commission conducted in 2015, ICF estimated that the rate of appeal to transfer requests was around 50 %. The Cost of non-Europe report on asylum policy estimated that in 2016, appeals were lodged for an estimated 16 % of **all** asylum decisions in the EU (i.e., therefore not restricted to appeals against Dublin transfers), while in 2017, the appeal rate was 40 %. See: Wouter van Ballegooij and Cecilia Navarra, [The Cost of Non-Europe in Asylum Policy](#), EPRS, European Parliament, October 2018, p.121.

<sup>58</sup> For example, the European Court of Auditors estimated that for the year 2018, 148 021 outgoing requests for Dublin transfers were made in the EU, but only 25 960 actually took place. See: European Court of Auditors, Asylum, relocation and return of migrants: time to step-up action to address disparities between objectives and results, [Special Report 2019/24](#).

<sup>59</sup> UNHCR, [Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation](#), 2017, Executive Summary, p.10.

<sup>60</sup> On this aspect, it is worth noting that the amendments suggested by the European Parliament to improve statistics on asylum as part of the revision of the [Migration Statistics Regulation](#) was rejected by the Council in trilogue negotiations. See OEIL procedure [2018/0154](#).

<sup>61</sup> European Court of Auditors, Asylum, relocation and return of migrants: time to step-up action to address disparities between objectives and results, [Special Report 2019/24](#).

<sup>62</sup> The Court nevertheless underlines that when preparing its 2019 operating plans, EASO made a substantial effort to put the key elements of strategic planning in place.

needs and preferences are overlooked in the Dublin procedures are the main reasons explaining this failure.<sup>63</sup>

An aspect that has in addition received increasing attention in recent years is the human cost of the system, and in particular its impact on the asylum seekers themselves. Several accounts of first-hand experiences have been given across the EU, providing worrying pictures of the difficulties and stressful factors encountered by asylum-seekers.<sup>64</sup> Often these reports describe individuals who, when they arrive in the EU, are already exhausted and traumatised by the horrors witnessed back home and the difficulties encountered during the journey to reach the EU. Some are suffering from mild to moderate symptoms of depression or post-traumatic stress disorder (PTSD).

In addition to these initial traumas, those who have reached the EU, applied for asylum and are subject to the Dublin procedures are seriously weakened by months (years in some cases) of administrative process and often poor reception conditions. Great hardship is in fact placed on the applicants and their families during the procedures.<sup>65</sup> The fact that applicants subject to the Dublin procedures often have to report back to authorities (sometimes on a daily basis) without predictable outcomes can lead to a system that restricts freedom of movement, creates social precariousness and causes severe anxiety. Additional difficulties and traumas are furthermore experienced during the transfer procedures, which can entail administrative detention, including for families and children.

Overall, the above-mentioned evaluations demonstrate that the very purpose of the Regulation (i.e., to provide swift and fair access to asylum procedures in a single Member State) is in practice defeated. The main results of the above-mentioned evaluations can be summarised as follows:

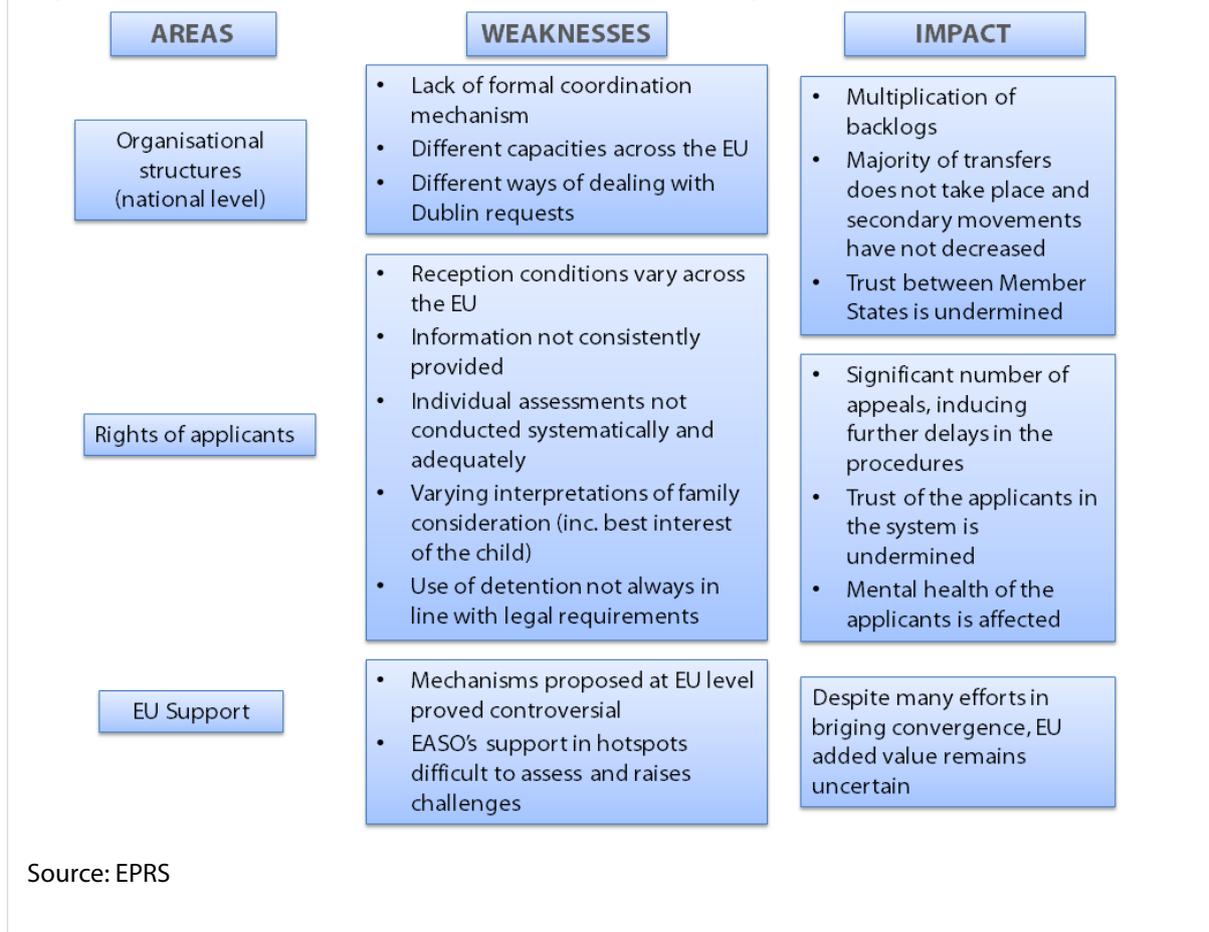
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<sup>63</sup> Dutch Advisory Committee on Migration Affairs, [Secondary movements of asylum-seekers in the EU](#), The Hague, November 2019; Wouter van Ballegooij and Cecilia Navarra, [The Cost of Non-Europe in Asylum Policy](#), European Parliament, EPRS, October 2018. The latter study furthermore notes that when asylum-seekers' preferences are only partially taken into account in the determination of the Member State responsible for them, this affects their chances of successful integration should their application be recognised.

<sup>64</sup> See for example: Médecins sans Frontières, [Life in limbo](#), 2018. Médecins sans Frontières (MSF) here reports on the results of their observation during a project conducted in Sweden with asylum-seekers from war torn countries (Syria, Afghanistan and Iraq). The fact that such observations were made in Sweden is far from anecdotic. The Swedish system is widely recognised as affording applicants a high standard of protection and guarantees. The MSF report thus not only suggests that systems usually known for their good reception capacities are struggling to maintain these standards, but also proposes that the experiences of asylum-seekers elsewhere, where reception conditions are particularly disastrous, might be even worse. For an account of the difficulties experienced by asylum applicants, see: Migration Policy Institute, [Life After Trauma: The Mental-Health Needs of Asylum Seekers in Europe](#), 2018; CIMADE, *Into the infernal machine of the European System*, 2019.

<sup>65</sup> [New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection](#), Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Affairs, European Parliament, 2014.

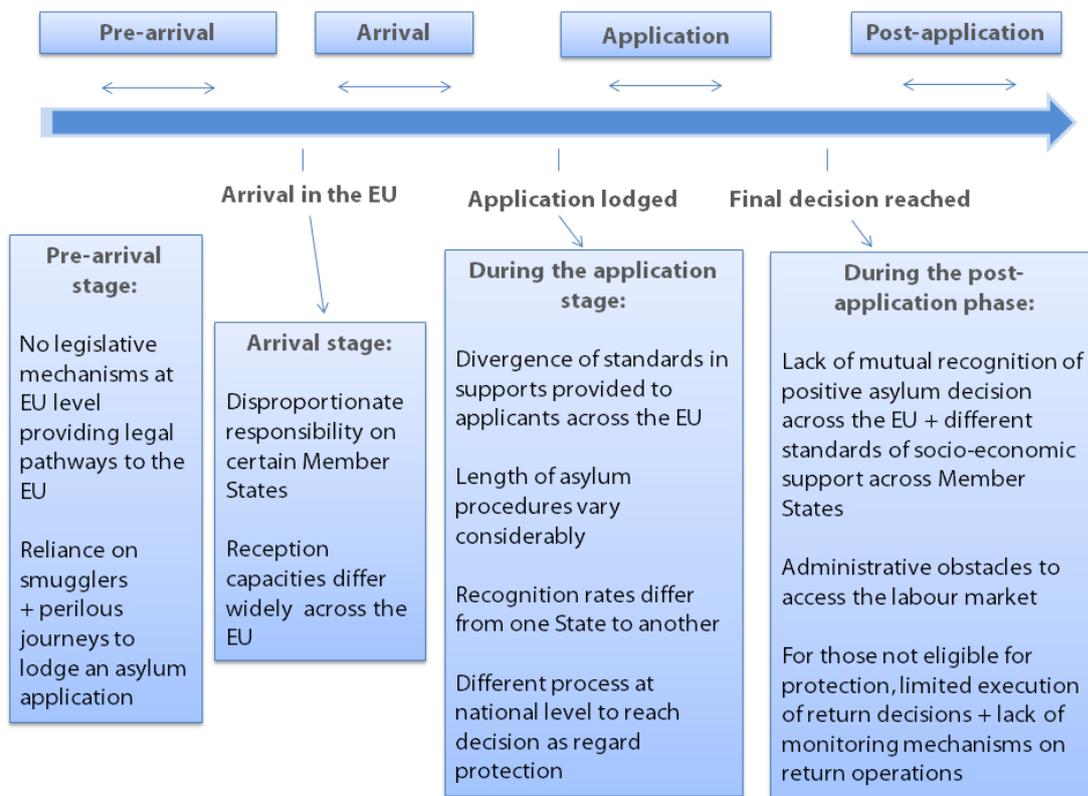
Figure 2 – Main results of evaluations of the Dublin Regulation (2015-2018)



Echoing these concerns and consistent with these results, the up-to-date evaluation presented hereafter in Part II (external study) confirms these recurring malfunctions of the overall procedure.

Beyond the Dublin Regulation, the CEAS system as a whole has shown great weaknesses, especially in the last few years. When an asylum applicant finally accesses a regular asylum procedure in one Member State, after having been through the Dublin procedures, the obstacle course does not end there. When accessing the regular procedure, the asylum applicant again experiences long delays, constant periods of waiting without any certainty over their future. In 2018, a Cost of Non-Europe report was prepared by EPRS in the field of asylum. The report describes in great detail the whole system's gaps and barriers, which are presented in the following chart:

Figure 3 – Common European Asylum System (CEAS): main gaps and barriers



Source: EPRS, based on the [Cost of Non Europe in Asylum Policy](#), 2018

## 1.6. Current state of play at interinstitutional level

In the course of the 8th legislature, the reform of the Dublin Regulation (i.e., for a Dublin IV) was the most contentious file in the discussions related to the CEAS reform.

As mentioned above, the Parliament's position on the Commission's proposal for reform was adopted in November 2017.<sup>66</sup> In its negotiating position related to the Dublin Regulation, the Parliament reiterated its call for a binding mechanism for the fair distribution of asylum applicants among all EU Member States.<sup>67</sup>

Furthermore, the Parliament suggested the following proposals for a new Dublin Regulation:

- asylum applicants who have a 'genuine link' with a particular Member State should be transferred to that country (and this should become the first relocation criterion);
- asylum applicants who 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 applicants 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;
- the country of first arrival must register all applicants 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;
- swifter family procedures should be introduced under which applicants 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.

Despite this clear negotiating position from the Parliament's side, the lack of agreement in Council prevented the start of interinstitutional negotiations and adoption of the reform during the last legislature.<sup>68</sup>

As noted above, the reform of the Dublin Regulation has been one of the main stumbling blocks in reform of the CEAS, along with the proposed Asylum Procedures Regulation.<sup>69</sup> The main points of disagreement relate to the specificities of the responsibility allocation mechanism, the duration of

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<sup>66</sup> European Parliament, Report on the proposal for a regulation 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)0270 – C8-0173/2016 – 2016/0133(COD)), 6.11.2017. Rapporteur: Cecilia Wikström (ALDE, SE).

<sup>67</sup> This position was already emphasised in the Parliament [Resolution of 12 April 2016](#) on the situation in the Mediterranean and the need for a holistic EU approach to migration.

<sup>68</sup> For an overview of the various steps of the discussions, see [Dublin Reform](#), EPRS.

<sup>69</sup> ECRE, [Policy note: Making the CEAS work, starting today](#), 2019.

responsibility, pre-Dublin checks and the inclusion of beneficiaries of international protection in the scope of the Regulation.<sup>70</sup> As a result, the lack of agreement on the reform of Dublin III effectively blocked any progress in the negotiation and any conclusion of all the other asylum-related proposals.

With the start of a new legislature, the appointment of a new college of Commissioners and in light of the above-mentioned stalemate at Council level, the Parliament's mandate for negotiations with the Council on the Dublin Reform was confirmed by the new Parliament, as announced by the President of the Parliament at the 2019 October II plenary session. On 4 September 2019, the LIBE Committee appointed a new Rapporteur, Fabienne Keller (Renew, France).

In its progress report of March 2019 on the Implementation of the European Agenda on Migration,<sup>71</sup> the European Commission noted that for three consecutive years, migrant arrivals figures had fallen steadily (current levels are a mere 10 % of their peak in 2015). However, the Commission also underlined that the migratory pressure was likely to continue, and that a key lesson learned from the humanitarian crisis was the need to overhaul the EU's asylum rules and establish a system that is fair and fit for purpose and able to manage any future hike in migratory pressure. In November 2019, European Commission President, Ursula von der Leyen announced a 'Fresh Start on Asylum and Migration' and a draft proposal for a new migration package has also been announced for the first quarter of 2020.

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<sup>70</sup> ECRE, [Asylum at the European Council 2018: Outsourcing or Reform?](#), 2018, p.14.

<sup>71</sup> European Commission, [Progress report on the Implementation of the European Agenda on Migration](#), COM(2019) 126.

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# Part II: Evaluation of the implementation of the Dublin Regulation

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This study was prepared at the request of the Directorate for Impact Assessment and European Added Value, within the Directorate General for Parliamentary Research Services (DG EPRS) of the General Secretariat of the European Parliament.

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## 1. Executive summary

In this research paper, ECRE provides an evaluation of the implementation of the Dublin Regulation III covering specific topics, which are represented by the chapter headings (from 2.3. Organisational structure to 2.15. Detention during the Dublin procedure). The main findings of the report can be summarised and separated into two categories as follows:

### Administrative and practical considerations

- The organisation, staffing and administrative structure of Dublin-entrusted authorities can affect the implementation of the Regulation, by increasing delays in the completion of Dublin-related procedures and creating significantly burdensome workloads for national authorities. The negative consequences of such administrative deficiencies have been mitigated in specific situations where targeted operational support by EASO is offered.
- Despite the suitability of the Regulation to provide reasonable solutions following disembarkation, or in cases of relocation, Member States bound by the Regulation (EU Member States and 4 associated countries) are routinely ignoring this channel. Similarly, despite its possible positive effect, the preventive action provision of the Regulation (Article 33) has never been used.
- Strict application of criteria of irregular entry, along with a reluctance to use family provisions, have resulted in unnecessary and unreasonable transfer procedures with no prospect of success. Moreover, authorities invest considerable resources in procedures to transfer asylum seekers out of their territory, while at the same time receiving similar numbers of asylum applicants from other countries.
- Extensive data on secondary movements of individuals suggest a largely ineffective mechanism and system. Personal circumstances, protection-based concerns, health reasons and systemic deficiencies may all contribute to secondary movements. Despite its stated aim, the application of the Regulation does not seem to effectively address this phenomenon, without resulting in unreasonable transfers and destitution.
- Divergent interpretation of the start of time limits in Dublin procedures has resulted in a lack of predictability in Dublin practices and an increased rejection of requests that certain Member States deem expired.

### The cost of implementation on the rights of applicants for international protection

- The complex nature of the Dublin system, the late stage at which information is given, and the absence of interpretation and legal assistance make it difficult to realise applicants' right to information. The right to information plays a significant role in the protection of the rights of the applicant, as it ensures they understand both the consequences of EU legislation on their lives. A wide disparity in the way national authorities inform applicants on the Dublin system puts the respect for human rights into question. Lack of child-friendly information remains an issue.
- The right to privacy of applicants for international protection may be jeopardised by an unchecked use of the Eurodac regulation. Issues relating to the retention of sensitive data, interoperability of databases and the non-consensual nature of data-registering may raise serious human rights concerns, especially in light of the proposal for a new reform of the Eurodac Regulation.

- Routine disregard towards family provisions, incorrect application of the principle of the best interests of the child, scarce use of humanitarian and discretionary clauses raise serious human rights concerns on the use of Dublin criteria by Member States.
- Unaccompanied minors may be facing significant violations of their rights to legal representation, appropriate accommodation, and family unity. Insufficient identification mechanisms and erroneous methods of age assessment further exacerbate the position of children and may delay, or otherwise affect negatively, the outcome of Dublin procedures.
- Despite jurisprudence recognising the obligation to suspend transfers on the basis of individual, humanitarian criteria, even if they are not related to systemic deficiencies, national authorities seem to restrictively rely on the deficiencies test for the suspension of any transfer. A certain reluctance to issue official policies to suspend transfers, when sufficient evidence on the risks applicants will face in a specific country exists, is a point of concern for the protection of individuals against inhuman and degrading treatment.
- The right to an effective judicial protection in the Dublin context has been elaborated through a series of CJEU judgments, following lack of clarity in the Regulation and dubious practices that attracted significant litigation. The issue of whether a Member State's refusal to accept responsibility can be brought before the courts remains unclarified, as the Regulation does not provide a solution and European courts have followed divergent interpretation.
- The issue of Dublin detention and coercive transfers raises concerns on the respect of the applicants' right to liberty and physical integrity. Civil society reports on the use of detention in the context of Dublin procedures indicate a worrying trend of reliance on coercion, while differences in the definition of the risk of absconding, which may provide a basis for detention, have led to different detention practices across the Member States.

### Assessment using Better Regulation principles

An assessment of the Dublin Regulation against the criteria set out in the Better Regulation Toolbox, effectiveness, efficiency, relevance, coherence and EU added value, leads to the following conclusions:

- It is not possible to provide a comprehensive or unqualified evaluation of the implementation of Dublin III due to the paucity of available information. Key information gaps cover: grounds for requests; duration of procedures; resources; withdrawn applications; failed transfers; appeal processes and detention.
- A number of Member States demonstrate one or more good practice in their implementation of Dublin. These often stem from policy decisions on how to apply the Regulation.
- While good practice is judged here on the basis of conformity with the fundamental rights of applicants, the controversies and political priorities of surrounding Dublin – and allocation of responsibility in general – mean that there are multiple ways to judge what is good practice.
- The implementation of Dublin III is not effective, in that the primary objectives of the Regulation are not being met.
- The Dublin Regulation appears to be inefficient, in that the costs of its implementation are significant and probably disproportionate given that its objectives are not being achieved. Nonetheless, a definitive assessment is difficult due to the absence of comprehensive information on the costs of Dublin.
- In the absence of centralised asylum decision-making, having legislation that allocates responsibility among the states operating in a common system is necessary. It is also

necessary to allocate responsibility in a manner that is – at very least – in compliance with the fundamental rights of the people affected by the system. These contextual factors indicate that the objectives of Dublin III remain relevant.

- Nonetheless, the evidence on the implementation of Dublin, combined with longstanding critiques of its design and the principles underlying it, indicate that Dublin III in its current form is not relevant.
- The coherence of the Dublin Regulation is weak in three ways. First, internal coherence is lacking due to the differing interpretations of key articles across the Member States. Second, the coherence of the Regulation with fundamental rights is weak due to flaws in both the drafting and implementation. Third, coherence with the rest of the asylum *acquis* is not perfect, primarily due to differences in wording leading to differences in interpretation between the Dublin Regulation and the Asylum Procedures Directive.
- The added value of having EU law on the areas covered by the Dublin Regulation is clear: it is necessary to have standardised responsibility criteria and related evidentiary requirements if there is to be a common system. Where there is EU competence and EU legislation has been developed, the EU can add value through supporting implementation.
- Nonetheless, the flaws in the design and implementation of Dublin raise questions as to the added value of the Dublin Regulation as currently formulated.

## Recommendations

Given the scope of the study, the recommendations primarily concern the implementation of Dublin III. While there is a wealth of literature on flaws in the design of the Dublin Regulation and on alternatives to it, the Recommendations do not comment extensively on these areas. Instead, they draw on the evidence presented in the study in response to the research questions and suggest how implementation could be improved. As the assessment notes, some of the flaws are inherent in the design of the Regulation, thus implementation alone will not resolve the problems.

### Effective and harmonised application of the Regulation

- Avoid applying the Regulation in an ineffective, costly or otherwise unreasonable manner; the unnecessary use of human and financial resources by administrative authorities should be discouraged in cases where the application of the Regulation provisions could be reasonably avoided.
- For example, a less stringent standard of proof should be applied in family cases to allow for completion of more transfer requests based on family unity.
- Provisions on dependent persons (Article 16) and the discretionary clauses (Article 17) could be used far more widely to support family unity.
- Tying up resources in transfers should be avoided where the rigid application of the law would result in avoidable human cost, e.g. long waiting times that affect the length of asylum procedures (situation of *requalifies* in FR – see section on [Transfers](#)), unsuccessful transfers (situation in DE and FR – see section on [Transfers](#)), and disregard of wider family links.
- Encourage comprehensive and frequent reporting of statistics on all aspects of Dublin, in order to promptly identify worrying practices and address emerging problems.
- Clarify key provisions to ensure full compliance with primary EU law and to assist the authorities responsible for the implementation of the Regulation in practice. This will minimise risks of incorrect interpretation of provisions and costs of litigation, especially regarding the criteria for the use of detention (see section on [Detention during the Dublin procedure](#)), the context in which discretionary clauses of Article 17 should be used (see section on [The discretionary clauses](#)), the calculation of time limits (see section

on [The duration of the different stages of the procedure](#)), and the individualised assessment before the execution of a transfer (see section on [Transfers](#)).

- Direct the focus of Europe-wide networks of Dublin Units to address widely reported divergences and bad practices.

## Compliance with human rights standards

- Avoid coercion in the context of implementation of the Regulation by domestic authorities. While Dublin III remains the legal framework, a more humane approach can be achieved by the creation of policy guidance and legislation at the domestic level. The elimination of coercion, either to achieve a transfer or in relation to detention, has wide-ranging positive consequences: it minimises human suffering; considerably reduces the financial and operational costs of transfers; and minimises litigation related to transfers and related costs.<sup>72</sup> It could also reduce irregularity by providing asylum seekers with incentives to engage with the authorities and follow the rules, especially if there is the option of rights after obtaining status.
- Any potential reform of the Dublin system needs to put fundamental rights at its centre, for example, any revision of the criteria for allocation of responsibility should not ignore the applicant's individual circumstances, such as meaningful links, reasonable expectations or social connections with specific countries. It should also be combined with an expansion of mobility rights after the awarding of status, which will reduce the attempt to move before status determination.
- In line with CJEU and ECtHR jurisprudence (see section on [Transfers](#)) disconnect systemic deficiencies and the suspension of transfers. It is not necessary to show the presence of systemic deficiencies before suspending transfers. Risks demonstrated in assessment of individual circumstances, non-refoulement and human rights abuses are reason enough to suspend a transfer even when the destination country does not present systemic problems.
- Support realisation of the right to family life by ensuring that family unity is one of the primary considerations in the application of the Regulation, as dictated by the hierarchy in the Regulation. Otherwise provisions on family unity remain illusory.
- Better data provision and more expansive data reporting obligations are necessary to identify violations that emerge through bad practice.
- When patterns of unlawful practices can be established, consistent use of Recommendations by the European Commission should be encouraged to protect applicants and, in the absence of compliance, gradual resort to infringement procedures should be considered.
- Encourage the correct use of discretionary clauses of Article 17 and promote their application on the basis of solidarity and rights rather than exceptionality and emergency.
- Expand the use of the discretionary clauses of Article 17 to address challenging situations, including as a tool for sharing responsibility. This includes their use in situations of large number of spontaneous arrivals and in the specific context of sea arrivals and disembarkation procedures.
- Member States should use Dublin transfer channels in these contexts, instead of attempting to outsource responsibility to third countries.

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<sup>72</sup> The elimination of coercion has been called for *inter alia* by Elspeth Guild et al., [New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection](#), PE509.989, 2014; Elspeth Guild et al., [Enhancing the CEAS and alternatives to Dublin](#), PE519.234, 2015; Francesco Maiani, [The Reform of the Dublin III Regulation](#), European Parliament, Policy Department, June 2016.

- Monitor rights-based CEAS implementation by conducting a thorough assessment of the application of the Dublin Regulation III on the basis of compliance with the Charter of Fundamental Rights of the European Union.
- Consistent evaluation activities by the European Commission and Charter-based analysis of the application of the Regulation by the Fundamental Rights Agency of the EU should be promoted as an institutional form of monitoring and impact assessment, along with engagement with civil society actors and relevant stakeholders.

### Solidarity and accountability

- In the absence of a temporary suspension mechanism, ensure prompt activation of mechanism in Article 33 enabling the Commission to make recommendations and take preventive action in response to challenging situations jeopardising the Dublin system.
- Where action is not swiftly taken by the European Commission, Member States should make use of their discretion under the same article, which allows them to draw preventive action plans and to call for the assistance of other Member States, the Commission and EASO. The protection of fundamental rights of asylum applicants should always remain at the centre of the mechanism's function.
- Support responsibility sharing practices, instead of responsibility assigning approaches that resort to strict and technical application of the Regulation regardless of the humanitarian considerations.
- The existence of discretionary clauses should be used to alleviate pressure on Member States facing challenges.
- In the absence of a fundamental reform or permanent corrective mechanisms, the discretionary clauses can help to ensure that the Regulation is applied in a humane manner and in line with the principle of solidarity among Member States.
- A fairer system of allocation be a priority for any reform of the Dublin system otherwise the value of engaging in reform is questionable.
- In the short term, *ad hoc* temporary solidarity and responsibility sharing mechanisms provide a method for mitigating some of the damaging consequences of the system e.g. formal relocation arrangements can promote predictability and certainty so long as they operate within the existing legal framework of the CEAS.
- Expand the sources used for the monitoring and identification of unlawful practices to include information provided by international and non-governmental organisations where it is reliable, up-to-date and specific.
- Reliable and qualified reports by international and non-governmental organisations should form part of the European Commission's action against unlawful state behaviour, whether in the context of recommendations or in the initiation of infringement proceedings.
- Engage with civil society including/and persons subject to the Dublin Regulation on an ongoing basis to ensure that monitoring of implementation takes into account those directly affected.

## 2. Introduction

### 2.1. Background to the report

This report provides an overview of the implementation of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 ('Dublin III Regulation' or 'Dublin Regulation').<sup>73</sup>

The Regulation entered into force on 1 January 2014 and is binding on all 28 European Union (EU) Member States, as well as on four Schengen Associated States: Liechtenstein (LI), Switzerland (CH), Iceland (IC) and Norway (NO). Throughout the report, the shorthand 'Member States' will be used to describe the countries applying the Dublin Regulation. Although the UK left the EU on 31 January 2020, the report refers to this country at some points; the UK is still bound by the Regulation during the transition phase.

The main stated objectives of the Regulation are twofold: it aims to guarantee swift access to the procedure for asylum seekers and to prevent multiple applications by the same person in different Member States.<sup>74</sup> The main principles of the Regulation are outlined in Part I of this study.

Pursuant to its legal obligation to conduct an evaluation of the application of the Regulation by July 2016,<sup>75</sup> the European Commission commissioned one study on the evaluation of the Regulation and one on its implementation by Member States. The two studies were conducted by ICF, a global consulting company, and were published in December 2015 and March 2016 respectively.<sup>76</sup> The next evaluation of the Regulation due by July 2018 has not yet been produced.<sup>77</sup> In addition to official Commission evaluations, a number of other actors such as the European Parliament and the United Nations High Commissioner for Refugees (UNHCR) have commissioned detailed studies on the implementation of the Dublin Regulation.<sup>78</sup>

The studies carried out by ICF and UNHCR are summarised in Part I of the study. In particular, they contain an extensive analysis of different aspects of the implementation of the Regulation, ranging from the use of responsibility criteria and guarantees, to procedures, detention and communication between authorities.

Among other findings, the ICF evaluation noted that Member States use certain criteria for allocating responsibility more than others, apparently disregarding the hierarchy set out in the regulation. The criteria supported by some types of evidence, such as a Eurodac 'hit', are used more often, which constitutes a different basis for using the criteria, other than the hierarchy set out in

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<sup>73</sup> [Regulation \(EU\) No 604/2013](#) 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.

<sup>74</sup> EASO, [Annual report on the situation of asylum in the EU 2018](#), 2019, p. 70.

<sup>75</sup> [Regulation \(EU\) No 604/2013](#) ("Dublin III"), Article 46.

<sup>76</sup> ICF, [Evaluation of the Dublin III Regulation, 2015](#); ICF, [Evaluation of the implementation of the Dublin III Regulation, 2016](#).

<sup>77</sup> [Regulation \(EU\) No 604/2013](#) ("Dublin III"), Article 46, citing [Regulation \(EU\) No 603/2013](#) ("Eurodac Regulation"), Article 40.

<sup>78</sup> See e.g. Francesco Maiani, [The Reform of the Dublin III Regulation](#), European Parliament, Policy Department, June 2016; UNHCR, [Left in Limbo](#), 2017.

the Regulation.<sup>79</sup> ICF also noted that the number of transfers is very low compared to the volume of outgoing requests issued by Member States.<sup>80</sup>

On the procedural safeguards in place to ensure that applicants' rights are respected during the asylum process, ICF found that almost half the Member States provide only general information on the Dublin procedure. It also noted various problems arising in relation to the personal interview, including language barriers and a lack of interpreters, a lack of expertise of interviewers, limited access to legal assistance, for instance to prepare for the interview, and, in certain countries, omission of the personal interview in circumstances not covered by the list of reasons justifying omission in the Regulation.<sup>81</sup> The study also highlights significant variations in law and practice across Member States regarding remedies and the possibility to challenge a transfer decision, i.e. different types of remedies and significant variations in time limits during which the applicant can exercise his or her right to an effective remedy, ranging from 3 days to 60 days.<sup>82</sup>

In its study, UNHCR corroborated *inter alia* the finding that only a small percentage of requests result in transfers and that applicants face severe delays in accessing the asylum procedure *in situ*.<sup>83</sup> It also noted that the family provisions are restrictively interpreted, i.e. they are interpreted in a narrow way which limits their use, and that the discretionary clauses are under-used.<sup>84</sup> UNHCR further demonstrated that a majority of Member States use detention to secure Dublin transfers, albeit with varying frequency and based on different assessments of the principles of necessity and proportionality, which are supposed to be respected when detention is considered.<sup>85</sup> It further reported practical difficulties faced by people in accessing judicial remedy while in detention, mainly due to limited access to legal assistance and the speed of removals.<sup>86</sup>

Given the large volume of existing research, the present report provides an update on the application of the Dublin III Regulation by focusing on selected aspects of implementation in the period 2016 to 2019. It stops short of offering a comprehensive evaluation of Member States practice, which remains within the remit of the responsibilities of the European Commission under the *acquis*. That said, references will be made throughout the report to the ways in which the implementation of the Dublin Regulation has contributed to meeting the objectives of coherence, relevance, effectiveness, and efficiency set out in the Better Regulation provisions.

ECRE was asked to provide an evaluation covering thirteen specific topics, which are represented by the chapter headings in this study (from 2.3. Organisational structure to 2.15. Detention during the Dublin procedure).

## 2.2. Methods

For the purposes of this report, the authors have relied on desk research as the main method for gathering data and qualitative information. Sources consulted included: statistics relevant to the Dublin Regulation made available by Eurostat; statistics relevant to the Dublin Regulation made available by the Asylum Information Database (AIDA), managed by ECRE, as a complementary

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<sup>79</sup> ICF, [Evaluation of the implementation of the Dublin III Regulation](#), 2016, p. 27.

<sup>80</sup> *Ibid.*, p. 56-57.

<sup>81</sup> *Ibid.*, p.11-14.

<sup>82</sup> *Ibid.*, p. 75-76.

<sup>83</sup> UNHCR, [Left in Limbo](#), 2017, p. 156.

<sup>84</sup> *Ibid.*, p. 132.

<sup>85</sup> *Ibid.*, pp. 160-161.

<sup>86</sup> *Ibid.*, p. 163.

source of data; qualitative information on national practice extracted from AIDA country reports and comparative reports; the European Asylum Support Office (EASO) Annual Reports on the situation of asylum in the European Union and other sources; and case law from the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR) and domestic courts, as provided in the European Database of Asylum Law (EDAL), managed by ECRE.

### 2.2.1. Remarks on Dublin statistics

The study is based on analysis of empirical evidence on the implementation of the Dublin Regulation however the lack of comprehensive statistical information means that analysis and conclusions are heavily qualified and that often only a partial assessment can be provided because information is partial or otherwise patchy. An overview of the state of affairs in the availability of Dublin statistics is provided in this section as background to the figures and analysis provided in the study.

The European Commission (Eurostat) has been entrusted with the provision of annual EU-wide figures on the Dublin system since 2008 under the Migration Statistics Regulation.<sup>87</sup> Member States are required to provide Eurostat with annual statistics on the implementation of the Dublin Regulation by the end of every March.<sup>88</sup> The European Parliament recommended a rule of monthly supply of Dublin statistics in the amendment of the Migration Statistics Regulation,<sup>89</sup> which was not accepted by the Council in trilogue negotiations.<sup>90</sup>

There are a number of challenges in the provision of EU-wide statistics. First, Eurostat systematically publishes Dublin statistics with gaps and several months of delay.<sup>91</sup> At the end of 2019, data on outgoing requests are missing for six Member States for 2015 and for five Member States for 2016.<sup>92</sup> Data on outgoing transfers are missing for six Member States for 2015, for five Member States for 2016 and for one Member State for 2017 and 2018.<sup>93</sup> Due to these gaps, reports from other EU institutions and agencies, such as EASO, are weakened when it comes to analysis of Dublin data.<sup>94</sup>

Second, data presented by Eurostat are at times inaccurate. The database mentions zero outgoing transfers for IT in 2016,<sup>95</sup> whereas the IT Dublin Unit reported at least 61 transfers for that period.<sup>96</sup> It also refers to zero outgoing transfers for SI in 2018,<sup>97</sup> while the SI Dublin Unit reported 31 transfers that year.<sup>98</sup>

Third, data on outgoing and incoming procedures do not always match. For instance, according to 2018 Eurostat figures, DE carried out 2,848 outgoing transfers to IT but IT received only 2,291

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<sup>87</sup> [Regulation \(EC\) No 862/2007](#) of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection ("Migration Statistics Regulation"), Article 4(4).

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> European Parliament, [Proposal for a Regulation \[amending the Migration Statistics Regulation\]: First reading](#), 2019, T8-0359/2019, Article 1(1)(1)(e).

<sup>91</sup> ECRE, [Making asylum numbers count: ECRE's analysis of gaps and needs for reform in data collection on the Common European Asylum System](#), 2018, p. 2.

<sup>92</sup> Eurostat, migr\_dubro.

<sup>93</sup> Eurostat, migr\_dubto.

<sup>94</sup> EASO, [Annual report on the situation of asylum in the EU 2018](#), 2019, p. 70.

<sup>95</sup> Ibid.

<sup>96</sup> AIDA, [Country Report Italy](#), 2017, p. 35.

<sup>97</sup> Eurostat, migr\_dubto.

<sup>98</sup> AIDA, [Country Report Slovenia](#), 2019, p. 26.

incoming transfers from DE.<sup>99</sup> These inconsistencies are likely to stem from the fact that Eurostat's compilation of data relies on the statistics supplied by Member States. It appears that Dublin Units continue to have different numbers on the number of requests and transfers they exchange.

According to Eurostat, asymmetries between the number of incoming and outgoing requests may exist for different reasons. Differences in the times that requests are recorded domestically may lead to differences in annual data or changes on the legal basis that one Member State will accept a request that was proposed on a different legal basis may both account for statistical discrepancies.<sup>100</sup> Moreover, Eurostat does recommend that data should be provided on the number of persons concerned, as certain requests may concern more than one person. As some States engage in reporting based on the number of requests, regardless of the number of persons covered by each request, this may lead to further inconsistencies.<sup>101</sup>

EASO also collects information on the application of the Dublin system as part of its information and analysis activities.<sup>102</sup> Information consists *inter alia* of statistics in the Agency's Early Warning and Preparedness System (EPS) and qualitative country information in its Information and Documentation System (IDS). Most Dublin statistics collected by EASO are not publicly accessible, however. At Member State level, only a handful of countries (e.g. EL, DE, LU, PL, HR, UK, and CH) release figures on the activities of their Dublin Units at varying intervals and levels of detail.<sup>103</sup> Practice is particularly positive in EL and CH, both of which publish detailed monthly reports on outgoing and incoming requests, replies and effective transfers broken down by Member State.<sup>104</sup>

Given the situation described, adequate data on the Dublin Regulation are yet to be available at EU level. In the interest of consistency this report will primarily rely on Eurostat, as it remains the sole accessible source of EU-wide figures. Bearing in mind the methodological constraints outlined, Eurostat statistics should be read critically and with caution. Where available, more recent statistics published by the AIDA database, managed by ECRE, will be cited.

### 2.2.2. Selection of countries for in-depth analysis

Due to the gaps in the provision of Dublin statistics at EU level, a full comparison of quantitative and qualitative aspects of implementation is not possible. The report will provide information for all 32 countries bound by the Dublin system to the extent that information is available. Analysis will focus on the main operators of the system, namely the Member States initiating Dublin procedures in recent years. Based on available figures, these are DE, FR, CH, AT, EL, BE and NL.

As regards asylum applicants, Syria, Afghanistan and Iraq were the three main countries of origin of applicants in the EU in recent years (see Annex 1). In 2018, their applications for international protection accounted for more than a quarter of all applicants (27 %).<sup>105</sup> During the first nine months

<sup>99</sup> Eurostat, migr\_dubto; Eurostat, migr\_dubti.

<sup>100</sup> Eurostat, [Dublin statistics on countries responsible for asylum application – Data Sources](#).

<sup>101</sup> Ibid.

<sup>102</sup> [Regulation \(EU\) No 439/2010](#) of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office ("EASO Regulation"), Article 11.

<sup>103</sup> ECRE, [Comments on the Commission proposal amending the Migration Statistics Regulation](#), 2018, p. 11.

<sup>104</sup> Greek Asylum Service, [Statistical data – Dublin III Regulation procedures](#); Swiss State Secretariat for Migration, [Statistique en matière d'asile – Dublin: requêtes, règlements et transferts](#).

<sup>105</sup> EASO, [Annual report on the situation of asylum in 2018](#), June 2019, p.12.

of 2019, however, one in four pending applications pertained either to Syrian, Afghan or Venezuelan nationals.<sup>106</sup>

As regards the main Member States of destination, Germany, France, Greece, Italy, and Spain accounted for almost three quarters of all applications lodged in the EU in 2018. The top 5 receiving countries per capita included Cyprus, Greece, Malta, Liechtenstein, and Luxembourg.<sup>107</sup>

## 2.3. Organisational structure

### Key findings

Most countries entrust their asylum authorities with the implementation of the Dublin Regulation, which is a good practice because these are specialised agencies. Exceptions include BE, FR and IT where Dublin is implemented by other actors (information is not available for all countries).

Shortages in the administrative capacity of asylum authorities contribute to delays in the procedure and affect the effective application of the Dublin Regulation (and other parts of the *acquis*).

Exchanges between Dublin Units are facilitated by the European Commission and EASO. EASO manages a Network of Dublin Units, which develops practical tools and provides operational support to selected countries. The work of this Network is largely confidential so an assessment of its value is difficult.

### 2.3.1. General

Asylum authorities responsible for examining applications for international protection and competent to take decisions at first instance are at the core of asylum systems.<sup>108</sup> Their ability to conduct a rigorous and fair examination of asylum claims depends on factors including internal organisation, resources and functioning. The EU asylum *acquis* thus obliges Member States to provide asylum authorities with appropriate means, including sufficient competent personnel,<sup>109</sup> and to ensure that the staff has the appropriate knowledge or has received the necessary training in the field of international protection.<sup>110</sup>

While asylum authorities vary in size, tasks and resources, it is common practice to establish units dealing with different types of asylum applicants and/or different asylum procedures. Accordingly, the majority of countries have entrusted the implementation of the Dublin Regulation to 'Dublin Units' within their asylum authorities.<sup>111</sup> Some Member States such as BE, FR and IT have made use of the discretion afforded to them by the Asylum Procedures Directive to separate their asylum authorities and those in charge of the Dublin system,<sup>112</sup> meaning that a different structure deals with Dublin rather than it being consigned to a unit within the asylum authority.<sup>113</sup>

<sup>106</sup> EASO, [More than half a million asylum applications lodged in the EU+ so far in 2019](#), 19 November 2019.

<sup>107</sup> EASO, [Annual report on the situation of asylum in 2018](#), June 2019, p.12.

<sup>108</sup> Asylum authorities are referred to as "determining authorities" in Article 4(1) of the recast Asylum Procedures Directive.

<sup>109</sup> [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ("recast Asylum Procedures Directive"), Article 4(1).

<sup>110</sup> [Directive 2013/32/EU](#) ("recast Asylum Procedures Directive"), Articles 4(3) and 14(1).

<sup>111</sup> ECRE, [Asylum authorities: An overview of internal structures and available resources](#), 2019, p. 19.

<sup>112</sup> [Directive 2013/32/EU](#) ("recast Asylum Procedures Directive"), Article 4(2)(a).

<sup>113</sup> ECRE, [Asylum authorities: An overview of internal structures and available resources](#), 2019, pp. 19-20.

**BE:** The Dublin procedure is carried out by the Aliens Office prior to transmitting asylum applications to the Commissioner-General for Refugees and Stateless Persons (CGRS) for examination.

**FR:** Prefectures are in charge of implementing the Dublin Regulation following the registration of an application. A claim is not lodged with the French Office of Protection of Refugees and Stateless Persons (OFPRA) unless the responsibility of FR has been established under the Regulation.

To ensure higher convergence in Dublin procedures throughout the country, the FR Ministry of Interior rolled out a 'regionalisation' plan in 2018, whereby one Prefecture per region (*pôle régional Dublin*) would become competent to implement the Dublin Regulation. Accordingly, the Dublin procedure is now handled by 11 dedicated Prefectures for the entire territory.<sup>114</sup> It should be noted that the regionalisation plan has created difficulties for asylum seekers, as many have been required to travel to different cities to attend appointments with the competent Prefectures. Missing an appointment has led to reception conditions being withdrawn and applicants becoming exposed to destitution.<sup>115</sup> The Council of State has clarified that the costs of such travel have to be covered by the authorities.<sup>116</sup>

**IT:** Whereas the Territorial Commissions for International Protection are in charge of examining asylum applications, the Dublin procedure is handled by a separate Dublin Unit under the Ministry of Interior. Following a 2018 legislative reform, IT law has provided for the establishment of up to three branches of the Dublin Unit, and one such branch is likely to be set up in the region of Friuli-Venezia Giulia.<sup>117</sup>

The allocation of responsibility of Dublin implementation and refugee status determination to different authorities can create difficulties because core legal questions in the operation of the Dublin system, such as the application of procedural safeguards and fundamental rights, are not then managed by the asylum authorities.

It can also exacerbate confusion and misrepresentation of the exact number of asylum claims received by a country. For example, when reporting to Eurostat,<sup>118</sup> FR supplies the number of persons lodging applications with OFPRA and excludes those who have registered an application and then been placed in Dublin procedures.<sup>119</sup> This derogation from Eurostat Technical Guidelines leads to an underestimation, if not misrepresentation, of figures on asylum applications in FR. In 2018, 139,330 persons were registered as asylum seekers by the Ministry of Interior. For its part, OFPRA reported 122,743 applicants, of whom 17,030 were persons previously in a Dublin procedure who were eventually permitted to lodge a claim after FR became responsible (*requalifiés*).<sup>120</sup>

### 2.3.2. Resources and evolution of organisational structure

In recent years, asylum authorities have adapted their staffing levels in accordance with the number of people seeking international protection. Increasing the number of staff is considered by certain

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<sup>114</sup> EASO, [Annual report on the situation of asylum in the EU+ in 2018](#), 2019, p. 75.

<sup>115</sup> AIDA, [Country Report France](#), 2019, p. 44.

<sup>116</sup> (FR) French Council of State, Order 422159, 26 July 2018.

<sup>117</sup> AIDA, [Country Report Italy](#), 2019, p. 50.

<sup>118</sup> [Regulation \(EC\) No 862/2007](#) ("Migration Statistics Regulation"), Article 4(1).

<sup>119</sup> AIDA, [Country Report France](#), 2019, p. 9.

<sup>120</sup> *Ibid.*

Member States as a way to improve the efficiency of national asylum systems and to optimise available resources, with the long-term aim of decreasing backlogs and processing times.<sup>121</sup>

However, asylum caseloads in individual countries can fluctuate significantly within a relatively short period of time and backlogs of pending cases can increase or drop significantly from one year to the next.<sup>122</sup> Fluctuations of this type are reported in almost every Member State, regardless of the number of staff in their respective determining authority. Despite the increase in staff in most countries in recent years, case processing times were lengthy during 2018 and the first half of 2019.<sup>123</sup>

Information on the financial and human resources specifically allocated to Dublin Units is not made available for most Member States. Therefore, assessing whether resources correspond to needs is not possible. It is also not possible to ascertain the evolution of resources and organisational structure of Dublin Units in recent years, i.e. to assess whether resources increased in line with the increase in arrivals.

Partial statistics are available in AIDA for specific countries. For example, HR had 8 officials in its Dublin Unit in 2017.<sup>124</sup> This number dropped to 6 officials in 2018.<sup>125</sup> In HU, the staff of the Dublin Unit dropped from 18 in 2017 to 11 in 2018.<sup>126</sup> In CY, there is no staff member solely dedicated to the implementation of the Dublin Regulation. The 6 caseworkers of the Asylum Service in 2017 and 2018 were responsible for Dublin but also for other matters.<sup>127</sup> BE has reported staff shortages in its Dublin Unit, without providing figures.<sup>128</sup>

Since most Dublin Units fall under the asylum authorities of the respective Member State, the information on the overall resources of the asylum authority is a proxy indicator of resources allocated to Dublin. A comparison of staffing in asylum authorities to the number of applicants indicates severe shortages in the resourcing of asylum authorities, further substantiated by feedback from staff and by delays in processing and related backlogs. The conclusion can thus be drawn that inadequate resources have a significant negative impact on the application of the Dublin Regulation.

The following table compares the number of staff as at 30 June 2019 and the number of asylum seekers received in the first half of 2019 in selected EU Member States:

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<sup>121</sup> ECRE, [Asylum authorities: An overview of internal structures and available resources](#), 2019, pp. 29-33.

<sup>122</sup> ECRE, [Housing out of reach? The reception of refugees and asylum seekers in Europe](#), 2019, p. 11.

<sup>123</sup> ECRE, [Asylum authorities: An overview of internal structures and available resources](#), 2019, pp. 34-36.

<sup>124</sup> AIDA, [Country Report Croatia](#), 2018, p. 34.

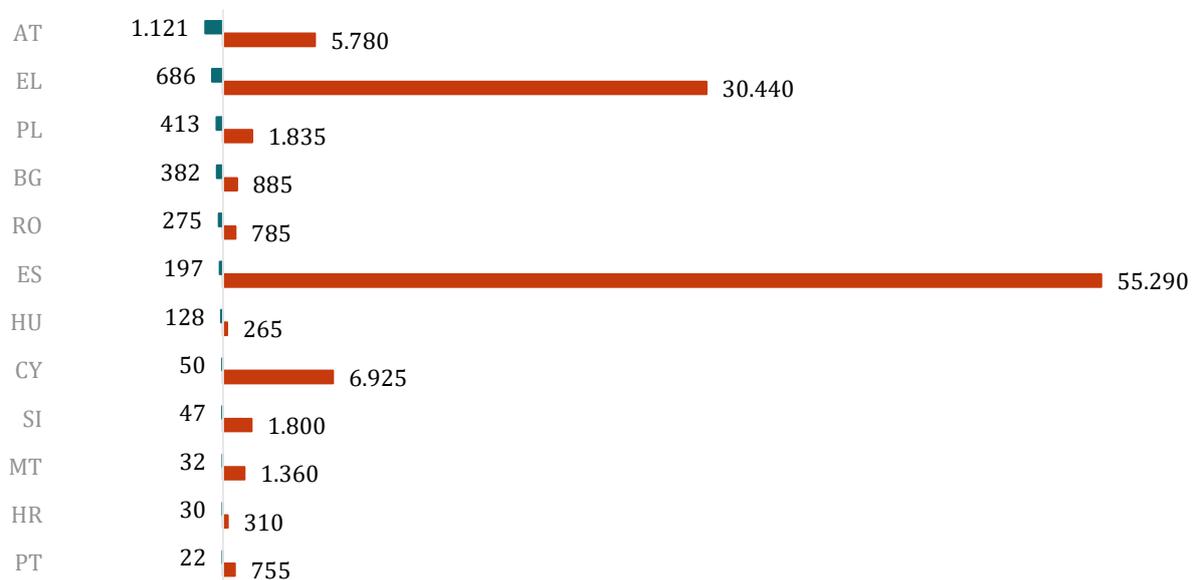
<sup>125</sup> AIDA, [Country Report Croatia](#), 2019, p. 39.

<sup>126</sup> AIDA, [Country Report Hungary](#), 2018, p. 30; AIDA, [Country Report Hungary](#), 2019, p. 34.

<sup>127</sup> AIDA, [Country Report Cyprus](#), 2018, p. 15; AIDA, [Country Report Cyprus](#), 2019, p. 15.

<sup>128</sup> EASO, [Annual report on the situation of asylum in the EU 2018](#), 2019, p. 75.

Figure 4: Number of staff of asylum authorities against asylum applicants: 1 Jan - 30 Jun 2019



Source: AIDA, *Asylum authorities: An overview of internal structures and available resources*, 2019, p. 31. Staff figures (blue) include all officials, not just caseworkers responsible for examining applications.

As indicated in the table, in the first half of 2019, authorities in ES, EL and CY received particularly high numbers of asylum applicants relative to their size and capacity. This is likely to contribute to difficulties in carrying out Dublin procedures in a timely manner for newly arriving asylum seekers. In 2018, for instance, CY faced difficulties in meeting the deadlines for issuing ‘take charge’ requests to reunite family members under the Regulation.<sup>129</sup> It should be noted of course that for all Member States in question the issue is not specific to Dublin: a high ration of applicants to staff will affect the efficiency of all aspects of the system.

The type of employment contracts used by asylum authorities may be an obstacle to the sustainability of capacity in asylum authorities. As of 30 June 2019, more than 50% of staff positions in the EL Asylum Service and nearly 70% in the CY Asylum Service staff were temporary posts. By way of contrast, all staff at the asylum authorities of RO (General Inspectorate of Immigration, IGI-DAI) and PT (Immigration and Borders Service, SEF) were employed on permanent work contracts.<sup>130</sup>

It should be noted that some Member States benefit from EASO operational support. Currently, EASO operations are ongoing in CY, IT, EL and MT. In operations in IT, EL and MT, EASO has deployed caseworkers and other experts into the national Dublin Units to support them in activities defined in the Operating Plans agreed with the countries. Such support has generally been seen as a positive contribution to the efficiency and quality of the Dublin procedure.<sup>131</sup>

<sup>129</sup> AIDA, [Country Report Cyprus](#), 2019, p. 34.

<sup>130</sup> ECRE, [Asylum authorities: An overview of internal structures and available resources](#), 2019, p. 37.

<sup>131</sup> ECRE, [The role of EASO Operations in national asylum systems](#), 2019, pp. 9-10.

### 2.3.3. Cooperation at EU level of national authorities

Cooperation including exchange of information and practice between Dublin Units is facilitated by the EU, specifically by the European Commission and EASO, in the following ways.

First, Dublin Unit staff meet regularly in the framework of expert groupings managed by EU institutions and agencies. These include the Contact Committees organised by the European Commission to discuss implementation issues,<sup>132</sup> as well as the Network of Dublin Units managed by EASO since February 2016. It is not clear whether and to what extent the two groups cover similar or different aspects of the implementation of the Regulation, i.e. whether or not there is overlap. It appears that the EASO Network of Dublin Units has been more active than the Dublin Contact Committee in recent years. The Contact Committee held its two most recent meetings on 15 November 2016 and 15 June 2017, while the EASO Network organised a large number of meetings in 2018 alone.<sup>133</sup> Specific details on these meetings, including attendance rates, minutes and agendas are not available. According to information provided by EASO, the 2018 meetings centred around general aspects of Dublin implementation, challenges and good practices,<sup>134</sup> including two thematic meetings focusing on the use of a secure electronic communication system between Dublin Units (DubliNet),<sup>135</sup> and the use of Article 17 of the Regulation.<sup>136</sup>

EASO launched a Dublin Exchange Programme involving a first set of visits to the EL and NL Dublin Units by experts from five Member States in November 2019.<sup>137</sup> ECRE has not been able to find public information that could provide the basis for an assessment of the effectiveness of these initiatives.

Second, in addition to promoting regular exchange of information and practice, EASO supports Dublin Units through training and the development of practical guides on the implementation of the Regulation. In October 2019, the Agency published a Practical Guide on the implementation of the Regulation, focusing on the interview and evidence assessment.<sup>138</sup> Other tools related to the Regulation include Practical Guides on family tracing and on the best interests of children.<sup>139</sup>

Third, as mentioned above, EASO offers operational support to the Dublin Units of EL, IT and MT as part of its ongoing operations. The areas of the Dublin procedure covered by EASO assistance vary according to the Operating Plan in force. Currently, the Agency supports IT in both outgoing and incoming procedures, whereas support to EL and MT is limited to the outgoing procedure.<sup>140</sup> Such support is likely to be consolidated and expanded in future operations with the prospective

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<sup>132</sup> European Commission, [Contact Group – Dublin III \(E00612\)](#).

<sup>133</sup> EASO, [Annual General Report 2018](#), 2019, pp. 44-45.

<sup>134</sup> EASO, [EASO Dublin Network expert meeting - EASO Headquarters, 21-22 February 2018, 2018](#); EASO, [EASO Dublin Network Steering Group Meeting – 8 June \(Brussels\)](#), 2018.

<sup>135</sup> EASO, [EASO Dublin Network expert meeting with eu-Lisa, 2018](#).

<sup>136</sup> EASO, [5th Steering Group meeting of the EASO Network of Dublin Units, 2018](#).

<sup>137</sup> (EL) Greek Asylum Service, [Προγραμμα EASO ανταλλαγής τεχνογνωσίας Μονάδων Δουβλίνου Αθήνα 12-14/11/2019 – Ολλανδία 5-7/11, 2019](#).

<sup>138</sup> EASO, [Practical Guide on the implementation of the Dublin III Regulation: Personal interview and evidence assessment, 2019](#).

<sup>139</sup> EASO, [Practical Guide on family tracing](#), 2016; EASO, [Practical Guide on the best interests of the child in asylum procedures, 2019](#).

<sup>140</sup> ECRE, [The role of EASO Operations in national asylum systems](#), 2019, p. 10.

transformation of EASO into the EU Asylum Agency (EUAA), if negotiations on the Commission proposal resume.<sup>141</sup>

If the Commission proposal is adopted, the EUAA will also be responsible for monitoring the Member States' technical implementation of core aspects of the CEAS, including Dublin.<sup>142</sup> It is not yet clear how the monitoring activities of the Agency will feed into the work and possible enforcement measures carried out by the European Commission.

Finally, depending on the direction of negotiations on the future of responsibility sharing in the EU, it is possible that the EUAA becomes operationally involved in aspects of the distribution of asylum seekers across the continent. Some of the proposals for the Asylum and Migration Pact foresee a role for the EUAA in relocation mechanisms, building on its role in relocation following disembarkation. The Pact and related legislative proposals are expected in March 2020.

## 2.4. The right of information of the applicant

### Key findings

IE, CY, PL, NL, FR, RO, SE, SI, and CH systematically provide information on the Dublin procedure. The quality and amount of information varies between countries, and in some cases within countries, with different practices observed from region to region in the same country (e.g. FR and RO).

The complex nature of the Dublin system, the late stage at which information is given, and the absence of interpretation and legal assistance make it difficult to realise applicants' right to information.

The right of access to information for applicants for international protection is well established in the EU asylum *acquis*,<sup>143</sup> including in the Dublin Regulation which explicitly instructs the responsible authorities to inform the applicant *inter alia* of the functioning and consequences of the Dublin procedure, as well as the possibility to challenge a transfer decision.<sup>144</sup> While these safeguards have been widely transposed at national level, practice indicates that the provision of information significantly differs from one Member State to another.

In certain countries (IE, CY, PL, NL, FR, RO, SE, SI, and CH) access to information on the Dublin procedure appears to be provided systematically in practice. In IE for example, all applicants are provided with information leaflets from the International Protection Office (IPO) guiding them through the Dublin procedure.<sup>145</sup> In CY, applicants are provided a leaflet on the Dublin Regulation and a list of relevant contact details to obtain further information.<sup>146</sup>

Nevertheless, it should be noted that the level of information provided can vary within the same country. In FR for example, the information provided about the Dublin procedure varies significantly

<sup>141</sup> European Parliament, [Legislative train schedule towards a new policy on migration – Strengthening the European Asylum Support Office \(EASO\)](#).

<sup>142</sup> ECRE, [Agent of protection? Shaping the EU Asylum Agency](#), 2017, p. 2.

<sup>143</sup> [Directive 2013/32/EU](#) ("recast Asylum Procedures Directive"), Article 12; [Regulation \(EU\) No 603/2013](#) ("Eurodac Regulation"), Article 29; [Regulation \(EU\) No 603/2013](#) ("Dublin III Regulation"), Article 4.

<sup>144</sup> [Regulation \(EU\) No 603/2013](#) ("Dublin III Regulation"), Article 4.

<sup>145</sup> AIDA, [Country Report Ireland](#), 2019, p. 49.

<sup>146</sup> AIDA, [Country Report Cyprus](#), 2019, p. 53; Cypriot Asylum Service, [Information leaflets on the Dublin and Eurodac Regulations](#).

from one Prefecture to another.<sup>147</sup> In RO, access to information happens in Regional Centres with the exception of Bucharest where a lack of staff and interpreters has been reported.<sup>148</sup>

The fact that information is provided does not guarantee that it is actually understood by the asylum seeker: there are reports from almost all Member States that asylum seekers struggle to understand the procedure and their related rights and obligations due to the complexity of the rules as well as the poor quality of information provided in some cases.

In other countries (BG, EL, HU, IT, PT and UK)<sup>149</sup> access to information on the Dublin procedure is either not available or only partially available. In IT, since 2016 asylum seekers have not been properly informed about the different steps of the Dublin procedure.<sup>150</sup> The provision of information by the *Questura* has been categorised as superficial and not adapted to asylum seekers.<sup>151</sup> In a recent ruling of 25 March 2019, the Civil Court of Rome annulled a Dublin transfer because the *Questura* of Gorizia had only provided information on the regular asylum procedure, thus failing to meet the obligations laid down in Article 4 of the Dublin Regulation.<sup>152</sup>

An important obstacle to the necessary provision of information results from the limited access of asylum seekers to legal assistance. In some countries (CY, DE, EL, HU, MT, PL, SE) access to legal assistance during the Dublin procedure at first instance is generally not available.<sup>153</sup> In others, access to legal aid is met with various practical obstacles, such as short timeframes to lodge an appeal (CH, DE, HU) and insufficient time to study the case and prepare before a hearing (AT).<sup>154</sup> In NL, while asylum seekers under the regular procedure can meet with a legal representative before the start of the procedure, this is not the case for applicants in a Dublin procedure, where a legal representative is assigned only after the Dublin interview and after an intention to reject the application has been issued.<sup>155</sup>

Another factor that has been reported as severely limiting access to information is the language barrier and the absence of interpreters (e.g. in EL, IT, PT, RO, UK). As mentioned in the introduction, the main countries of origin of asylum-seekers for a number of years now have been Syria, Afghanistan and Iraq, with applicants unlikely to speak either the language of the country where they lodge the application or English. Reliable interpretation into their mother tongue is essential for their understanding of the information provided to them but depends on the availability of interpreters with the requisite language knowledge. Evidence shows a near continuous shortage of interpreters in many countries. In this regard, the Administrative Court of Appeal of Bordeaux in FR has highlighted that the absence of interpretation is a violation of the fundamental guarantees which must be respected in the framework of the Dublin procedure.<sup>156</sup>

Another important element in evaluating access to information is the type of information being provided to asylum seekers and whether it enables them to fully understand all aspects of the Dublin procedure. Certain country examples illustrate the point.

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<sup>147</sup> AIDA, [Country Report France](#), 2019, p.75.

<sup>148</sup> AIDA, [Country Report Romania](#), 2019, pp. 72-73.

<sup>149</sup> Although the UK left the EU on 31 January 2020 it is referred to in the study whenever relevant.

<sup>150</sup> AIDA, [Country Report Italy](#), 2019, p. 77.

<sup>151</sup> AIDA, [Country Report Italy](#), 2018, p. 66.

<sup>152</sup> (IT) Italian Civil Court of Rome, Decision 6256/2019, 25 March 2019.

<sup>153</sup> ECRE/ELENA, [Legal note on access to legal aid in Europe](#), 2017, p. 6.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> (FR) French Administrative Court of Appeal of Bordeaux, Decision No 16BX01854, 2 November 2016.

In **MT** for example, a leaflet consisting of a few short paragraphs written in English is provided to asylum seekers, but it does not include information on the consequences of travelling to another EU Member State and on the consequences of absconding.<sup>157</sup>

In **HU**, asylum seekers are informed about the fact that a Dublin procedure has started, but they do not receive further information on the different steps of the procedure.<sup>158</sup>

In **HR**, general information on the Dublin procedure is available, but a lack of information has been identified with regard to family reunification procedures.<sup>159</sup>

In **AT**, the organisation Verein Menschenrechte Österreich (VMÖ), which is in charge of providing information on the Dublin procedure is also charged with providing information on voluntary return. It has been criticised by NGOs for its close ties with the authorities and for not acting in the interest of asylum seekers and it is unclear if and to what extent information is being provided to asylum seekers.<sup>160</sup>

Another issue relates to the point at which information is provided to asylum seekers. In the UK,<sup>161</sup> asylum seekers are not systematically informed about the Dublin procedure and its implications until they are detained for transfer to the responsible EU Member State or Schengen Associated State.<sup>162</sup> Similarly in PT, asylum seekers mostly obtain information on a request made to another Member State, and the answer, only once a transfer decision has already been issued.<sup>163</sup>

Finally, it should be noted that limiting access to information for asylum seekers is often related to deliberate policy choices. In HU, the government's approach has consistently been to limit access to information in recent years for example by denying asylum seekers access to NGOs or by introducing in 2018 a law criminalising activities aimed at supporting and informing asylum seekers, as mentioned above.<sup>164</sup> In BE, the government has been accused of providing letters to asylum seekers containing misleading or limited information in 2016, 2017 and in early 2018. These referred to provisions which had not entered into force and which stated that asylum seekers who had been fingerprinted in another Member State would be transferred back.<sup>165</sup> The government admitted in Parliament and its policy note on asylum and migration in 2017 that providing such information was part of a larger 'deterrence campaign'.<sup>166</sup> The government's policy note of 2018 also emphasised the need to intensify deterrence campaigns.<sup>167</sup>

<sup>157</sup> AIDA, [Country Report Malta](#), 2019, p. 44.

<sup>158</sup> AIDA, [Country report Hungary](#), 2019, p. 65.

<sup>159</sup> AIDA, [Country Report Croatia](#), 2019, p. 62.

<sup>160</sup> AIDA, [Country Report Austria](#), 2019, pp. 30-31.

<sup>161</sup> Although the UK left the EU on 31 January 2020 it is referred to in the study whenever relevant.

<sup>162</sup> AIDA, [Country Report United Kingdom](#), 2019, p. 58.

<sup>163</sup> AIDA, [Country Report Portugal](#), 2019, p. 63.

<sup>164</sup> AIDA, [Country Report Hungary](#), 2019, pp. 65-66.

<sup>165</sup> AIDA, [Country Report Belgium](#), 2019, p. 59.

<sup>166</sup> Ibid.

<sup>167</sup> (BE) Chamber of Representatives, [Policy Note, Asylum and Migration](#), 2018, p. 11. Moreover, the Facebook page of the Aliens Office advertised images in 2018 containing catch phrases such as "In case of illegal stay, you will be detained", "No Money, No Home, No Future" or "Your phone will be confiscated". The contested Facebook page was subsequently deleted upon resignation of the State Secretary for Asylum and Migration. For more information see BRUZZ, [Omstreden facebookpagina Vreemdelingenzaken Offline, 2018](#).

## 2.5. Registration in Eurodac

### Key findings

Persons applying for international protection are subject to fingerprinting procedures for the purposes of the Eurodac Regulation. Refusal to comply has reportedly led to instances of harassment in the past but there have been no recent reports raising similar concerns.

The reform of the Eurodac Regulation has attracted widespread criticism due to the expansion of the scope of data-collecting activities, to additional purposes (reasons for justification) introduced for the processing of data, and due to the consequences for individuals of non-compliance.

The Eurodac Regulation requires Member States to take the fingerprints of persons applying for international protection (Eurodac CAT1), who irregularly cross an external border (Eurodac CAT2) or who are found to be irregularly present on their territory (Eurodac CAT3). The primary aim of the Regulation is to assist the implementation of the Dublin system by providing probative evidence of a previous asylum claim or of irregular entry in a Member State, which in turn establishes its responsibility for the applicant.<sup>168</sup>

Under the 2016 reform of the Eurodac Regulation proposed by the European Commission a substantial expansion in the scope of activities is entailed, including collection of more personal data from individuals, to be stored for longer periods, and to be used for additional purposes, including return. This has raised concerns among civil society organisations and data protection experts, as it will undermine asylum seekers and migrants' human rights to privacy, as guaranteed by the Charter of Fundamental Rights.<sup>169</sup> The non-consensual nature of data collection requires particular scrutiny and should only be carried out in accordance with the principles of necessity and proportionality to meet objectives of general interest of the Union or to protect the rights of others.<sup>170</sup> In this context, experts have called for a clarification of the scope and the objectives of data collection as well as recommending measures to be taken by Member States.<sup>171</sup>

Another important element of the reform relates to the consequences of non-compliance with the obligation to provide data for Eurodac purposes. While the Regulation foresees the possibility for Member States to apply 'effective, proportionate and dissuasive' sanctions in accordance with their national law,<sup>172</sup> it is crucial that these are exhaustively prescribed in the Regulation so as to avoid granting excessive discretion to Member States to use disproportionate sanctions. Experts have expressed deep concerns about the use of detention of asylum seekers as a sanction to obtain their fingerprints or facial image, as it would be disproportionate and otherwise constitute an unlawful interference with their right to liberty under Article 6 of the Charter.<sup>173</sup>

<sup>168</sup> [Regulation \(EU\) No 603/2013](#) ("Eurodac Regulation"), Article 1; [Regulation \(EU\) No 603/2013](#) ("Dublin III Regulation"), Recital 30.

<sup>169</sup> [Charter of Fundamental Rights](#), Articles 7 and 8.

<sup>170</sup> ECRE, [Comments on the Commission Proposal to recast the Eurodac Regulation](#), p. 6; EDPS, [Opinion 07/2016 on the First reform package on the Common European Asylum System \(Eurodac, EASO and Dublin regulations\)](#), 2016, p. 8.

<sup>171</sup> EDPS, [Opinion 07/2016 on the First reform package on the Common European Asylum System \(Eurodac, EASO and Dublin regulations\)](#), 2016, p. 13.

<sup>172</sup> European Commission, [Proposal for a recast Eurodac Regulation, COM\(2016\) 272](#), 2016, Article 2(3).

<sup>173</sup> ECRE, [Comments on the Commission Proposal to recast the Eurodac Regulation](#), 2016, p. 13; EDPS, [Opinion 07/2016 on the First reform package on the Common European Asylum System \(Eurodac, EASO and Dublin regulations\)](#), 2016, p. 14.

In practice, up until 2014, civil society organisations in countries including IT and MT had recorded situations whereby asylum seekers refused to be fingerprinted and reportedly faced harassment and the use of force by authorities seeking to obtain the persons' fingerprints.<sup>174</sup> In more recent years (2016-2019), however, there have been no systematic reports or concerns relating to refusal on the part of individuals to be fingerprinted for Eurodac or to the use of coercion for that purpose.

That being said, there have been issues in the way in which individuals have been fingerprinted in certain countries. As mentioned above, the procedure applied by IT in the region of Friuli-Venezia Giulia is incompatible with the Eurodac Regulation as persons who express the intention to apply for international protection are wrongly fingerprinted as persons in a situation of irregular stay.

## 2.6. Application of the Dublin procedure in hotspots and following disembarkation

### Key findings

The Dublin Regulation has been thoroughly applied in the EL hotspots, with 8,604 applicants arriving on the islands being exempted from the border procedure and channelled into Dublin procedures from 2016 to 2018.

Changes to Greek law mean that this exemption no longer applies.

The IT hotspots have not had a particular effect on the implementation of the Dublin procedure. However, IT has set up a specific procedure on its north-eastern borders, in which applicants have been fingerprinted under the wrong Eurodac category and issued transfer decisions before being able to lodge an asylum claim.

In the standard operating procedures it developed in 2019 ('Messina Model'), EASO has highlighted the applicability of the Dublin system in the context of ad hoc relocation from IT and MT. In general, the reception and relocation of persons under ad hoc relocation schemes following disembarkation should and can be carried out in full compliance with asylum law by both sending and receiving countries.

The 'hotspot approach', as presented in the European Commission's 2015 European Agenda on Migration, aims to facilitate coordination between EU and national authorities in the reception, identification and registration of asylum applicants and migrants at the external borders of the EU, by introducing reception facilities ('the hotspots') for the initial processing of new arrivals.<sup>175</sup> Hotspots are currently operating at specific points of arrival in EL and IT since 2015.<sup>176</sup> The five hotspots in EL (Lesvos, Chios, Samos, Leros and Kos) have undergone a significant change in purpose and functions since the EU-Turkey statement of 18 March 2016,<sup>177</sup> where they have become a site for implementation of the Statement rather than for other purposes. The context is therefore distinct and not comparable to the situation in other Member States. Even in Italy, the establishment of the hotspots in Lampedusa, Pozzallo, Trapani, Taranto and Messina appears not to have had any direct effect on the implementation of the Dublin Regulation.

As a general rule, asylum seekers arriving on the hotspots in EL following 20 March 2016 are subject to a fast-track border procedure. This involves an admissibility assessment, an in-merit assessment

<sup>174</sup> AIDA, [Country Report Malta](#), 2019, p. 26; AIDA, [Country Report Italy](#), 2018, p. 43.

<sup>175</sup> European Commission, [The hotspot approach to managing exceptional migratory flows](#).

<sup>176</sup> See e.g. Dutch Council for Refugees et al., [The implementation of the hotspots in Italy and Greece, 2016](#).

<sup>177</sup> European Council, [EU-Turkey statement, 2016](#).

or a ‘merged procedure’ depending on the profile of the applicant.<sup>178</sup> Under EL legislation, asylum seekers falling under the family provisions of the Dublin Regulation are exempted from the fast-track border procedure.<sup>179</sup> From 2016 to 2018, the Asylum Service exempted a total of 8,604 applicants on this basis.<sup>180</sup>

As described above, EL has issued a large number of Dublin requests. The total number of outgoing Dublin requests it issued from 2016 to 2018 was 19,784,<sup>181</sup> with 43% of these requests concerning asylum seekers arriving in the hotspots. This is presented by EL as a faithful application of the family unity guarantees afforded by the Dublin Regulation. A point of major concern is that the exemption from the fast-track border procedure of this category of asylum seekers (those falling under the family provisions of Dublin) has been repealed as of 1 January 2020, following legal changes in Greece that have provoked consternation among experts.<sup>182</sup> In practice, this means that the applicants will still be subject to the geographical restriction (i.e. contained in the hotspots) while the Dublin procedure is pending and will be subject to the fast-track procedure if it is determined that Greece is responsible for examining their application.

The situation in the Central Mediterranean has resulted in the development of ad hoc arrangements for relocation of disembarked persons across different EU countries.<sup>183</sup> Statistics on the use of Dublin procedures following disembarkation are not available for Italy or Malta. In certain cases, it is not clear whether or not transfers have taken place under the Dublin Regulation. ECRE has argued that the relocation should take place within the Dublin Regulation and, furthermore, the discretionary clauses of the Regulation could be used to facilitate the establishment of more relocation and disembarkation arrangements. It has further criticised attempts to use negotiations on disembarkation and relocation to either facilitate outsourcing of responsibility to third countries or to impose ideas such as ‘controlled centres’.<sup>184</sup>

It appears that this was not the case in Malta. In the summer of 2018, MT has reinstated a policy of automatic detention of persons disembarking in its ports. Detention is applied *de facto* in the Initial Reception Centre of Marsa and, more recently, in a section of the Safi Barracks detention centres as an extension of the Initial Reception Centre.<sup>185</sup> In several disembarkation cases, MT has unlawfully prevented people from lodging an asylum application during the period of *de facto* detention. The authorities have proceeded to transfer to other EU countries without considering the persons as asylum seekers and without applying the Dublin Regulation.<sup>186</sup> With the involvement of EASO in operational support to the MT Dublin Unit as of October 2019,<sup>187</sup> however, it is likely that the relocation procedure will be based on the discretionary clauses of the Dublin Regulation.

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<sup>178</sup> AIDA, [Country Report Greece](#), 2019, pp. 76-77.

<sup>179</sup> (EL) Greek Law 4375/2016, Article 60(4)(f).

<sup>180</sup> AIDA, [Country Report Greece](#), 2019, p. 77: The Asylum Service exempted 1,476 applicants in 2016, 3,123 in 2017 and 4,005 in 2018 on Dublin Regulation grounds.

<sup>181</sup> Eurostat, migr\_dubro: 5,187 in 2016, 9,559 in 2017 and 5,038 in 2018.

<sup>182</sup> (EL) Greek International Protection Act, Article 90(3). The European Commission had encouraged EL to abolish the exemption and to consider returning such applicants to Turkey: European Commission, [Joint Action Plan on the implementation of the EU-Turkey statement](#), 2016, para 2.

<sup>183</sup> ECRE, [Relying on relocation](#), 2019, p. 1.

<sup>184</sup> ECRE, [Editorial: A Contingency Plan for Disembarkation and Relocation](#), 2019.

<sup>185</sup> Dr. Neil Falzon, [Detention by Default – a Maltese Betrayal, 2019](#).

<sup>186</sup> ECRE, [Relying on relocation: ECRE’s proposal for a predictable and fair relocation arrangement following disembarkation](#), 2019, pp. 4-5.

<sup>187</sup> ECRE, [The role of EASO Operations in national asylum systems](#), 2019, pp. 9-10.

In ES disembarked persons must indicate whether or not they wish to be transferred to France without the possibility of prior access to the asylum procedure or of receiving sufficient information on the process.<sup>188</sup> In addition, insofar as rescued persons are not recognised as asylum seekers, transfer procedures are not carried out in accordance with the Dublin Regulation as should have been the case for asylum seekers.<sup>189</sup>

In the standard operating procedures it developed in 2019 (the ‘Messina Model’), EASO has highlighted the applicability of the Dublin system in the context of *ad hoc* relocation: ‘The Messina model requires and foresees that the legal basis of the intervention should be article 17 of the Dublin Regulation.’<sup>190</sup> This is also the position taken by Member States of relocation such as DE.<sup>191</sup> Since the informal agreement among the Member States, brokered by France and Germany, a certain *ad hoc* system seems to be working. The Malta Declaration was an attempt to incorporate Italy and Malta into the agreement, following political changes in the former. While elements of the Declaration are problematic, the practice seems to follow the proposals put forward by civil society and others.

Other issues resulting from these *ad hoc* arrangements include the selection of persons eligible for relocation, which seems to be driven by potentially arbitrary preferences of receiving Member States in practice,<sup>192</sup> as well as the absence of systematic oversight or centralised information collection on the number of people concerned, thus preventing the Commission from effectively monitoring states’ compliance with the *acquis* during and following the distribution process.<sup>193</sup>

Civil society and others have argued for creation of expanded and more formal agreements on disembarkation, always in full conformity with the CEAS, given the humanitarian crisis at Europe’s borders. In the long-term, the Dublin system thus requires deeper reform *inter alia* to address the generally acknowledged flaws and to ensure fair sharing of responsibility, in accordance with Article 80 TFEU. In the short term, EU countries need to set up a temporary solidarity and responsibility sharing mechanism for the Member States willing to be involved, i.e. a relocation arrangement that guarantees predictability and certainty and which operates within the existing legal framework of the CEAS so as to be feasible and sustainable.<sup>194</sup>

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<sup>188</sup> ECRE, [Relying on relocation: ECRE’s proposal for a predictable and fair relocation arrangement following disembarkation](#), 2019, p.5.

<sup>189</sup> Ibid.

<sup>190</sup> EASO, [Note on the ‘Messina Model’ applied in the context of ad hoc relocation arrangements following disembarkation](#), 2019, p. 1.

<sup>191</sup> (DE) German Federal Government, [Response to parliamentary question](#), 19/14584, 2019, p. 7.

<sup>192</sup> In many cases, key steps of the asylum procedure are being conducted on another country’s territory before persons are transferred or even considered or registered as asylum seekers. The French Office of Protection of Refugees and Stateless Persons (OFPRA) has conducted missions with a view to selecting persons “relating to asylum” (*relevant du droit d’asile*), i.e. in need of international protection, who would be eligible for transfer to France. Similarly, Portugal has also screened persons through interviews with its Aliens and Borders Service (SEF) prior to their transfer. ECRE, [Relying on relocation: ECRE’s proposal for a predictable and fair relocation arrangement following disembarkation](#), 2019, p.4.

<sup>193</sup> Ibid., p.4.

<sup>194</sup> ECRE, [Relying on relocation: ECRE’s proposal for a predictable and fair relocation arrangement following disembarkation, 2019](#).

## 2.7. Criteria for the determination of the responsible Member State

### Key findings

DE and FR are the main users of the Dublin system, accounting for over half of all outgoing requests made in the EU in recent years. A sizeable share of requests were also issued by CH, AT, EL, BE, NL. The lack of correlation between requests and the numbers of arrivals and/or applications, indicates that the use of the system and the number of requests issued is determined by policy decisions in the Member States.

'Take back' requests have been the dominant form of Dublin procedures in recent years. Most persons placed in a Dublin procedure had already applied for asylum elsewhere.

Practice confirms that the criteria for determining which state is responsible, as set out in the Dublin Regulation, are not used in the prescribed order. The hierarchy set out in the Regulation is not respected.

Despite their position at the top of the hierarchy, family unity considerations are used only in a limited way by all countries with the exception of EL.

The use of the 'humanitarian clause' under Article 17(2) of the Regulation has also been rare.

67.6% of all outgoing Dublin requests in 2018 were accepted. However, acceptance rates were much lower for requests based on family unity (48%) and dependent persons (23%).

Administrations invest considerable resources in procedures to transfer asylum seekers out of their territory, while at the same time receiving similar numbers of asylum applicants from other countries. This means that significant resources are spent transferring different people in different directions.

Chapter III of the Dublin Regulation lays down a hierarchy of criteria for determining which country should 'take charge' of an asylum seeker, i.e. which country is responsible. The order of the criteria is as follows: family unity (Articles 8-11),<sup>195</sup> residence documents and visas (Article 12),<sup>196</sup> irregular entry or stay (Article 12),<sup>197</sup> visa-waived entry (Article 14),<sup>198</sup> application at airports or transit zones (Article 15),<sup>199</sup> and the residual criterion of first country of application (Article 3(2)).<sup>200</sup> Where a person has an ongoing, abandoned or rejected asylum application in a country, that country is required to 'take back' the applicant (Articles 18 and 20).<sup>201</sup>

The number of Dublin requests and the legal basis chosen for the requests may indicate policy decisions on the way the system is used. As is extensively explained below, family unity criteria are not used as often as their prominence in the Regulation would suggest, i.e. as these criteria are at the top of the hierarchy, it would be reasonable to expect them to be used more often.

Family-based Dublin requests are often rejected due to stringent evidentiary requirements, or changing approaches towards unaccompanied minors in cases of alleged self-inflicted family separation.<sup>202</sup> It is thus possible that Member States make policy decisions to avoid applying the

<sup>195</sup> [Regulation \(EU\) No 603/2013](#) ("Dublin III Regulation"), Articles 8-11.

<sup>196</sup> *Ibid*, Article 12.

<sup>197</sup> *Ibid*, Article 13.

<sup>198</sup> *Ibid*, Article 14.

<sup>199</sup> *Ibid*, Article 15.

<sup>200</sup> *Ibid*, Article 3(2).

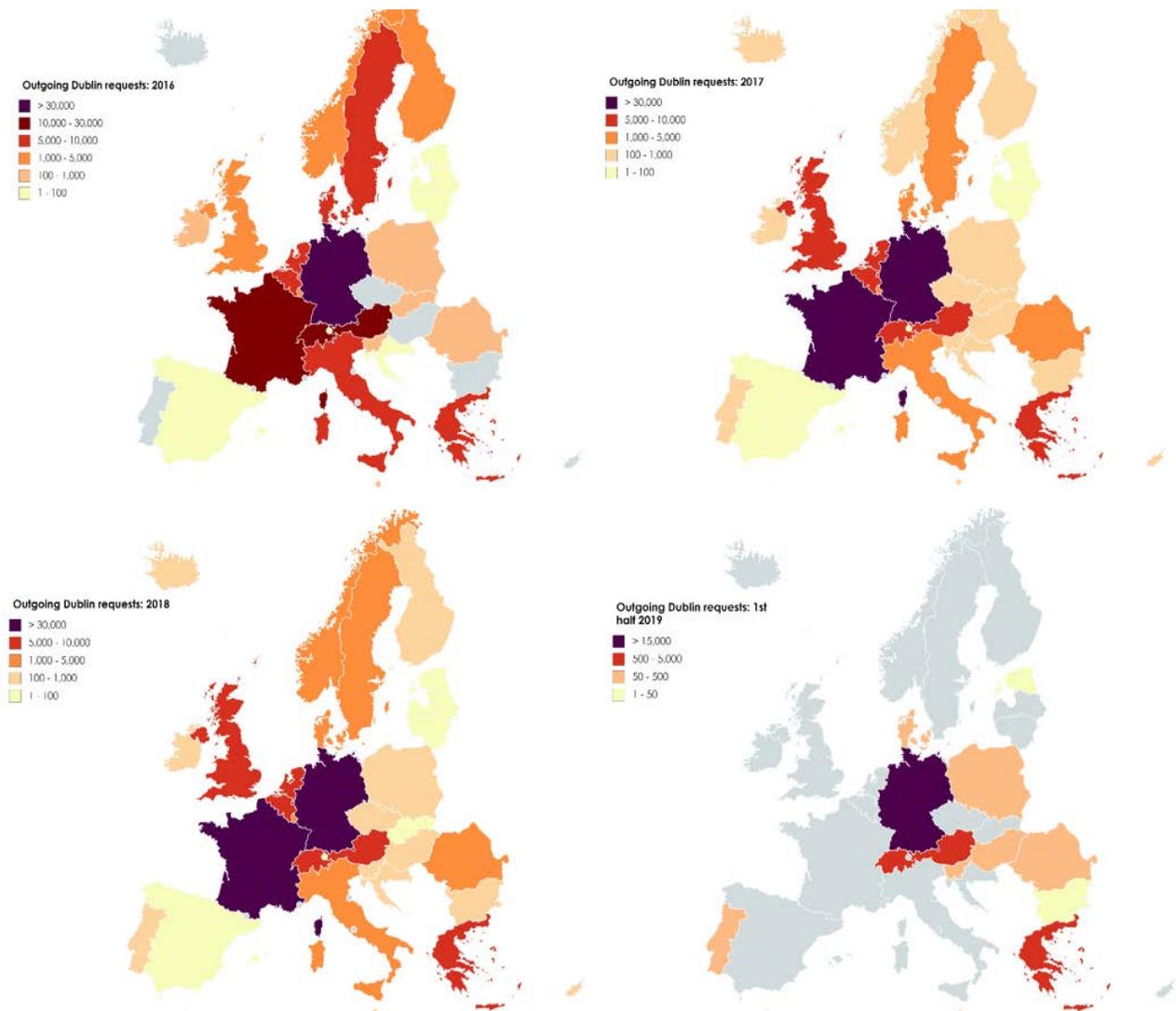
<sup>201</sup> *Ibid*, Articles 18(1)(b), (c) and (d) and 20(5).

<sup>202</sup> AIDA, [Country Report Greece](#), 2019, p. 60.

family criteria. In addition, the increasing and higher level of use of take back procedures, could indicate both a high number of secondary movements and Member States' decisions to prioritise use of take back procedures to send applicants back to Member States of first entry.

Dublin procedures are initiated on the basis of a request from one Dublin Unit to another to 'take charge' of or 'take back' an individual. Outgoing requests are those prepared and sent by countries who wish to transfer a person; incoming requests are those received by a Member State when another country requests that they accept a person for reasons set out in Dublin. The total number of outgoing requests recorded in the EU was at least 167,683 in 2016.<sup>203</sup> This number slightly decreased to 166,359 in 2017 and to 155,327 in 2018.<sup>204</sup>

Figure 5: Overview of outgoing requests issued from 2016 to the first half of 2019 across the continent



<sup>203</sup> Eurostat, migr\_dubro: Data missing for BG, CZ, CY, MT and PT.

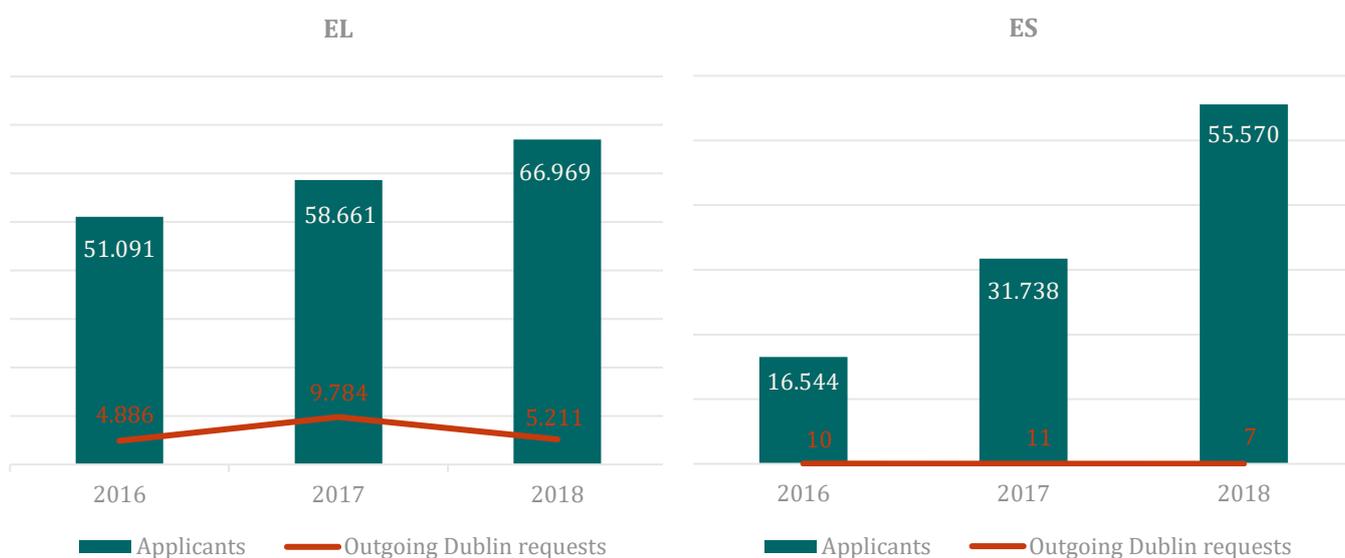
<sup>204</sup> Ibid.

The maps above provide a rough overview of outgoing requests issued from 2016 to the first half of 2019 across the continent, based on the statistics contained in the Annex 2. As illustrated there, the Dublin system is primarily used by DE and FR. Outgoing requests from DE and FR accounted for 47% of the total of outgoing requests in 2016, 63% in 2017 and 65% in 2018.<sup>205</sup> Figures for 2018 indicate that nearly one in three asylum seekers in DE and FR were subject to a Dublin procedure.<sup>206</sup>

After FR and DE, a significant share of outgoing requests was issued by CH, AT, EL, BE and NL during the same period. Other countries (ES, EE, LV, LT, LI, SK, IC, PL, BG, HR, CY) have consistently issued limited numbers of requests under the Regulation. It is assumed that policy decisions in the Member States explain this variation however the evidence on the policies being applied that would support this explanation is not available in the public domain.

The situation in ES merits particular consideration. Contrary to other main countries of first arrival such as EL, where an increase in asylum applications has been mirrored by a sizeable number of Dublin procedures, the rise in asylum applications has had no impact on the minimal use of the Regulation by ES thus far:

Figure 6: Comparison of asylum and Dublin caseload in EL and ES: 2016-2018



Source: AIDA. Figures based on national statistics.

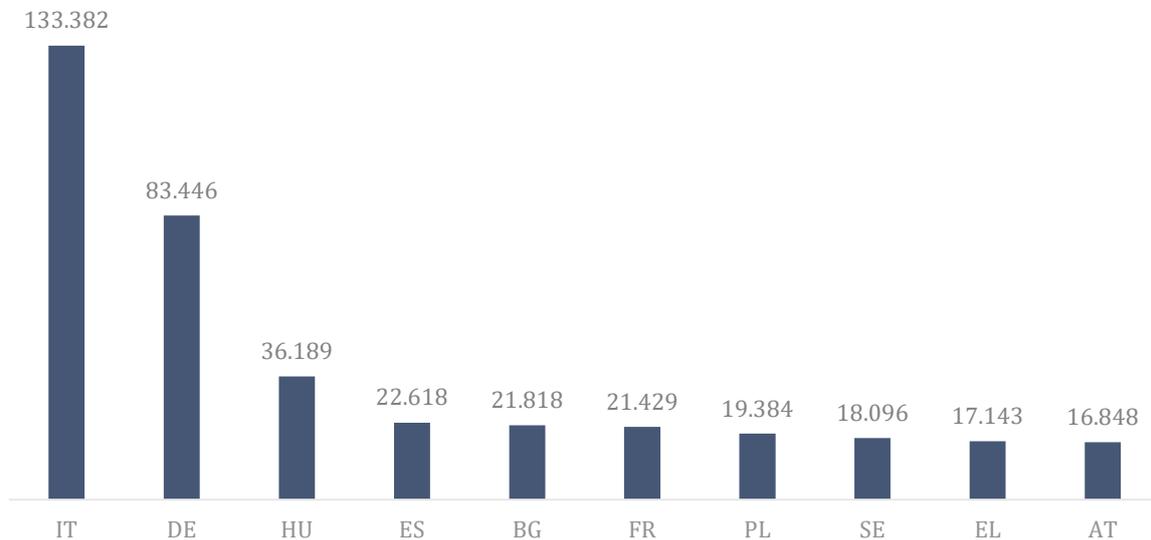
The primary addressees of Dublin requests, i.e. the countries receiving the most requests to take back or to take charge of a person in the period 2016-2018 were IT and DE, which received 133,382 and 83,446 incoming requests respectively.<sup>207</sup> Other main countries at the receiving end of Dublin procedures include HU, ES, BG, FR, PL, SE, EL and AT:

<sup>205</sup> Ibid.

<sup>206</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 4.

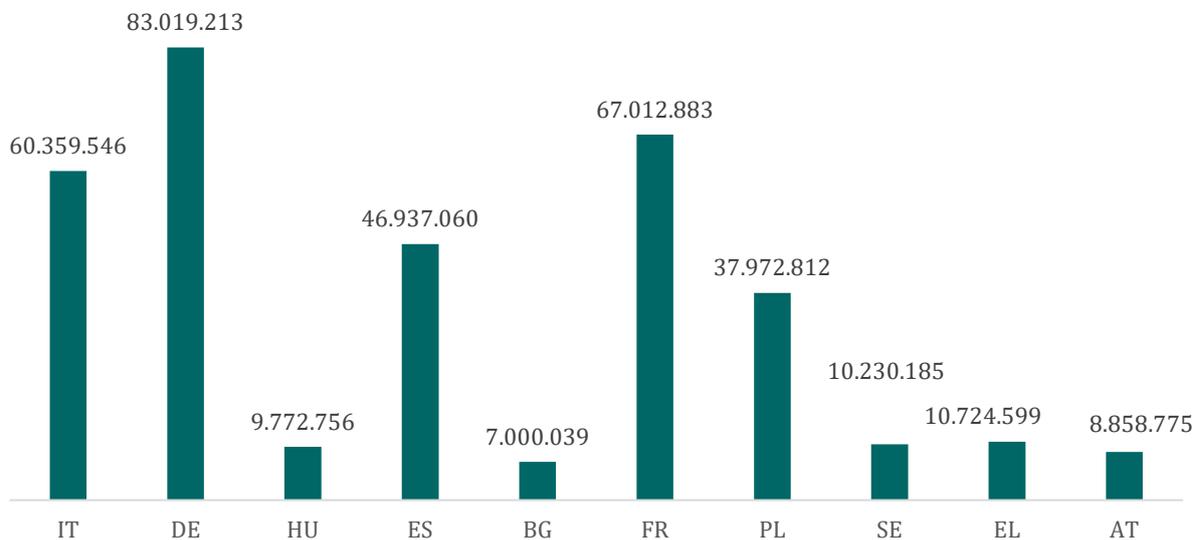
<sup>207</sup> Eurostat, migr\_dubri. Note that Eurostat refers to 64,844 incoming requests for IT in 2016, while the IT Dublin Unit reported just over 26,116 for that period: AIDA, [Country Report Italy](#), 2017, p. 35.

Figure 7: Incoming requests by main receiving countries: 2016-2018



Source: Eurostat, migr\_dubri

Figure 8: Population size by main receiving countries on 1 January 2019



Source: Eurostat, demo\_gind

Accordingly, in recent years DE is both the top sender of outgoing requests and the second main recipient of incoming requests under the Dublin Regulation, with high volumes of outgoing and incoming requests. While such 'exchanges' of requests for transfer of asylum seekers may be interpreted as faithful adherence to the Dublin criteria, they also create administrative burden and inefficiency; the phenomenon demonstrates the deeply bureaucratic nature of the Dublin system. Administrations in fact invest considerable time and human and financial resources on procedures

to transfer asylum seekers out of their territory, only to end up with approximately equal numbers of procedures requesting that they receive asylum seekers from other countries.<sup>208</sup>

The diagram illustrates the breakdown by type – take charge or take back requests. Unfortunately, a nationality breakdown is not available in Eurostat data.

Figure 9: Breakdown of outgoing requests by type: 2016-2018



As illustrated by the breakdown of outgoing Dublin requests issued from 2016 to 2018 by type, 'take back' requests are the dominant form of request, on average more than double the number of 'take charge' requests over the last three years. This means that the majority of persons placed in a Dublin procedure had already applied for asylum elsewhere in the EU.<sup>209</sup>

The number of 'take back' requests initiated in recent years relates to the stated objectives of the Regulation that refer to tackling multiple asylum claims.<sup>210</sup> The predicament of persons seeking protection in multiple countries, referred to as 'secondary movements', has attracted considerable political attention in recent years.<sup>211</sup> Figures show that in the period 2016-2018, Member States registered a total of 2,693,665 applicants,<sup>212</sup> and issued a total of 336,787 'take back' requests for persons who had already sought asylum in another EU country. 'Take back' requests thus make up 12.5% of the total asylum caseload during that period. The rise in Dublin cases involving multiple asylum applications has been coupled with an increase in references to the CJEU to interpret the rules governing the 'take back' procedure.

The CJEU has clarified, *inter alia*, that a Member State, to which an applicant has returned after being transferred, is not allowed to transfer that person anew to the requested Member State without respecting a take back procedure.<sup>213</sup> In *X*,<sup>214</sup> the Court held that a Member State issuing a 'take back' request to the responsible country is not required to inform it that an appeal against a decision on the application previously lodged in the first Member State is pending. More recently, it was clarified

<sup>208</sup> ECRE, [The Dublin system in the first half of 2018](#), 2018, p. 3.

<sup>209</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 8.

<sup>210</sup> EDAL, [CJEU - C-411-10 and C-493-10, Joined cases of N.S. v United Kingdom and M.E. v Ireland](#), Judgment of 21 December 2011, para 79. See also ICF, [Evaluation of the Dublin III Regulation](#), 2015, p. 9.

<sup>211</sup> See e.g. Council of the European Union, Theme: 'Limiting abuse and secondary movements' - Dublin Regulation, 9221/2017, 2017; European Commission, [Progress report on the implementation of the European Agenda on Migration, COM\(2019\) 481](#), 2019, p. 4.

<sup>212</sup> Note that these figures include an aggregate of applicants registered by each Member State. Therefore they double-counting of applicants.

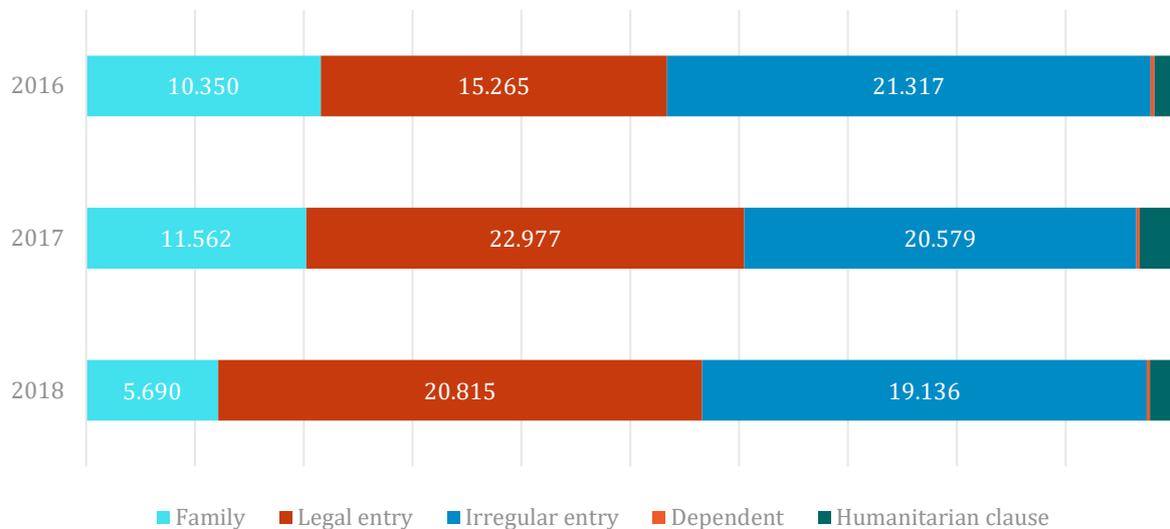
<sup>213</sup> EDAL, [CJEU – Case C-360/16 Hasan](#), Judgment of 25 January 2018.

<sup>214</sup> EDAL, [CJEU – Case C-213/17 X](#), Judgment of 5 July 2018.

that an applicant cannot appeal against a decision not to transfer them under Article 9 of the Regulation in the case of a take back procedure, unless the applicant's case falls under Article 20 (5) and the applicants has provided information clearly establishing correct responsibility.<sup>215</sup>

As regards 'take charge' requests concerning persons who had not previously lodged an application in another country, the responsibility criteria invoked by sending Member States during the same period were as follows:

Figure 10: Breakdown of outgoing "take charge" requests by criterion: 2016-2018

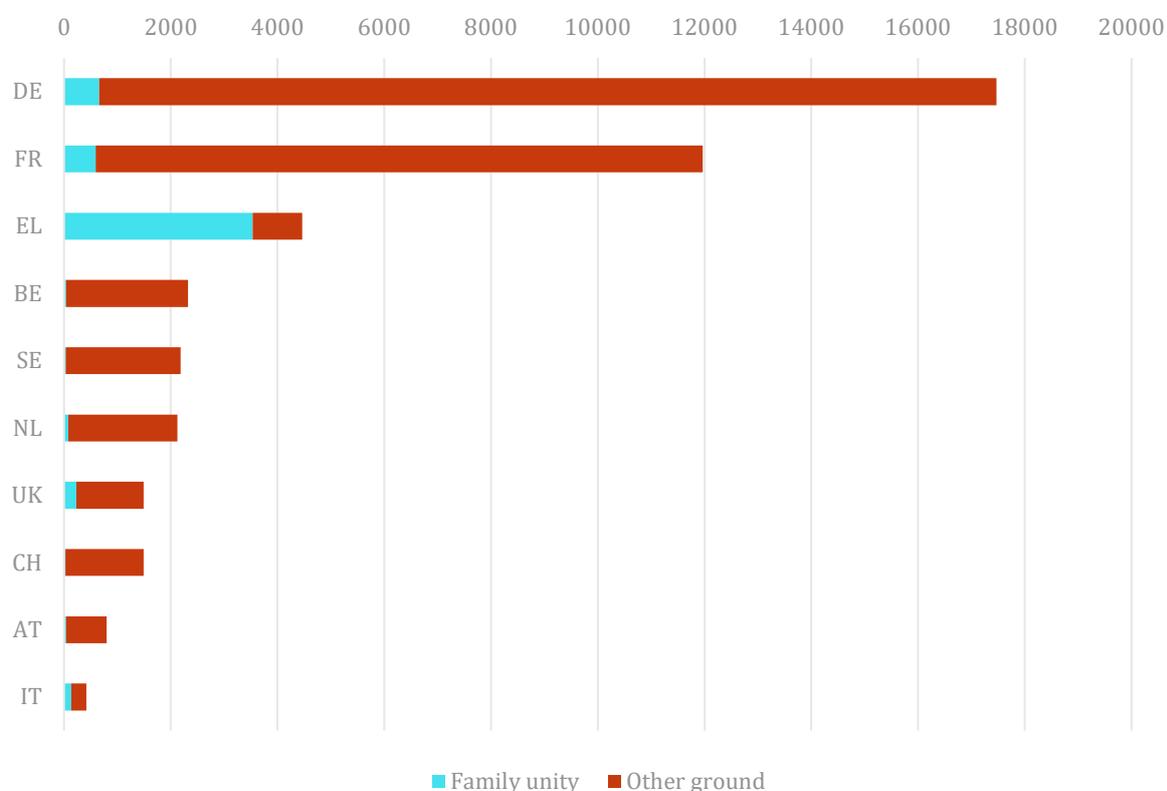


Source: Eurostat, migr\_dubro

As most Dublin procedures continue to be concentrated in a limited number of countries, the table below shows the reasons for which 'take charge' requests were issued focused on the main senders of requests under the Regulation.

<sup>215</sup> CJEU, [Joined Cases C-582/17 and C-583/17 H. and R.](#), Judgment of 2 April 2019.

Figure 11: Rate of family requests out of outgoing ‘take charge’ requests by main countries: 2018



Source: Eurostat, migr\_dubro

These figures provide evidence to support concerns raised on the lack of respect for the hierarchy of the responsibility criteria in the Dublin Regulation.<sup>216</sup> Despite being top of the hierarchy in Chapter III of the Regulation, and therefore to be treated as priority, family unity only accounted for 5% of ‘take charge’ requests in FR, 3.7% in DE and NL and 1.7% in CH and BE in 2018. Given the profile of people arriving in Europe and concerns about the evidentiary requirements imposed in family cases, such as compulsory translation of documents proving family links, including a requirement for official translations of specific documents such as identity cards,<sup>217</sup> as well as unnecessary DNA tests,<sup>218</sup> it is likely that these figures should be higher.

EL remains an exception, with 79.3% of ‘take charge’ requests based on the family unity provisions of the Regulation in 2018. It should be noted that family unity is now the main way to safely and legally leave Greece for another Member State. It remains the case, however, that countries receiving requests from EL impose excessive evidentiary requirements to refuse ‘take charge’ requests, as detailed below.

In 2018, the only year for which full data are available on Eurostat, 101,343 outgoing Dublin requests were accepted and 48,584 were refused across the EU. The overall acceptance rate of requests was

<sup>216</sup> UNHCR, [Left in Limbo](#), 2017, p. 86 et seq.; ECRE, [The Dublin system in 2017](#), 2018, pp. 2-3; ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 9.

<sup>217</sup> AIDA, [Country Report: Greece](#), 2019, p. 60.

<sup>218</sup> Safe Passage, [Child Refugees In Limbo For 16 Months Waiting To Reunite With Family Members](#), 2019.

therefore 67.6% across all procedures.<sup>219</sup> Acceptance rates differed according to the criteria of the Regulation. For example:

**Irregular entry and stay:** in 2018, 10,731 'take charge' requests were accepted and 5,861 were refused, a rate of 64.7%.

**Family unity:** in 2018, 3,559 'take charge' requests were approved and 3,806 were rejected, a 48% acceptance rate.<sup>220</sup>

As regards EL in particular, the acceptance rate for family reunification requests was as low as 37.6%, since 1,535 requests were accepted and 2,543 were rejected.<sup>221</sup> Examples of restrictive practices by recipient Member States vis-à-vis family unity requests include requests of DNA tests to prove the applicant's family ties and demands that age assessments of unaccompanied children be conducted according to the receiving country's methods.<sup>222</sup> Since 2017, Dublin Units have increasingly refused requests in cases where the separation of the family took place after their asylum application in EL, on the basis that the family separation was 'self-inflicted' and thereby contrary to the best interests of the child. Since 2018, the EL Asylum Service has partially adopted this reasoning and has stopped issuing Dublin requests on the basis that wasting time on requests with limited prospects of success is contrary to the best interests of the child.<sup>223</sup>

**Dependency:** Requests for dependent persons based on Article 16 of the Dublin Regulation had even higher rejection rates. In 2018, only 41 requests were accepted (23.7%), while 132 were refused.<sup>224</sup>

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<sup>219</sup> Eurostat, migr\_dubdo.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Efsyn, [Μια οδυνηρή πραγματικότητα, 2019](#); Safe Passage and PRAKSIS, [Caught in the middle: Unaccompanied children in Greece in the Dublin family reunification process, 2019](#).

<sup>223</sup> AIDA, [Country Report Greece](#), 2019, p. 60.

<sup>224</sup> Ibid.

## 2.8. The discretionary clauses

### Key findings

The discretionary clauses of Article 17 are not used very often: Article 17(1) requests were issued 11,958 times in 2018 and the use of the humanitarian clause of Article 17(2) is much more limited with 1,060 requests issued in 2018. This limited use of 17(2) continues in 2019.

In 2018, DE was leading user of Article 17(1) with 7,805 requests, while EL was responsible for 75% of 17(2) requests in 2018.

The context and circumstances regarding the use of the discretionary clauses are characterised by significant inconsistencies among Member States.

The entirely optional character of Article 17 was confirmed by the CJEU in C-661/17 M.A., 23 January 2019. There is nonetheless potential for a greater use of these discretionary clauses. This would improve the situation for people seeking protection in Europe by reducing the time spent in limbo, and by either limiting the disruptive effects of transfers or by allowing transfers when it would be in their interests, for example for uniting with family or community members beyond the scope of the family unity articles.

Article 17(1) of the Dublin Regulation, known as the ‘sovereignty clause’, grants Member States unfettered discretion to undertake responsibility for an asylum application at any time on the basis of any criteria they deem relevant. According to the CJEU, ‘the aim of that option is to allow each Member State to decide, in the exercise of its sovereignty, for political, humanitarian or practical considerations, to agree to examine an application for asylum even if it is not responsible under those criteria’.<sup>225</sup>

The clause is particularly relevant to cases where countries can refrain from triggering a Dublin procedure on account of human rights risks in the recipient Member State, i.e. instead of triggering a Dublin procedure and attempting to transfer the person, the country can use the clause to assume responsibility (see also [Transfers](#) below). The discretionary clause of Article 17(2), known as the ‘humanitarian clause’, is less broad in its scope and allows Member States to undertake responsibility for an asylum application on the more specific bases of humanitarian and family considerations (which nonetheless cover a range of possible circumstances).

According to Eurostat statistics, what is known as the ‘sovereignty clause’ under Article 17(1) was applied 11,958 times in 2018. Of those applications, DE accounted for 7,805 (65%), NL for 1,542 (13%) and FR for 1,010 (8%).<sup>226</sup> The reliability of these figures is questionable as not all countries keep records of cases where they have used the sovereignty clause partly because they do not always issue a decision declaring their responsibility for an asylum application.<sup>227</sup> The CJEU clarified in 2018 that the Regulation imposes no obligation on states to issue such a decision.<sup>228</sup> According to the respective AIDA Country Reports, Switzerland applied the 17 (1) clause in 875 cases, Hungary applied it in 82 cases and Poland applied it in two cases. Slovenia and Romania did not use the clause in 2018.<sup>229</sup>

<sup>225</sup> EDAL, [CJEU – Case C-56/17 Fathi](#), Judgment of 4 October 2018.

<sup>226</sup> Eurostat, migr\_dubduni.

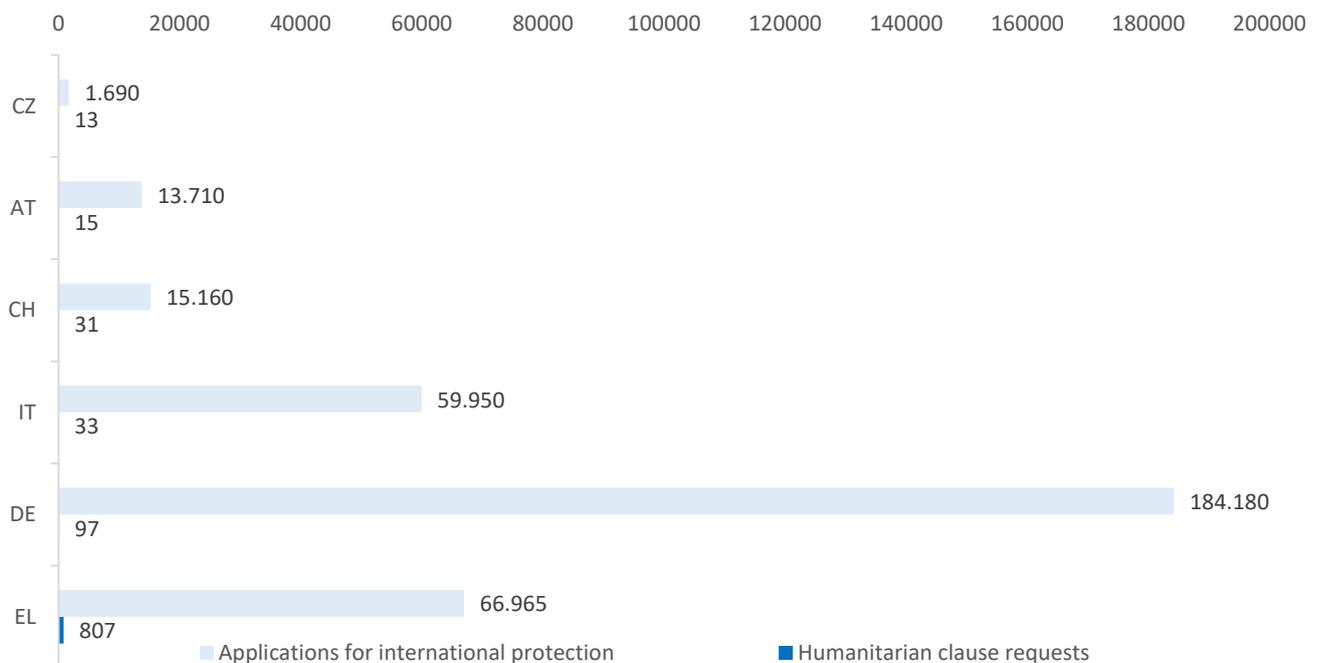
<sup>227</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 10.

<sup>228</sup> EDAL, [CJEU – Case C-56/17 Fathi](#), Judgment of 4 October 2018.

<sup>229</sup> AIDA, [The implementation of the Dublin III Regulation in 2018](#), 2019, p.10.

Regarding the humanitarian clause of Article 17(2), it has only rarely been used by Member States in recent years, as research demonstrates.<sup>230</sup> In 2018, the only year for which full data are available on Eurostat, a total of 1,060 “take charge” requests were issued on the basis of Article 17(2) of the Regulation.<sup>231</sup> Over 75% of those emanated from EL, far ahead of other countries:

Figure 12: ‘Humanitarian clause’ requests and number of applications for international protection: 2018



Source: Eurostat, migr\_asy. The table only shows countries with more than 10 ‘take charge’ requests.

Compared to the total number of outgoing requests made across the EU, Article 17(2) ‘humanitarian clause’ requests accounted for no more than 0.7% of all Dublin procedures initiated in 2018. There were no ‘humanitarian clause’ requests from the UK,<sup>232</sup> MT, DK, EE and ES in the same year, while a limited number of requests was issued by SE (9), BG (7), RO (7), PO (5) and SI (2). It should be noted that in some cases, countries make use of the ‘humanitarian clause’ instead of the family provisions of the Regulation. HU previously relied on Article 17(2) instead of Article 8 for requests concerning unaccompanied children but has corrected its practice as of 2018.<sup>233</sup>

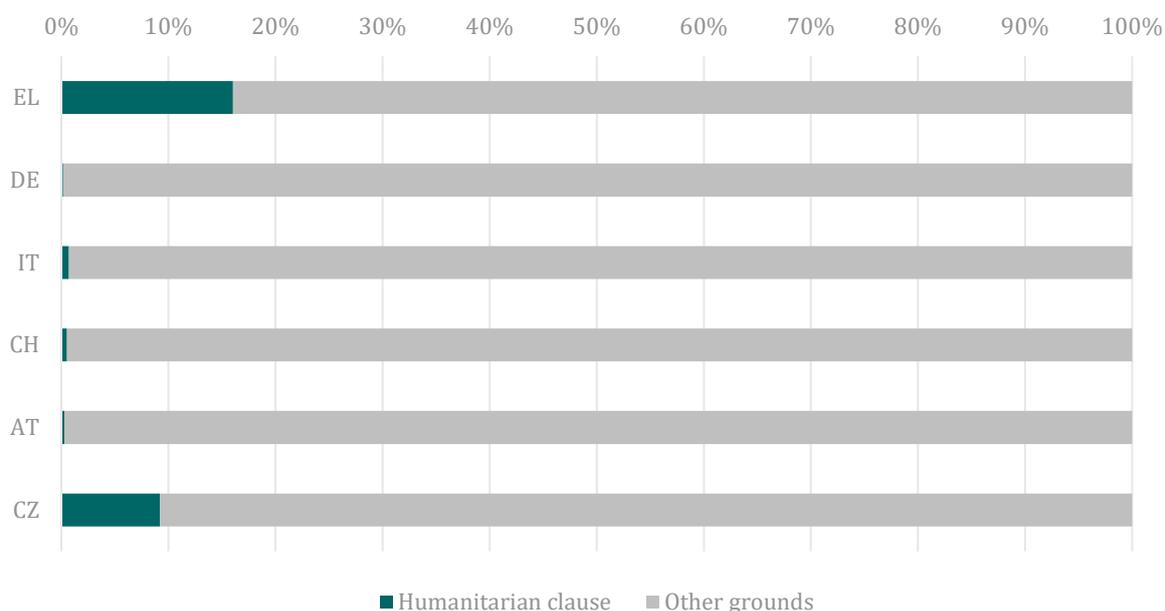
<sup>230</sup> ICF, [Evaluation of the implementation of the Dublin III Regulation](#), 2016, pp. 35-36; UNHCR, [Left in Limbo](#), 2017, p. 129.

<sup>231</sup> Eurostat, migr\_dubro.

<sup>232</sup> Although the UK left the EU on 31 January 2020 it is referred to in this study when relevant.

<sup>233</sup> AIDA, [Country Report Hungary](#), 2019, p. 35.

Figure 13: 'Humanitarian clause' requests compared to total outgoing requests: 2018



Source: Eurostat, migr\_dubro.

Figures confirm that this limited use of the 'humanitarian clause' continues in the first half of 2019. While EL issued 667 requests based on the 'humanitarian clause', Article 17(2) was only used once in AT, DK and PL, and was not used at all by SI, PT, RO, BG and EE.<sup>234</sup>

'Humanitarian clause' requests are often not accepted by receiving Member States. In 2018, 405 such requests were accepted and 843 were refused.<sup>235</sup> It should nevertheless be noted that the clause remains discretionary for Member States.

The criteria for applying the discretionary clauses are not clear for every Member State and information is often unavailable. According to information provided by AIDA, Member States follow different approaches to the use of these clauses. For BG,<sup>236</sup> ES,<sup>237</sup> CH,<sup>238</sup> and IT,<sup>239</sup> Article 17 is mostly used for vulnerable cases, family unity or on health-related grounds. In AT the Constitutional Court has ruled that in case of a risk of a violation of human rights Austria has a duty to apply Article 17(1); the humanitarian clause of 17(2) is mostly used where the applicant is in another country and applies for reunification with relatives in Austria.<sup>240</sup> The humanitarian clause is used in EL for cases of dependent or vulnerable persons who fall outside the family criteria of Chapter III or where the three-month deadline for a request has expired.<sup>241</sup>

In DE, data is unclear but the sovereignty clause has been applied to vulnerable cases where the transfer would result in undue hardship; in 2018, the humanitarian clause was used for ad hoc

<sup>234</sup> ECRE, [The Dublin system in the first half of 2019: Key figures from selected European countries](#), 2019, p. 3.

<sup>235</sup> Eurostat, migr\_dubro.

<sup>236</sup> AIDA, [Country Report Bulgaria](#), 2019, p. 25.

<sup>237</sup> AIDA, [Country Report Spain](#), 2019, p. 32.

<sup>238</sup> AIDA, [Country Report Switzerland](#), 2019, p. 29.

<sup>239</sup> AIDA, [Country Report Italy](#), 2019, p. 50.

<sup>240</sup> AIDA, [Country Report Austria](#), 2019, pp. 35-56.

<sup>241</sup> AIDA, [Country Report Greece](#), p. 61.

relocations following disembarkation in Italy and Malta.<sup>242</sup> In FR, the discretionary clauses were used during the Calais camp dismantlement of 2016.<sup>243</sup>

While NL has been reluctant to use the discretionary clauses, the criteria it uses in their application are clear. Authorities may use the Article 17(1) clause where the transfer would result in disproportionate harshness, would violate the country's international obligations, or for reasons relating to better process control, while the humanitarian clause can be used for family reunification or cultural grounds in combination with individual circumstances.<sup>244</sup> In CY, humanitarian reasons may trigger Article 17(2) when other criteria are not applicable, while Article 17(1) is used when transfer time limits are not met due to reasons not foreseen in the Regulation (e.g. health reasons).<sup>245</sup>

## 2.9. Unaccompanied children

### Key findings

The Dublin Regulation stipulates that the best interests of the child should be the primary consideration for Member States with respect to all procedures provided for in the Regulation.

The use of specialised staff in several countries is a good practice to support the protection of unaccompanied children. Positive practices of child-friendly accommodation have been identified in PT, PL, SE, NL.

The manner in which age assessments are carried out continues to disregard expert recommendations and remains a concern.

Unaccompanied children are not adequately represented in legal processes due to a lack of resources, an absence of legal representatives, the limited time for which representatives are appointed and representatives' lack of knowledge of asylum procedures.

Lack of child-friendly information and problems in identification and accommodation persist in a significant number of countries.

### 2.9.1. Consideration of the best interests of the child

The vulnerability of unaccompanied children in the asylum context is acknowledged both in the EU asylum *acquis* as well as in international human rights instruments, requiring states to adopt the necessary measures to address their special needs.<sup>246</sup> The key principle to be applied is that of respect for the best interests of the child. Legal standards on children's rights entail that children should be treated as such, regardless of their migratory status.

In certain countries, this has resulted in the establishment of dedicated units within asylum authorities to deal exclusively with unaccompanied children (i.e. in BE, FR and HU); other countries

<sup>242</sup> AIDA, [Country Report Germany](#), 2019, p. 32.

<sup>243</sup> AIDA, [Country Report France](#), 2019, pp. 41-42.

<sup>244</sup> AIDA, [Country Report Netherlands](#), 2019, pp. 29-30.

<sup>245</sup> AIDA, [Country Report Cyprus](#), 2019, p. 34.

<sup>246</sup> [Directive 2013/32/EU](#) ("recast Asylum Procedures Directive"), Article 25; [Directive 2013/33/EU](#) ("recast Reception Conditions Directive"), Article 24; [Regulation \(EU\) No 604/2013](#) ("Dublin III Regulation"), Article 6; [United Nations Convention on the Rights of the Child](#), Articles 20(1) and 22(1); Committee on the Rights of the Child (CRC), [Treatment of unaccompanied and separated children outside of their country of origin, General Comment No. 6 \(2005\)](#). See also: AIDA, [The concept of vulnerability in European asylum procedures, 2017](#).

employ specialist staff (e.g. in DE, PL, CH).<sup>247</sup> The importance of training on interviewing and processing applications of unaccompanied children is widely acknowledged among the determining authorities in Europe.

Controversy remains in the area of age assessment, the process of determining the age of an applicant and specifically of determining whether or not they are a child. The controversies around the use of medical procedures to conduct age assessment relate to the lack of scientific data confirming that these methods result in reliable and accurate results. Experts seem to concur on the use of these methods as an indicator, rather than as solid proof of age, however Member States follow a different approach, attaching decisive weight to medical results.<sup>248</sup> Issues including unnecessary exposure to radiation and the disregard of cultural, ethnic and gender factors are also highlighted by experts.<sup>249</sup>

Recommendations for clear priority to be given to documentary evidence and other indicators such as a multidisciplinary assessment by qualified professionals have been presented, including by EASO.<sup>250</sup> Nonetheless, some countries, including AT, BE, BG, CY, CH, EL, ES, FI, HU, HR, PL, NO and SE, continue to rely on medical methods for assessing the age of unaccompanied children.<sup>251</sup> More specifically, SE and AT seem to rely on radiological examination despite domestic guidance by medical bodies that no medical test will determine exact age (SE) or domestic legislation providing that medical tests should be a last resort (AT).<sup>252</sup>

Guidance and domestic legislation in UK,<sup>253</sup> MT, IT, EL, NL and FR demonstrates a preferable multidisciplinary approach that also engages social workers and cultural mediators (although there are implementation problems in EL).<sup>254</sup> Increased reliance on medical results and dismissal of the applicants' statements has been reported in ES and SE. On the other side, domestic jurisprudence in DE has established standards on the need to use age assessment results in favour of the applicant, with the application of the benefit of the doubt principle.<sup>255</sup>

The weight attached to the principle of the benefit of the doubt differs from Member State to Member State, with some countries attaching major importance to the observations of physical appearance and demeanour made by officials (e.g. SR and HU). Most countries do not allow an age assessment decision to be challenged directly and/or do not provide for the notification of a separate administrative decision on the outcome of the age assessment procedure.<sup>256</sup>

Certain jurisdictions have witnessed important jurisprudence clarifying issues of age assessment. Procedures conducted by ES have been found unlawful by the UN Committee on the Rights of the Child,<sup>257</sup> due to the lack of legal representation, exclusive reliance on medical tests rather than

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<sup>247</sup> ECRE, [Asylum authorities : an overview of internal structures and available resources](#), 2019, p.11.

<sup>248</sup> Council of Europe, [Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration](#), 2017, para. 129.

<sup>249</sup> Ibid, paras. 131-137.

<sup>250</sup> EASO, [Guidance on reception conditions for unaccompanied children: operational standards and indicators, 2018](#).

<sup>251</sup> ECRE, [The concept of vulnerability in European asylum procedures](#), 2017, pp.35-36; ECRE, [Detriment of the doubt: age assessment of unaccompanied asylum-seeking children, 2015](#).

<sup>252</sup> ECRE, [The concept of vulnerability in European asylum procedures](#), 2019, pp. 35-36.

<sup>253</sup> Although the UK left the EU on 31 January 2020, information on it is included in the study where relevant.

<sup>254</sup> Ibid, 36-37.

<sup>255</sup> Ibid, p. 37.

<sup>256</sup> ECRE, [The concept of vulnerability in European asylum procedures](#), 2017, pp. 38-39.

<sup>257</sup> Committee on the Rights of the Child, A.L. ([CRC/C/81/D/16/2017](#)) and J.A.B. ([CRC/C/81/D/22/2017](#)), 31 May 2019; Committee on the Rights of the Child, N.B.F. ([CRC/C/79/D/11/2017](#)), 27 September 2018.

psychosocial factors, and non-consideration of the benefit of the doubt. Similarly, case law in BE has indicated the need for consideration of the applicant's individual situation and statements, as well as adequate reasoning for age assessment decisions.<sup>258</sup> Recent jurisprudence in the UK has emphasised that age assessment guidance needs to be precise and should consider factors including the wide margin of error in medical tests and the importance of the benefit of the doubt.<sup>259</sup> In LU, it has been decided that the presumption of minor age does not apply when bone testing shows the applicant to be an adult and when a doctor does not express doubts on the results,<sup>260</sup> while in NL, the District Court of The Hague has found errors in age assessment procedures that were based on an assumption of the Secretary of State without the presence of a representative of the Immigration and Naturalisation Service during the assessment.<sup>261</sup>

The Constitutional Council of FR recently issued a decision on the conformity of bone tests in age assessment procedures with the country's Constitution, finding that bone tests are constitutionally acceptable so long as a holistic assessment is conducted and the benefit of doubt principle is respected.<sup>262</sup> The inappropriate and unreliable use of age assessment procedures in FR had previously been condemned by the European Committee of Social Rights.<sup>263</sup> Finally, the Federal Administrative Tribunal of CH has also confirmed that adequate reasoning in age assessment decisions includes consideration of the overall context and the personal statements of the applicants, especially in light of the wide margin of error in medical tests.<sup>264</sup>

The Dublin Regulation also stipulates that the best interests of the child should be the primary consideration for Member States with respect to all procedures provided for in the Regulation.<sup>265</sup> This has been tested in the courts: the CJEU held in its *MA* ruling of 6 June 2013 that when an unaccompanied child submits more than one asylum application in two Member States and does not have any family members present in the territories of these Member States, the responsible Member State is the one in which the child is present after having lodged an asylum application there pursuant to Article 8(4) of the Regulation.<sup>266</sup> On the basis of the need to always consider the best interests of the child and their particular vulnerability, the Court emphasised that it is important not to prolong the procedure for determining the Member State responsible more than is strictly necessary and to always ensure that the child has prompt access to asylum procedures. Given that speedy and prompt access is jeopardised by transfers, it concluded that, as a rule, unaccompanied children should not be transferred to another Member State.<sup>267</sup>

This ruling was subsequently implemented in NL, where the Council of State ruled on 5 September 2013 that the Immigration and Naturalisation Service (IND) should not have refused to examine the application for international protection of an unaccompanied minor who did not have family

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<sup>258</sup> (BE) Belgian Council of State, [Decision 242.623](#), 11 October 2018; (BE) Belgian Council of State, [Decision 246.340](#), 9 December 2019.

<sup>259</sup> (UK) United Kingdom, [BF \(Eritrea\) v Secretary of State for the Home Department \[2019\] EWCA Civ 872](#), 23 May 2019.

<sup>260</sup> EDAL, [Luxembourg - Administrative Tribunal - 3rd Chamber, Decision no. 39735](#), 21 June 2017.

<sup>261</sup> (NL) Dutch District Court of The Hague, [NL19.27373](#), 2 December 2019.

<sup>262</sup> (FR) French Constitutional Court, [Decision 2018-768 QPC](#), 21 March 2019.

<sup>263</sup> European Committee of Social Rights, [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France \(no. 114/2015\)](#), 2018.

<sup>264</sup> EDAL, Switzerland, Federal Administrative Tribunal, [Decision E-7333/2018](#), 4 March 2019.

<sup>265</sup> [Regulation \(EU\) No 604/2013](#) ("Dublin III Regulation"), Article 6(1).

<sup>266</sup> EDAL, [CJEU – Case C-648/11 The Queen on the application of MA, BT, DA v Secretary of State for the Home Department](#), Judgment of 6 June 2013.

<sup>267</sup> *Ibid.*

members legally residing in the EU.<sup>268</sup> In FR, the official policy of the Dublin Unit is not to transfer unaccompanied children under the Dublin Regulation.<sup>269</sup> Unaccompanied children can however be placed under a Dublin procedure by Prefectures if their claim is not registered before they reach the age of 18 or if they are deemed to be adults after an age assessment.<sup>270</sup>

Applying the best interests of the child principle has also been considered in practice beyond situations covered by MA:

**PT:** in 2017, the Administrative Circle Court of Lisbon suspended the transfer decision of an unaccompanied child to DE on the grounds that the authorities failed to take into consideration the best interests of the child, e.g. their well-being, social development and views.<sup>271</sup>

**EL:** As stated above, in 2018 the Dublin Unit stopped sending outgoing requests in cases where a subsequent separation of the family took place after their asylum application in EL (so-called “self-inflicted” family separations), arguing that this is not in the best interests of the child.<sup>272</sup> A new tool for best interests assessment for unaccompanied minors was introduced in the Dublin procedure and aims to collect and evaluate all the required information to facilitate processing such requests under the Dublin III Regulation.<sup>273</sup>

## 2.9.2. Appointment of a guardian

The Dublin Regulation sets out different safeguards for unaccompanied children, including the need to ensure that the representative of a child represents and/or assists an unaccompanied child with respect to the Dublin procedure.<sup>274</sup> While all Member States provide for the appointment of a representative to unaccompanied children in their respective legislation, important practical challenges in the appointment of guardians are reported across the EU. In 2018, concerns in this regard were expressed by national monitoring bodies in several Member States, including by the Ombudswoman in HR,<sup>275</sup> the Commissioner for the Rights of the Child in CY,<sup>276</sup> and the Commissioner for the Rights of the Child in PL.<sup>277</sup>

Overall, the main challenges in ensuring legal representation of unaccompanied children stem from the lack of resources and absence of legal representatives (e.g. in AT, BG, FR, EL, HU, MT, PL, CH), the length of their appointment (e.g. in ES, FR, HU, IT, MT, UK) and their lack of knowledge of asylum procedures (e.g. in HU, MT, PL). It should be noted that, in the context of infringement proceedings, the European Commission pointed to the lack of legal representation for unaccompanied minors as a particular concern in BG in its letter of formal notice of 9 November 2018 concerning the incorrect implementation of EU asylum legislation.<sup>278</sup>

<sup>268</sup> (NL) Dutch Council of State, Decision 201205236/1, 5 September 2013.

<sup>269</sup> AIDA, [Country Report France](#), 2019, p. 41.

<sup>270</sup> Ibid.

<sup>271</sup> (PT) Portuguese Administrative Circle Court of Lisbon, Decision 2334/17.5BELSB, 24 November 2017.

<sup>272</sup> AIDA, [Country Report Greece](#), 2019, p. 60.

<sup>273</sup> (EL) Greek Asylum Service, [Best Interests Assessment for Dublin unaccompanied minor’s cases – A new tool to serve the needs of family reunification applications of unaccompanied minors](#), 2018.

<sup>274</sup> [Regulation \(EU\) No 604/2013](#) (“Dublin III Regulation”), Article 6(2).

<sup>275</sup> (HR) Croatian Ombudsman for Children, [Pravobraniteljica se sastala s predstavnicima Vijeća Europe, 2018](#).

<sup>276</sup> (CY) Cypriot Commissioner for the Rights of the Child, [Έκθεση της Επιτροπής, αναφορικά με την εκπροσώπηση των ασυνόδευτων ανηλίκων αιτητών ασύλου, 2018](#).

<sup>277</sup> (PL) Commissioner for the Rights of the Child, [Letter to the Ministry of Justice, 2018](#).

<sup>278</sup> European Commission, [‘November infringements package: key decisions’](#), MEMO/18/6247, 2018.

Another safeguard foreseen in the Dublin Regulation is the provision of tailored information to unaccompanied minors, e.g. through a specific leaflet explaining the Dublin procedure.<sup>279</sup> According to AIDA, tailored information is not provided to unaccompanied children in a significant number of countries (AT, BG, CY, ES, HR, HU, IT, MT, PL, CH). Moreover, in countries where information is made available, it is not necessarily understood by unaccompanied minors. In PT for example, the information contained in the leaflets is brief and not considered child-friendly.<sup>280</sup> The quality of information provided to unaccompanied minors can vary within a country. In FR, OFPRA's guide on the right of asylum for unaccompanied children in France, which was created in 2014 and updated in 2018,<sup>281</sup> is not available in all Prefectures.<sup>282</sup> Similarly in CH, the provision of information by legal representatives differs considerably between the cantons.<sup>283</sup>

Lastly, it should be noted that many countries do not provide for identification mechanisms for unaccompanied children in their legislation (BG, CY, HU, IE, IT, PT, SE, CH) and that unaccompanied minors continue to be accommodated with adults in almost all Member States, with a few exceptions (PT, PL, SE, NL).

## 2.10. Transfers

### Key findings

Complete annual statistics on Dublin transfers have never been made available by Eurostat to date.

DE is both the top sender and the top recipient of transfers in the EU. From 2016 to the first half of 2019, it received more asylum seekers (27,865) than it transferred to other countries (23,550).

The overwhelming majority of outgoing Dublin requests do not result in a transfer. A notable exception is EL, where most transfers concern family reunification.

Despite extensive evidence of the deficiencies in the asylum systems of certain countries (such as HU and EL) most Dublin Units have not set out policies to prevent or to advise against the use of Dublin procedures to transfer people (back) to these countries, i.e. they have not instructed their services not to initiate transfer proceedings even when the destination countries are characterised by severe deficiencies in reception, procedures, decision making or political situation.

Where certain risks to the applicant are present, transfers should not take place. The case law of both the ECtHR and the CJEU confirms that it is not necessary to show 'systemic deficiencies' for a transfer to be unlawful; any source of risk is reason enough. Many Member States are not applying this interpretation.

The European Commission recommended the reinstatement of transfers to EL in 2016, and maintains this position. The change in approach led to a sharp increase in incoming requests received by the EL Dublin Unit.

As previously explained, Dublin procedures are initiated on the basis of a request from one Member State's Dublin Unit to another's to 'take charge' of or to 'take back' an individual. Take charge requests are issued on the basis of one of the Dublin criteria, while take back requests are issued for applicants who already have an ongoing, abandoned or rejected asylum application in a country.

<sup>279</sup> [Regulation \(EU\) No 604/2013](#) ("Dublin III Regulation"), Article 4(3).

<sup>280</sup> AIDA, [Country Report Portugal](#), 2019, p. 63.

<sup>281</sup> (FR) French OFPRA, [Guide de l'asile pour les mineurs isolés étrangers en France](#).

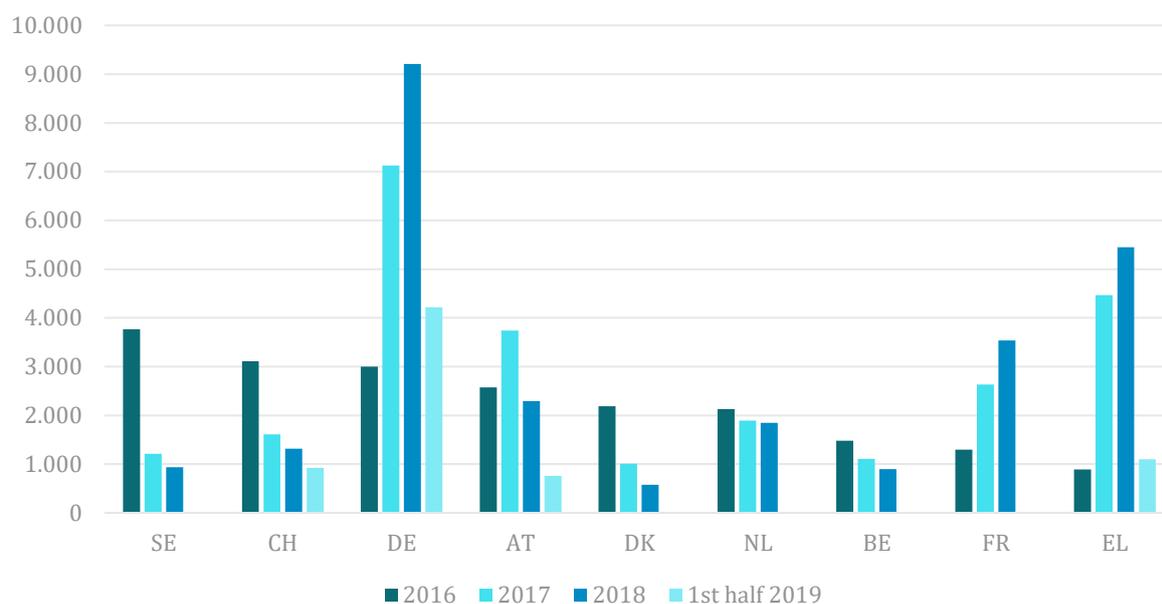
<sup>282</sup> AIDA, [Country Report France](#), 2019, p. 75.

<sup>283</sup> AIDA, [Country Report Switzerland](#), 2019, p. 53.

Outgoing requests are those prepared and sent by countries who wish to transfer a person, on the basis of either a take back or a take charge procedure. Incoming requests are those received by a Member State when another country requests that they accept a person for reasons set out in the Dublin Regulation, on the basis of either a take back or a take charge procedure.

Thus far, Eurostat has been unable to collect full statistics on outgoing and incoming Dublin transfers across the EU for any given year.<sup>284</sup> Thus, a comprehensive picture of the total number of transfers is not available. Given these gaps, the following section will focus on selected countries carrying out transfers under the Regulation in recent years.

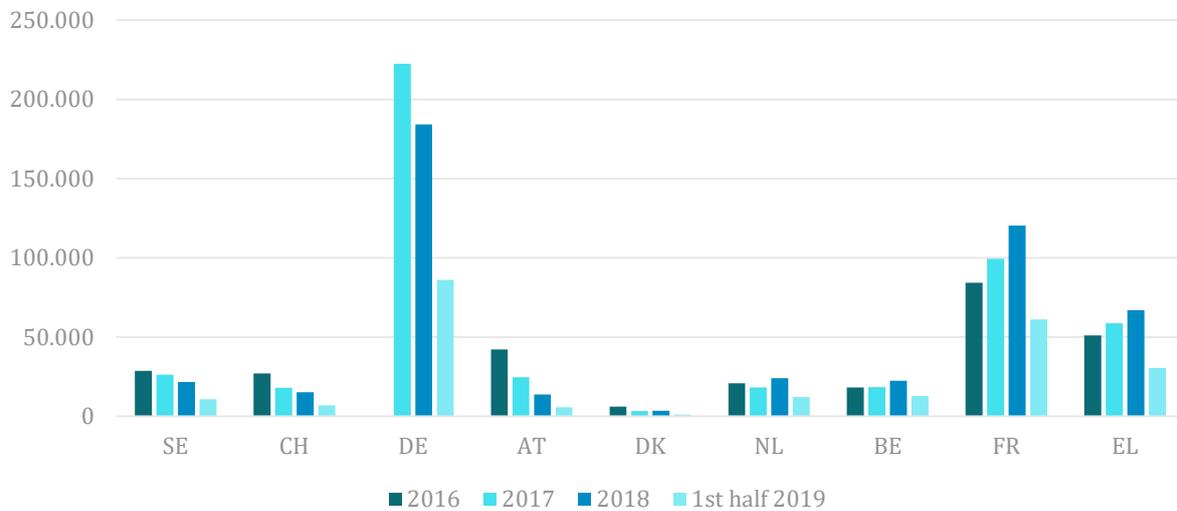
Figure 14: Outgoing transfers by main sending countries: 2016 - first half of 2019



Source: Eurostat, migr\_dubto; ECRE, [The Dublin system in the first half of 2019](#), 2019, p. 10

<sup>284</sup> Eurostat, migr\_dubto.

Figure 15: Total number of applicants in main sending countries: 2016 - first half of 2019



Source: Eurostat, migr\_asy. It should be noted that in 2016 the total number of applications for international protection in Germany was 745,155. For visual clarity, this figure is not in the graph.

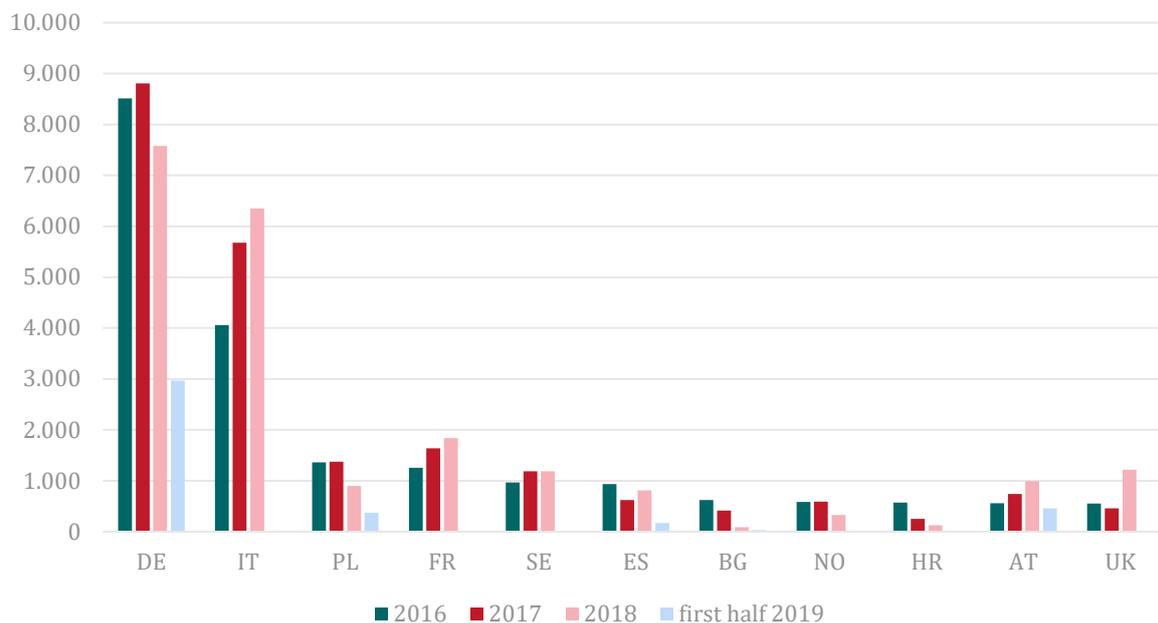
DE is the country performing most Dublin transfers in recent years, with 23,550 transfers from 1 January 2016 to 30 June 2019. During the same period, 11,906 transfers were implemented by EL and 9,360 by AT.

DE is also the top recipient of Dublin transfers. From 1 January 2016 to 30 June 2019 it received 27,865 asylum seekers via incoming Dublin transfer, therefore more than the number of applicants sent to other countries. Possible explanations for increasing onward movement from Germany are the falling recognition rate for Afghan asylum applicants since 2016 and the increasing practice of controversial deportation flights to Afghanistan which were taking place on a regular basis at least up until 2018.<sup>285</sup> The practices have been explored by ECRE elsewhere.<sup>286</sup>

<sup>285</sup> AIDA, [Country Report Germany](#), 2019.

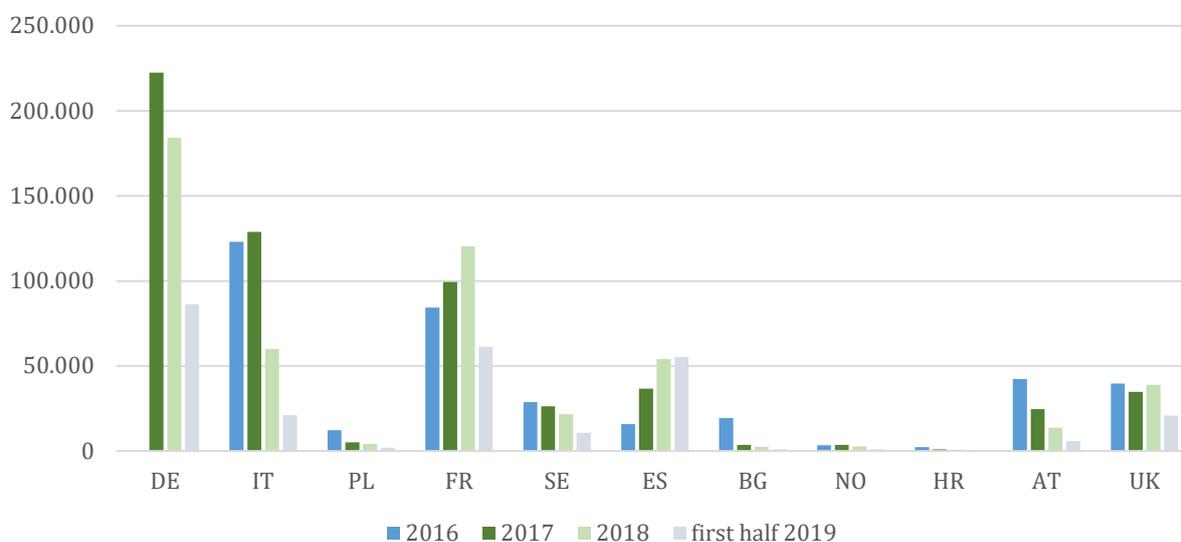
<sup>286</sup> ECRE, [Return policy: Desperately seeking evidence and balance](#), 2019; ECRE, [No reason for returns to Afghanistan](#), 2019; ECRE, [Return: No safety in numbers](#), 2017.

Figure 16: Incoming transfers by main sending countries: 2016 - first half of 2019



Source: Eurostat, migr\_dubto; ECRE, [The Dublin system in the first half of 2019](#), 2019, p. 11

Figure 17: Total number of applicants in main sending countries: 2016 - first half of 2019



Source: Eurostat, migr\_asy. It should be noted that in 2016, the total number of applications for international protection in Germany reached 745,155. To more clearly illustrate the remaining data, this anomalous result has been removed from the above graphic.

### 2.10.1. Efficiency of transfers

A central question is whether the Dublin system is efficient given the low rate of transfers effectively conducted compared to the number of procedures initiated. There are administrative, financial and

human resources costs attached to the procedures, even before the human costs and impact on the persons subject to the procedures is taken into account.<sup>287</sup>

The number of transfer decisions issued by Member States is not available at EU level, although several countries e.g. EL, DE make this information available for the AIDA database. Based on these figures, a comparison can be made between transfer decisions and actual transfers for selected Member States.

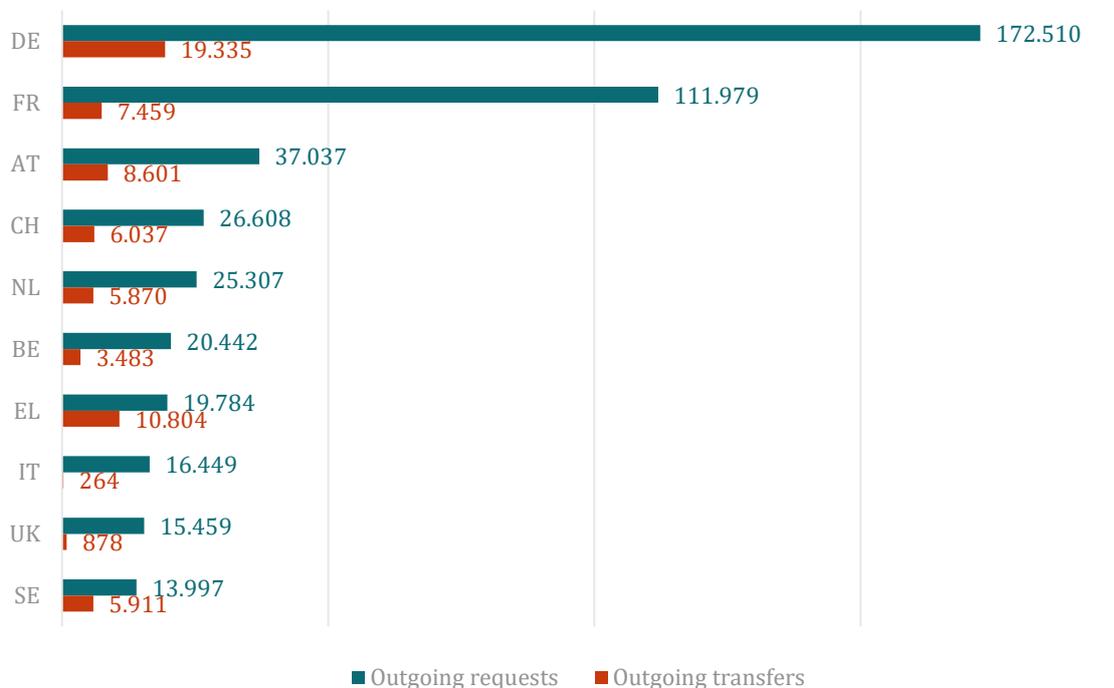
Table 1: Comparison of transfer decisions and outgoing transfers in selected countries: 2018

Country	Transfer decisions issued	Transfers implemented	Percentage implemented
DE	33,094	9,209	27.8%
CH	4,185	1,313	31.4%
EL	3,236	5,447	168.3%
HR	47	10	21.3%

Source: Eurostat, migr\_dubto; AIDA. The percentage in EL is above 100% due to the implementation of transfers for which decisions had been issued in previous years.

A comparison can also be drawn between the number of outgoing transfers and the number of outgoing requests issued by Member States. The disparity between Dublin procedures initiated and transfers implemented is even more striking.

Figure 18: Comparison of outgoing requests and transfers in main countries: 2016 – 2018



Source: Eurostat, migr\_dubro; migr\_dubto

<sup>287</sup> ECRE, [The Dublin system in 2016](#), 2017, p. 4.

The comparison between outgoing requests and transfers demonstrates that only a small fraction of Dublin procedures led to a transfer in recent years. The rate of transfer to request was only 11.2% for DE, 6.7% for FR, 5.6% for the UK and 1.6% for IT. However, the rate was 42.2% for SE and 54.6% for EL over the same three-year period.

The explanation of the low rate of completed transfers lies in the reasons for initiating the transfer procedure. Most Member States, including the main operators of the Dublin system, overwhelmingly trigger requests on the grounds of irregular entry and issue 'take back' requests and in most cases fail to transfer asylum seekers to the countries concerned. Strictly applying the 'irregular entry' criterion and making 'take back' requests on this basis, often fails because the request is usually directed to states at the border which are already facing low reception capacity due to their position, something that eventually renders the transfer impossible.

A different case is EL which makes systematic use of the Regulation primarily for family reunification purposes and reaches a high percentage of completed transfers in practice. The family criteria follow a different rationale that does not include a geographical factor and may result in more pragmatic Dublin requests. It is worth noting that such transfers under the family provisions of the Regulation require the family members' written consent.<sup>288</sup>

Inefficient Dublin procedures are not inevitable. ECRE has consistently argued that the majority of countries applying the Dublin Regulation make a conscious policy choice to subject both asylum seekers and their own administration to lengthy Dublin procedures even though they know in advance that these procedures will not end in a transfer. In many cases, the transfer does not happen because the time limit is reached – a situation that was predictable based on previous experience and the situation in the countries receiving the requests, i.e. the requesting country's authorities knew that it was likely that the time limit would expire before the transfer was completed, thus rendering the transfer impossible, however they decided to persist with the doomed transfer in any case.

The consequences are damaging for applicants. It may mean that access to the asylum procedure in the country where they are is severely delayed while the transfer is attempted. They will be left in limbo while the request is issued and until the time limit is eventually reached.<sup>289</sup> For example, 23,650 asylum applicants were exposed to delays in FR, waiting for the completion of their Dublin procedure before the procedure for the examination of their asylum application was initiated (these cases are termed *requalifiés*).<sup>290</sup> In some cases, the people concerned will be exposed to conditions where their basic human rights are not respected during a Dublin procedure which was never likely to succeed.

### 2.10.2. Suspension of transfers

Recent ECtHR and CJEU case law has confirmed that the grounds for denying Dublin transfers can be any source of risk to the individual; the risk does not have to relate to systemic deficiencies in the asylum system. Unfortunately, this interpretation is not been consistently followed by domestic courts.

Complete statistics on the legal issues in question in asylum caseloads is not available at EU level. However, it appears that extensive litigation of transfer decisions is taking place before courts and

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<sup>288</sup> [Regulation \(EU\) No 604/2013](#) ('Dublin III Regulation'), Articles 9 and 10.

<sup>289</sup> ECRE, [To Dublin or not to Dublin?](#), 2018, pp. 3-4; ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 8.

<sup>290</sup> AIDA, [Country Report France](#), 2019, p. 9.

appeal bodies of Member States. Out of sixteen asylum-related judgments issued by the CJEU in 2017, seven were solely related to the interpretation of the Dublin Regulation,<sup>291</sup> a high proportion at the EU's highest court which may reflect a similar situation at national level.

Article 3(2) of the Dublin Regulation, which codifies the CJEU judgment in *N.S. / M.E.*, provides that a Member State must refrain from performing a transfer when “there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions” leading to a risk of inhuman or degrading treatment.

The human rights test applicable to transfers has been a contentious issue in the implementation of the Dublin Regulation. Article 3(2) of the Regulation is not fully consistent with human rights law. The provision refers to the existence of ‘systemic flaws’ in a country’s asylum procedure or reception conditions, even though the case law of the ECtHR makes it clear that the source of the risk of ill-treatment is irrelevant to *refoulement* under the European Convention on Human Rights.<sup>292</sup> Thus, according to ECtHR case law, grounds for denying Dublin transfers can relate to any source of risk, not only those due to systemic deficiencies in asylum systems, i.e. the applicant does not have to show that there are systemic deficiencies in an asylum system to prevent a transfer. Risks may also emanate from unfair refugee status determination and risk of onward deportation to the country of origin. As noted elsewhere by ECRE:

‘Since 2017, a fresh body of case law has emerged on the suspension of Dublin transfers to Member States where an asylum seeker would unfairly be denied international protection and would face removal to his or her country of origin. Such suspensions on account of indirect *refoulement* have been most prominent vis-à-vis applicants from Afghanistan: domestic courts have ruled against transfers of individuals to Germany, Austria, Belgium, Sweden, Finland and Norway, due to human rights risks stemming from their unduly strict policy on granting protection to Afghan claims. Some courts have taken a similar line towards asylum seekers at risk of onward return to Sudan upon transfer to Italy.’<sup>293</sup>

The correct human rights test, as elaborated by the ECtHR has now been confirmed by the CJEU in *C.K.* in 2017, where it was held that risks may relate to a person’s medical condition,<sup>294</sup> and in *Jawo* in 2019, where the Court elaborated on the violation of human dignity as a result of extreme material poverty.<sup>295</sup> However, this is yet to uniformly trickle down to domestic courts. The legacy of ‘systemic flaws’ lives on in several jurisdictions, where courts still uphold Dublin transfers on the ground that risks of hardship facing individual applicants do not stem from systemic deficiencies in asylum systems of the countries concerned and thus erroneously judge that a transfer can proceed.<sup>296</sup> It

<sup>291</sup> EASO, [Annual Report on the Situation of Asylum in Europe 2017](#), 2018, p. 19.

<sup>292</sup> EDAL, [ECtHR – Tarakhel v. Switzerland, Application No 29217/12](#), Judgment of 4 November 2014. In para. 104 of the judgment, the Court referred to the rebuttal of the presumption that a State Party to the European Convention on Human Rights will comply with its prohibition of inhuman and degrading treatment under Article 3 when the person will be exposed to a real risk of inhuman or degrading treatment upon return. Despite the Regulation’s reference to the risk of inhuman treatment being the result of systemic flaws, the Court clarified that “[...] The source of the risk does nothing to alter the level of protection guaranteed by the Convention or the Convention obligations of the State ordering the person’s removal [...]”.

<sup>293</sup> ECRE, [To Dublin or not to Dublin?](#), 2018, p. 2.

<sup>294</sup> EDAL, CJEU – [Case C-578/16 PPU C.K. and others](#), Judgment of 16 February 2017.

<sup>295</sup> EDAL, [CJEU – Case C-163/17 Jawo](#), Judgment of 19 March 2019.

<sup>296</sup> For recent examples: (DE) German Administrative Court of Würzburg, Decision W 2 S 19.50498, 12 June 2019, Administrative Court of Hamburg, Decision 9 AE 1416/19, 7 June 2019, Administrative Court of Cologne, Decision 8 K 8451/18.A, 6 June 2019, Administrative Court of Frankfurt/Oder, Decision 8 L 1075/18.A, 17 April 2019, Administrative Court of Freiburg, Decision A 5 K 1829/16, 12 March 2019; (NL) Dutch Council of State, Decision 201809552/1/V3, 12 June 2019, Decision 201808522/1/V3, 19 December 2018, Regional Court of Haarlem, Decision NL19.9776, 16 May 2019; (BE)

should be noted that the European Parliament suggested amending the wording of Article 3 (2) of the Commission's proposal for a new Dublin Regulation to include the real risk of a serious violation of the applicant's fundamental rights as a reason to suspend a transfer.<sup>297</sup>

### 2.10.3. The role of the Commission

To date, the European Commission has never made recommendations to Member States to suspend transfers to Member States on account of risks of inhuman or degrading treatment, including to countries such as HU and BG against which it has initiated infringement proceedings due to concerns about their asylum legislation and practice.<sup>298</sup>

In the ECtHR judgment in *M.S.S. v. Belgium and Greece*,<sup>299</sup> and the N.S. judgment of the CJEU,<sup>300</sup> the two courts held that transfers to Greece would result in serious violations of the applicants' human rights due to systemic deficiencies in the country. Member States then suspended transfers to Greece in 2011. The Commission led a policy process to reinstate transfers to EL in 2015, which culminated in four Recommendations in 2016,<sup>301</sup> the last of which addresses all Member States and lays down the general conditions under which transfers to EL may resume.

Since the last Recommendation of the European Commission, most Member States have reinstated Dublin procedures vis-à-vis EL.<sup>302</sup> This has led to a sharp increase in incoming requests received by the EL Dublin Unit, see Table 16 below. Only a few Member States (PT, DK) currently have a policy of suspension of transfers to EL.

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Belgian Council of Alien Law Litigation, Decision 233 433, 28 June 2019, Decision 221 385, 17 May 2019; (CH) Swiss Federal Administrative Court, Decision E-1888/2019, 1 May 2019; (LU) Luxembourgish Administrative Court, Decision 42555, 24 May 2019, Decision 42466, 6 May 2019; (FR) French Administrative Court of Appeal of Douai, Decision 18DA01917, 31 December 2018. It may also occur that courts prevent transfers despite the erroneous use of the "systemic deficiencies" test: (DE) German Administrative Court of Munich, Decision M 11 S 19.50722, 17 July 2019.

<sup>297</sup> European Parliament, [Report on the 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\(2016\)0270 – C8-0173/2016 – 2016/0133\(COD\)\)](#), 6 November 2017

<sup>298</sup> ECRE, [To Dublin or not to Dublin?](#), 2018, p. 4.

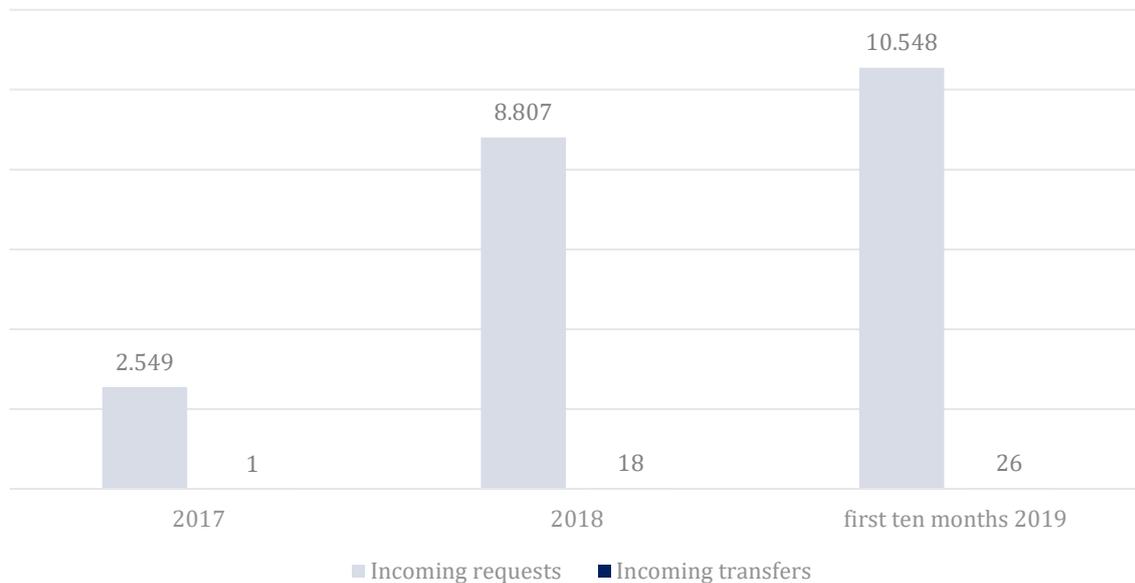
<sup>299</sup> EDAL, [ECtHR - M.S.S. v Belgium and Greece \[GC\], Application No. 30696/09, Judgment of 21 November 2011](#).

<sup>300</sup> EDAL, [CJEU - C-411-10 and C-493-10, Joined cases of N.S. v United Kingdom and M.E. v Ireland, Judgment of 21 December 2011](#).

<sup>301</sup> European Commission, Recommendations [C\(2016\) 871](#), [C\(2016\) 3805](#), [C\(2016\) 6311](#) and [C\(2016\) 8525](#), 2016.

<sup>302</sup> EASO, [Annual report on the situation of asylum in the EU 2017](#), 2018, p. 67; EASO, [Annual report on the situation of asylum in the EU 2018](#), 2019, p. 76.

Figure 19: Incoming requests and transfers to EL: 2017 - first ten months 2019



Source: Eurostat, migr\_dubri; Greek Asylum Service, [Statistical data](#), 2019. NB, the figures 1, 18 and 26 are the incoming transfers.

ECRE and UNHCR have called for a suspension of transfers to HU. No country implemented transfers in 2018 and 2019 but only NL, SE and the UK have laid down official policies opposing transfers.<sup>303</sup> In relation to IT, the second largest recipient of transfers, domestic case law on the legality of Dublin transfers has been inconsistent across the EU.<sup>304</sup>

## 2.11. Secondary movement and abandoned procedures

### Key findings

Onward movement (often called 'secondary movement') occurs for a large variety of reasons related to the person and to the situation in the country where they find themselves. A person's legal and family status and health considerations are relevant, as are the socio-economic and asylum situation in the country where they are.

State practices on surveillance and law enforcement, reception conditions, content of protection and recognition rates (specifically low recognition rates for particular groups) are all reasons why a person decides or is forced to depart from a Member State.

There is no evidence that 'pull factors' such as the provision of social assistance are significant factors in people deciding to go to a particular country.

Any attempt to address onward movement needs to be informed by a thorough assessment of the multiple and complex reasons for it. Overly simplistic or punitive approaches are likely to have negative results, such as destitution, but will not end the phenomenon itself.

<sup>303</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 19.

<sup>304</sup> *Ibid*, pp. 19-20.

A variety of reasons may play a role in the decision of people to depart from the Member State they first arrived, including both personal circumstances and factors relating to existing policies in Member States.<sup>305</sup>

According to a study delivered by the Dutch Advisory Committee on Migration Affairs, a change in the person's legal, family or health status may trigger a secondary movement to a Member State where expectations might be more positive, whereas systemic socio-economic factors can also generally contribute to onward movement.<sup>306</sup> Specific policies of Member States on law enforcement and surveillance, as well as reasons relating to content and level of protection in asylum and reception systems can be relevant factors.<sup>307</sup> In practice, such movements will also be determined by their knowledge of the situation in other Member States, presence of social and family links or smuggling routes.<sup>308</sup> Analysis of all the available studies on "pull factors" shows that many of the pull factors that are most often discussed, such as social assistance, are of limited importance. In general, there is little evidence that "pull factors" actually exist, while the role of "push factors" is well established.<sup>309</sup>

Recognition rates may also affect movement of applicants from certain nationalities, as there are wide discrepancies in the granting of international protection between different Member States. For Iraqi applicants, recognition rates vary from 94.2% in Italy to 12% in Bulgaria, while for Afghan nationals, recognition ranges from 98.4 in Italy to 24% in Bulgaria.<sup>310</sup>

The 'take back' statistics presented above (Table 5) only show persons for whom Member States have issued a take back request on the basis of a previous application elsewhere. It is not possible to ascertain how many asylum seekers have abandoned their asylum procedures in a country by travelling to another country.<sup>311</sup> Eurostat only provides general statistics on withdrawn asylum applications, without disaggregating explicit from implicit withdrawals (i.e. where there is no formal notification of withdrawal).<sup>312</sup>

At national level, some Member States such as BG regularly provide data on abandoned applications.<sup>313</sup> Against this backdrop, the likely addition of such disaggregation by explicit or implicit withdrawal in the amended Migration Statistics Regulation is expected to contribute to greater clarity on this aspect of Eurostat data.<sup>314</sup>

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<sup>305</sup> Poppy James and Dr. Lucy Mayblin, [Factors influencing asylum destination choice: A review of the evidence](#), 2016.

<sup>306</sup> Dutch Advisory Committee on Migration Affairs, [Advisory report, Secondary movements of asylum seekers in the EU](#), 2019, pp. 25-27.

<sup>307</sup> Ibid.

<sup>308</sup> Ibid, p. 26.

<sup>309</sup> Poppy James and Dr. Lucy Mayblin, [Factors influencing asylum destination choice: A review of the evidence](#), 2016.

<sup>310</sup> ECRE, [Asylum Statistics 2018: Changing arrivals, same concerns, 2019](#).

<sup>311</sup> See also EASO, [Annual report on the situation of asylum in the EU 2018](#), 2019, pp. 51-53.

<sup>312</sup> Eurostat, migr\_asywitha.

<sup>313</sup> AIDA, [Country Report Bulgaria](#), 2019, p. 19.

<sup>314</sup> European Parliament, [Proposal for a Regulation \[amending the Migration Statistics Regulation\]: First reading](#), T8-0359/2019, 2019, Article 1(1)(1)(-a); Council of the European Union, Draft Regulation [amending the Migration Statistics Regulation] – revised mandate for negotiations with the European Parliament, 14403/19, 2019, Article 1(4)(a).

## 2.12. Early Warning

### Key findings

Article 33 sets out a mechanism to address situations where the functioning of the Dublin system is at stake, due to challenges in the asylum system of a Member State.

The provision has never been applied.

Beyond stating (some of) the circumstances under which a transfer is not lawful, the Dublin system does little to prevent situations where transfers expose individuals to harm. The only provision of the Regulation relating to structural responses to such conditions is the ‘mechanism for early warning, preparedness and crisis management’ set out in its Article 33. This provision enables the European Commission to make recommendations to a Member State where the functioning of the Dublin system is jeopardised due to pressure on or deficiencies in its asylum system. The Commission can request preventive action plans and crisis management plans. The early warning mechanism remains a dormant provision, as Article 33 has not been applied to date.

## 2.13. The duration of the different stages of the procedure

### Key findings

The Dublin Regulation sets out binding time limits for all steps of the procedure, specifically for the issuance of a request, a reply thereto, and the actual transfer of the individual to the responsible country. The calculation of time limits for sending ‘take charge’ requests has changed in many countries following the CJEU’s 2017 ruling in *Mengesteab*, which allows the time period to start as soon as information on the existence of a document certifying a request for protection has reached the competent authorities. This finding has been interpreted as meaning that the procedure may start immediately after initial registration steps, even before the official lodging of an application.

The CJEU has consistently highlighted asylum applicants’ right to an effective remedy in Dublin procedures. Individuals are allowed to challenge transfer decisions based on the incorrect application of the responsibility criteria and the expiry of time limits for requests and transfers.

Member States becoming responsible by default due to non-compliance with the deadlines for transfers occurs often.

### 2.13.1. The rules on time limits

The Dublin Regulation sets out binding time limits for all steps of the procedure, specifically a time limit for the issuance of a request, a time limit for the reply to the request, and a time limit for the actual transfer of the individual to the responsible country. These time limits are meant to keep the Dublin procedure short and to enable fast access to the asylum procedure for the applicant. The time limit means that a deadline is in place by which the step has to be completed by the Member State in question. The CJEU ruling in the *Mengesteab* case concerns the question of when the clock starts to run, as explained below.<sup>315</sup> The deadlines differ depending on the type of procedure

<sup>315</sup> In general, it should be noted that one of the main issues in *Mengesteab* is that the meaning of lodging an application for the purposes of the Asylum Procedures Directive and the meaning of lodging an application under the Dublin Regulation are distinction. These are two different procedures which each has its own requirements, time limits and schemes.

initiated by a Member State, i.e. whether it is a take charge or take back request.<sup>316</sup> The following sections discuss deadlines and duration of the different stages of the Dublin procedure.

Table 2: Deadlines in Dublin procedures

Stage in the procedure	Time limit in months	
<b>Request</b>		i.e. the time that the MS+ has to make the request.
"Take charge" request based on Eurodac 'hit'	2	
"Take back" request based on Eurodac 'hit'	2	
"Take charge" request not based on Eurodac 'hit'	3	
"Take back" request not based on Eurodac 'hit'	3	
<b>Reply to request</b>		i.e. the time that the MS+ which receives the request has to respond to it.
Reply to "take charge" request	2	
Reply to "take back" request based on Eurodac 'hit'	0.5	
Reply to "take back" request not based on Eurodac 'hit'	1	
<b>Transfer following acceptance</b>		i.e. the time available to the first, requesting MS+ to actually physically transfer the person.
Transfer	6	
Transfer in case of "imprisonment"	12	
Transfer in case of absconding	18	

The calculation of the time limit for issuing a 'take charge' request has changed in a number of countries following case law developments in 2017. The CJEU held in *Mengesteab* that the 'lodging' of an application as per Article 20(2) of the Dublin Regulation does not have the same meaning as the 'lodging' of an application under the Asylum Procedures Directive. Certain countries (DE, FR, IT, BE, EL, HR as far as ECRE's information shows), which distinguish between 'registration' and 'lodging' of an asylum application in their national systems, have aligned their practice with the *Mengesteab* ruling and now start the calculation of the time limit from the moment the asylum seeker's intention to seek international protection is registered, rather than at the later stage of the formalisation of the application.<sup>317</sup>

The impact of *Mengesteab* has been significant in the context of 'take charge' requests by EL under the family provisions of the Dublin Regulation. Recipient countries strictly interpret the time limit as starting from the moment an applicant expresses the intention to seek asylum rather than the point of their full registration by the Asylum Service.<sup>318</sup> Consequently, 'take charge requests' that had already been sent by EL were rejected due to this abrupt change of practice, leaving the EL Dublin Unit struggling to send new requests on time.<sup>319</sup> Moreover, with the new starting point practically being moved to the moment of arrival there is less time to inform applicants, to gather evidence and documents, as well as to adequately examine cases on their merits. In its amendment to the

<sup>316</sup> Regulation (EU) No 604/2013 ("Dublin III Regulation"), Articles 21(1), 22(1), 23(2), 24(2) and 25(1).

<sup>317</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 12.

<sup>318</sup> AIDA, [Country Report Greece](#), 2019, p. 62.

<sup>319</sup> *Ibid*, p. 59.

European Commission's proposal for the reform of the Regulation, the European Parliament introduced a new Article 24a, to provide for quicker family reunification procedures where there are sufficient *prima facie* indicators of family links.<sup>320</sup>

### 2.13.2. Time limits for transfers

The Dublin Regulation sets out a general six-month deadline for carrying out a transfer from the time that the requested Member State accepts responsibility or from the time that an appeal against the transfer decision ceases to have suspensive effect.<sup>321</sup> The CJEU has clarified that failure to observe this time limit results in automatic shift of responsibility to the sending country.<sup>322</sup>

However, there is persisting ambiguity as to the calculation of time limits for carrying out a transfer in cases where the individual lodges an appeal against the transfer decision. The issue has been debated in domestic litigation. In FR, the Council of State has clarified that the 6-month deadline is suspended if the asylum seeker appeals the transfer decision, and continues to run from the delivery of the Administrative Court judgment, regardless of its outcome. In addition, the time limit restarts only once. This means that if the Administrative Court annuls the transfer and the Prefect lodges an onward appeal, the 6-month deadline is not renewed.<sup>323</sup> In AT, on the other hand, the Administrative High Court has ruled that the transfer deadline is not suspended if the decision on the appeal is notified to the individual after the expiry of the six-month deadline; in such a case, the sending country becomes responsible for the asylum claim.<sup>324</sup>

### 2.13.3. Overall average duration

A mapping of the duration of Dublin procedures across the continent is not possible due to a lack of EU-wide data. Only a few countries provide statistical information on the average duration of their Dublin procedures when requested and in these cases they present average periods without further breakdown, so the range and circumstances of delays in different (types of) case and their impact on individuals are hard to assess.

For the countries where partial information is provided to AIDA, in 2018, the average duration of the procedure from the acceptance of a request to the implementation of a transfer was less than a month in PL and SI, 2 months in RO and BG, and 6 months in MT. In CH, the average period was 265 days. In EL the general average duration of the procedure was 11 months due to the number of family reunification cases to Germany pending from 2017, which resulted in transfers in 2018.<sup>325</sup> In the first half of 2019, authorities reported the following average periods: 7 working days in EE, 14 calendar days in PT, 26 calendar days in SI, 2 months in RO and 6 months in MT.<sup>326</sup> For FR, average periods vary from one Prefecture to another, with an average of 73 days for a decision to be notified,

<sup>320</sup> European Parliament, [Report on the 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\(2016\)0270 – C8-0173/2016 – 2016/0133\(COD\)\)](#), 6 November 2017.

<sup>321</sup> [Regulation \(EU\) No 604/2013](#) ('Dublin III Regulation'), Article 29(2).

<sup>322</sup> EDAL, [CJEU - Case C-201/16 Shiri](#), Judgment of 25 October 2017.

<sup>323</sup> (FR) French Council of State, Decision 420708, 24 September 2018.

<sup>324</sup> (AT) Austrian Administrative High Court, Decision Ra 2018/14/0133, 24 October 2018.

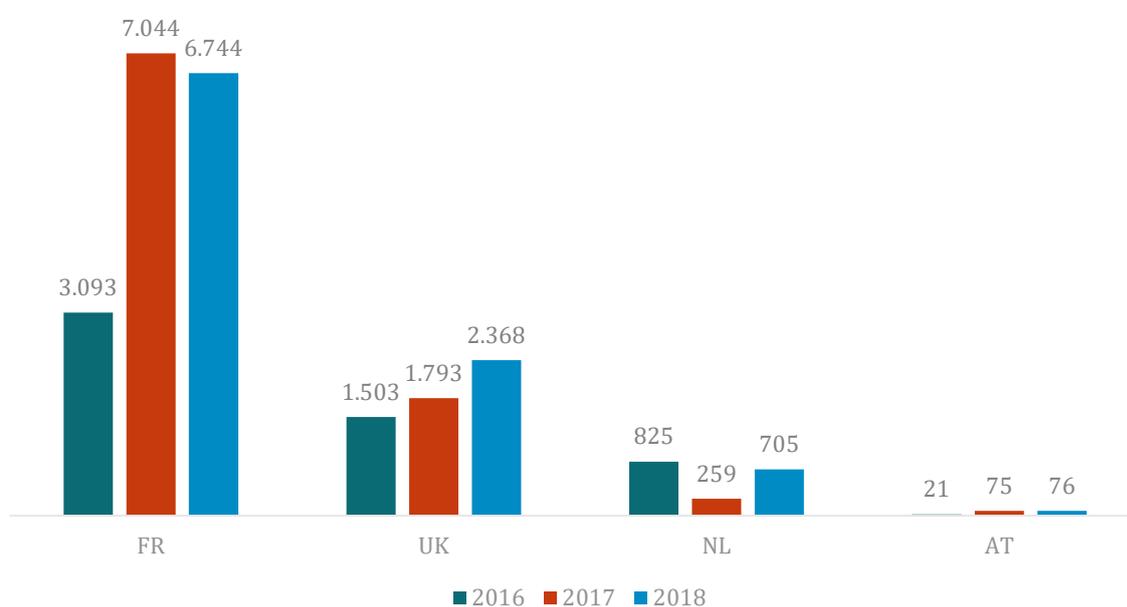
<sup>325</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 13.

<sup>326</sup> ECRE, [The Dublin system in the first half of 2019](#), 2019, p. 3.

with some Prefectures issuing a decision in one day and others (Haute Garonne, Meurthe-et-Moselle, Val-d’Oise) taking 4-5 months to do so.<sup>327</sup>

As discussed above, the majority of Dublin requests do not result in transfers. In many cases, responsibility shifts back to the sending country due to non-compliance with the deadlines for carrying out a transfer, despite the possibility to extend the 6-month time limit in cases such as absconding. Most Member States do not consistently report to Eurostat the number of cases in which they have failed to observe the transfer time limits and have become responsible by default.<sup>328</sup> For example, DE, CH and IT have only reported zero figures in recent years. According to available data, selected countries undertook responsibility due to non-compliance with transfer deadlines.

Figure 19: Responsibility by default due to failure to transfer within deadlines: 2016 - 2018



Source: Eurostat, migr\_dubduni

<sup>327</sup> AIDA, [Country Report France](#), 2019, p. 44.

<sup>328</sup> Eurostat, migr\_dubduni.

## 2.14. Appeal procedures

### Key findings

EU-wide statistics on the number of appeals against Dublin transfer decisions and on the duration of appeal procedures are not available.

According to CJEU jurisprudence, applicants can make an appeal against a decision based on claiming the incorrect application of responsibility criteria, cessation of responsibility, and the expiry of time limits.

The issue of justiciability of a Member State's refusal to accept a 'take charge' request, i.e. whether such a refusal to accept a request can be legally challenged before a judicial body, is a point of divergence between courts because the refusal is not accompanied by a decision that the applicant could challenge. UK and DE courts have accepted justiciability on the basis of the right to family life.

### 2.14.1. Legal rights to an effective remedy

Asylum applicants' right to an effective remedy under the Dublin Regulation has been consistently affirmed by the CJEU in recent years, meaning that applicants can appeal against certain decisions that Member States take when applying the Dublin Regulation. In particular, the Court has clarified that transfer decisions are amenable to review. It judged that this is a necessary safeguard protecting individuals against the incorrect application of the Regulation by Member States.

More specifically, it has ruled that an applicant can appeal decisions when it can be claimed that the decision was issued on the basis of an incorrect application of the responsibility criteria,<sup>329</sup> or of the clauses on cessation of responsibility.<sup>330</sup> They may also challenge a decision on the ground of expiry of the time limits for issuing a request,<sup>331</sup> or expiry of the time limits for performing a transfer, i.e. if the time limits have passed, they will appeal against the decision to transfer them on that basis.<sup>332</sup>

Nevertheless, the CJEU has recently restricted the scope of permissible appeals that are allowed based on incorrect application of the responsibility criteria in the context of 'take back' cases. In *H. and C.*, it found that 'take charge' procedures differ from 'take back' procedures, which are governed by separate provisions.<sup>333</sup> The Court therefore concluded that, where a decision has been taken following the acceptance of a 'take back' request, the applicant cannot plead that the country deemed responsible has not properly examined the responsibility criteria of the Regulation, unless the applicant falls under Article 20(5) of the Regulation, i.e. they left the first Member State before the process of determining the Member State responsible was completed, and has provided sufficient evidence establishing correct responsibility.

Another question brought before domestic courts in recent years concerns the justiciability of a country's refusal to accept a 'take charge' request, following which no transfer decision is issued. The question is whether a legal remedy is available when a Member State decides it will not 'take charge' of an applicant: can the applicant request a review before the courts of that Member State? The point of contention is that a refusal to take charge means that there is no transfer decision to

<sup>329</sup> EDAL, [CJEU - Case C-63/15 Ghezelbash](#), Judgment of 7 June 2016; EDAL, [CJEU - Case C-490/16 A.S.](#), Judgment of 26 July 2017.

<sup>330</sup> EDAL, [CJEU - Case C-155/15 Karim](#), Judgment of 7 June 2016.

<sup>331</sup> EDAL, [CJEU - Case C-670/16 Mengesteab](#), Judgment of 26 July 2017.

<sup>332</sup> EDAL, [CJEU - Case C-201/16 Shiri](#), Judgment of 25 October 2017; EDAL, [CJEU - Case C-163/17 Jawo](#), Judgment of 19 March 2019.

<sup>333</sup> CJEU, [Joined Cases C-582/17 and C-583/17 H. and R.](#), Judgment of 2 April 2019, paras 57-58 and 74-75.

challenge under Article 27 and no other provision of remedy by the Regulation. Courts across the EU have not taken a uniform position on this issue, however.<sup>334</sup>

**UK:**<sup>335</sup> The Upper Tribunal has held that the principle of fairness requires the applicant to be given an opportunity to know the 'gist' of what is submitted against him or her in respect of the application of the Dublin criteria. Therefore, in judicial review against the rejection of a 'take charge' request by the UK, it is for the court or tribunal to decide whether the Dublin criteria have been correctly applied.<sup>336</sup>

**DE:** Courts have also adjudicated rejections of 'take charge' requests in the context of family reunification.<sup>337</sup>

**AT:** The Federal Administrative Court has stated that the only available course of action following a refusal of a 'take charge' request on family unity grounds is the submission of a re-examination request by the sending Member State. The Court found that the asylum seeker cannot act directly against the negative decision, as it interpreted the Dublin procedure as an intergovernmental procedure.<sup>338</sup>

### 2.14.2. Number of appeal procedures

EU-wide statistics on the number of appeals against Dublin transfer decisions and on the duration of appeal procedures are not available. At national level, however, some countries collect data on Dublin appeals and their outcomes. Examples of such statistics may be found in DE, where figures of Administrative Court decisions granting or refusing suspensive effect in appeals against Dublin transfers are compiled. These do not concern the merits of the appeals, however.<sup>339</sup>

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<sup>334</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 12.

<sup>335</sup> Although the UK left the EU on 31 January 2020, it is included here when relevant.

<sup>336</sup> (UK) British Upper Tribunal, *MS v Secretary of State for the Home Department* [2019] UKUT 9 (IAC), 19 July 2018.

<sup>337</sup> (DE) German Administrative Court of Münster, Decision 2 L 989/18.A, 20 December 2018.

<sup>338</sup> (AT) Austrian Federal Administrative Court, Decision W175 2206076-1, 1 October 2018.

<sup>339</sup> AIDA, [Country Report Germany](#), 2019, pp. 37-38.

## 2.15. Detention during the Dublin procedure

### Key findings

Detention is only allowed if there is a ‘significant risk of absconding’. There is a wide divergence on what constitutes a risk of absconding and, in some Member States, absconding criteria are too broad and arguably not relevant to the risk assessment.

More countries have laid down criteria that may indicate a ‘significant risk of absconding’ after the *Al Chodor* judgment, although many have still not complied with it.

Statistics on detention and alternatives to it are not collected by Eurostat. The Council rejected the European Parliament’s request for their inclusion in the amended Migration Statistics Regulation.

The feasibility of data collection on detention will now be assessed in pilot studies led by the Commission.

### 2.15.1. Rules on detention

Detention under the Dublin procedure may only be ordered as a measure of last resort to secure transfer procedures where there is a ‘significant risk of absconding’ of the applicant.<sup>340</sup> The CJEU ruling in *Jawo* recalled that the term “absconding” is not defined in EU law,<sup>341</sup> though it noted that in the Dublin context it entails deliberate evasion of the reach of the national authorities in order to prevent the transfer.<sup>342</sup> This may be assumed where the applicant has left the accommodation place without informing the authorities.<sup>343</sup>

However, in a 2017 ruling, *Al Chodor*, the Court held that Dublin detention is unlawful if the objective criteria for determining a ‘significant risk of absconding’ pursuant to Article 2(n) of the Dublin Regulation have not been laid down in a national legal provision of general application.<sup>344</sup>

*Al Chodor* has generated a spill-over effect well beyond CZ, the country which referred the question for a preliminary ruling. The CJEU clarified that the Regulation imposes a requirement on all countries operating the Dublin system to define the criteria for a ‘significant risk of absconding’ in their domestic law. Domestic courts have agreed that, in the absence of such criteria laid down in law, detention is unlawful.<sup>345</sup>

<sup>340</sup> [Regulation \(EU\) No 604/2013](#) (“Dublin III Regulation”), Article 28(2).

<sup>341</sup> EDAL, [CJEU – Case C-163/17 Jawo](#), Judgment of 19 March 2019, para 54.

<sup>342</sup> *Ibid*, para 56.

<sup>343</sup> *Ibid*, para 57.

<sup>344</sup> EDAL, [CJEU – Case C-528/15 Al Chodor](#), Judgment of 15 March 2017.

<sup>345</sup> See e.g. (FR) French Court of Cassation, Decision No 1130, 27 September 2017; Decision No 17- 14866, 7 February 2018; (SI) Slovenian Administrative Court, Decision I U 618/2017-14, 6 April 2017; Decision I U 2578/2018-13, 31 December 2018; (UK) British Supreme Court, *R (Hemmati) v Secretary of State for the Home Department* [2019] UKSC 56.

Following the judgment, such a definition was codified in the UK in March 2017,<sup>346</sup> in BE in November 2017,<sup>347</sup> in FR in March 2018,<sup>348</sup> and in CY in July 2018.<sup>349</sup> Other countries such as SI and EL have continued to assess the risk of absconding with reference to the criteria laid down in pre-removal detention provisions. IE, BG, IT, PT, ES and MT have not laid down any criteria and therefore do not comply with the *Al Chodor* judgment.<sup>350</sup>

The codification of criteria for the determination of a 'significant risk of absconding' has led to overly broad and often irrelevant indicators being included in legislation in order to justify detention in Dublin procedures. The length of the lists varies from one country to another and can range from three criteria (HU, PL) to 12 (NL, FR) or even 13 (CY). The content of those criteria also varies considerably across countries.<sup>351</sup>

Table 3: Criteria for determining a "significant risk of absconding" under Article 2(n)

Objective criterion	Countries where codified
<b>Personal statements</b>	
False or misleading information	BE, CY, DE, HR, HU, UK
Unfounded statements during Dublin interview	CY
Concealment of identity, travel route, fingerprinting, family composition	BE, FR, HR
Concealment of prior application in another country	BE, FR, CH
Failure to cooperate with the authorities e.g. in information requests or in establishing identity	BE, CY, DE, FR, HR, HU, NL
<b>Documents</b>	
Deliberate destruction of identity or travel documents	CY, DE
Falsification of documents	FR
Lack of identity documents	PL
Failure to obtain a travel document for removal	AT

Source: ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, pp. 15-16

Several criteria introduced by countries appear to be irrelevant to the assessment of a risk of absconding and/or otherwise problematic. For example, HU deems violations of reception centre house rules as a ground for determining such a risk, while DE considers the payment of substantial amounts of money to smugglers as such a ground.

More worryingly, the lack of reception conditions or a place of residence is listed as a criterion in FR, despite the fact that the reception system falls far short of meeting actual reception needs to date, with only 44% of asylum seekers registered in 2018 granted accommodation. Under the FR definition of the risk of absconding, the very failure of the country to offer adequate reception

<sup>346</sup> (UK) British Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017.

<sup>347</sup> (BE) Belgian Aliens Act, as amended by Law of 21 November 2017, Article 1(2).

<sup>348</sup> (FR) Code of Entry and Stay of Foreigners and the Right to Asylum (Ceseda), Article L.551-1(2), inserted by Law n. 2018-187 of 20 March 2018.

<sup>349</sup> (CY) Cypriot Article 9ΣT-bis Refugee Law, inserted by Law No 80(I)/2018 of 12 July 2018.

<sup>350</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2019, p. 14.

<sup>351</sup> Ibid.

conditions is treated as a ground for detention of asylum seekers. In practice, however, when an asylum seeker without stable accommodation is notified of a transfer and appears before the Prefecture, he or she is placed under house arrest, i.e. classified as having the status of being under house arrest, as an alternative to detention.<sup>352</sup>

Practices of detention of children, whether in Dublin, return or transit zone/border proceedings, have been reported in several Member States (e.g. EL, BE, FR, HU, BG, ES),<sup>353</sup> despite general provisions in most countries calling for the use of detention of children only as a measure of last resort.<sup>354</sup> The European Court of Human Rights has clarified that a detention measure that is imposed without any consideration as to the best interests of the child, with no proportionality assessment and no use of alternatives to detention is unlawful.<sup>355</sup> The use of protective custody for unaccompanied minors in EL has also been found to be an unlawful measure of detention.<sup>356</sup>

### 2.15.2. Detention: the numbers

Eurostat does not collect statistics on detention of asylum seekers and alternatives to detention, as they fall outside the scope of the Migration Statistics Regulation. Whereas the European Parliament advocated for their inclusion in the amended Regulation in 2019, the Council opposed mandatory collection of detention statistics. The feasibility of gathering such data will be assessed under one of the pilot studies initiated by the Commission under the Regulation.<sup>357</sup>

This means that disaggregated data on persons detained in the context of a Dublin procedure are largely unavailable. By way of exception, partial figures for 2018 have been provided by civil society organisations for certain countries: in FR, a total of 3,456 persons were issued a detention order following a transfer decision in 2018. However, many more were detained across the country pending the determination of the Member State responsible for their claim.<sup>358</sup> In CH, civil society figures show there were 1,213 cases of detention pending transfer to the responsible country under the Regulation in 2018.<sup>359</sup> By way of contrast only 65 people were allowed to voluntarily travel to the responsible country from the “test centres” operated in Zurich and Boudry during that year.<sup>360</sup> This indicates a strong reliance on the part of the authorities on coercive measures over voluntary transfers, contrary to Recital 24 of the Dublin Regulation.

The duration of Dublin detention is unknown, as statistics thereon are not available. There is no known impact of detention on the duration of the Dublin procedure *per se*.

<sup>352</sup> Ibid.

<sup>353</sup> AIDA, Country Reports, 2018 Update: [Greece](#), pp. 159-161; [Belgium](#), pp. 97-98; [France](#), p. 99; [Hungary](#), pp. 88-91; [Bulgaria](#), pp. 60-62; [Spain](#), p.70.

<sup>354</sup> EASO, [Annual report on the situation of asylum in the EU 2018](#), 2019, pp. 155-157.

<sup>355</sup> EDAL, [ECtHR - Rahimi v. Greece, Application No. 8687/08](#), Judgment of 5 July 2011.

<sup>356</sup> EDAL, [ECtHR - H.A. and others v. Greece, Application No 19951/16](#), Judgment of 28 February 2019; EDAL, [ECtHR - Sh.D. and others v. Greece, Austria, Croatia, Hungary, Northern Macedonia, Serbia and Slovenia, Application No 141165/16](#), 13 June 2019.

<sup>357</sup> European Parliament, 2019, [Proposal for a Regulation \[amending the Migration Statistics Regulation\]: First reading](#), T8-0359/2019, Article 1(1)(1)(a)(dg)-(dj); Council of the European Union, 2019, Draft Regulation [amending the Migration Statistics Regulation] – revised mandate for negotiations with the European Parliament, 14403/19, Article 1(4b).

<sup>358</sup> Assfam et al., [Centres et locaux de rétention administrative](#), 2019, p. 16.

<sup>359</sup> AIDA, 2019, [Country Report Switzerland](#), 2019, p. 93.

<sup>360</sup> Ibid, p. 33.

### 2.15.3. Coercive transfers

The use of coercive measures to effectively implement Dublin transfers has been reported in several Member States. In its study on the evaluation of the Regulation in 2016, ICF had already illustrated the role of law enforcement authorities and the use of force to carry out transfers in DE, SE, LU, and UK.<sup>361</sup> However, recent findings indicate worrying practices in this regard, whereby asylum seekers are handcuffed, sedated and subject to police violence in the context of Dublin transfers.

**UK:**<sup>362</sup> In 2019, some Dublin transfers from the UK to DE were preceded by detention and a high-security forced removal, during which persons were handcuffed. Due to this, the German Red Cross uses the short stay in Erding, a waiting room where it operates with the Federal Office for Migration and Refugees (BAMF), to work with returnees on de-escalating the tension resulting from the use of detention in the UK.<sup>363</sup>

**DE:** The use of excessive force, physical restraints, separation of families, humiliating treatment and sedative medication by DE police authorities in Dublin transfers were denounced in Berlin and Lower Saxony in 2018.<sup>364</sup> In 2018, it was reported that authorities had resorted to 'aids to physical violence', such as handcuffs in 1,231 cases, up from only 255 in 2015.<sup>365</sup> More recent observations from Bavaria corroborate coercive practices in the enforcement of Dublin transfers, including police raids with dogs in Arrival, Decision and Return (AnKER) centres and the handcuffing of asylum seekers, including pregnant women.<sup>366</sup>

## 2.16. Conclusions and Recommendations

The Conclusions and Recommendations section draws on the key findings of the study, presented above. The conclusions assess the Dublin Regulation using the criteria set out in the European Commission's Better Regulation Toolbox,<sup>367</sup> specifically the effectiveness, efficiency, relevance, coherence, and EU added value of the intervention. Before the assessment, a first section explains that any assessment is partial due to the information gaps identified, and a second section lists good practice demonstrated by Member States in their respective application of the Regulation. As the Dublin Regulation primarily concerns people, with every aspect of its implementation directly affecting people seeking international protection in Europe, good practices that demonstrate respect for the rights of applicants are listed and a human rights lens is applied throughout.

The Conclusions and the Recommendations alike remain within the scope of the study which is an evaluation of the implementation of Dublin III based on the use of empirical evidence to answer the research questions listed (see the section on Methods in the Introduction). The Conclusions and Recommendations do not therefore include commentary on the principles underlying Dublin III or on the multiple informal and formal proposals presented for alternatives to the current Dublin Regulation. Nonetheless, the assessment attempts to disentangle challenges inherent in the design of the Regulation and challenges resulting from poor or selective implementation. The potential

<sup>361</sup> ICF, [Evaluation of the implementation of the Dublin III Regulation](#), 2016, p. 58.

<sup>362</sup> Although the UK left the EU on 31 January 2020, information from the UK is included when relevant.

<sup>363</sup> ECRE, [The AnKER centres Implications for asylum procedures, reception and return](#), 2019, p. 9.

<sup>364</sup> (DE) German Federal Government, [Response to parliamentary question, 19/7401, 29 January 2019](#).

<sup>365</sup> The Guardian, [Number of asylum seekers sent back to Italy triples in five years, 2019](#).

<sup>366</sup> ECRE, [The AnKER centres Implications for asylum procedures, reception and return](#), 2019, p. 12.

<sup>367</sup> European Commission, [Better regulation: why and how](#).

relationship between design issues and selective implementation, insofar as the former may facilitate the latter, forms a substantial part of the analysis.

The political context is also relevant. For most of the Member States for most of the period covered by the study, their political priority has been to minimise their responsibility, i.e. to minimise the number of people for whom they are responsible. This priority shapes their decisions about how they implement the Dublin Regulation, including a focus on take back requests based on the default first country of arrival principle, the obstacles placed on family unity criteria, such as high evidential standards, and the limited use of the discretionary clauses. Attempts to avoid responsibility may also have an impact on compliance with other components of the asylum *acquis*, for instance, through the creation of perverse incentives to keep reception conditions low or to refuse to deal with problems in decision-making (either to encourage onward movement or to make it likely that courts will prevent transfers). These tactics lie behind the implementation picture presented, and have a considerable impact on the human rights of those directly affected by the Dublin Regulation.

The assessment indicates that flaws leading to ineffectiveness, inefficiencies and irrelevance, are present at the level of design as well as implementation and choices about implementation priorities. Thus, even if the Regulation was implemented more effectively, problems would not be completely eradicated.

### 2.16.1. Information gaps

#### Key findings

It is not possible to provide a comprehensive or unqualified evaluation of the implementation of Dublin III due to the paucity of available information.

Key information gaps cover: grounds for requests; duration of procedures; resources; withdrawn applications; failed transfers; appeal processes; and detention.

The gaps in the information available on the implementation of Dublin III result from inconsistencies in reporting and an absence of data on specific aspects of the Regulation. This renders it impossible to provide comprehensive conclusions. All assessments and conclusions are therefore participation and qualified.

Some countries provide statistical information and otherwise report on their implementation of Dublin III, but not to the same degree or frequency. As mentioned in the Introduction, EL, DE, LU, PL, HR, UK, CH provide information and report periodically,<sup>368</sup> with EL and CH providing the best level of detail and frequency of reporting (providing monthly statistics).<sup>369</sup>

The specific information gaps identified in the study are as follows:

- **Grounds for requests:** There is a serious gap in statistical information on **the grounds on which Dublin requests are made**, with only nine states consistently providing of disaggregated data showing the different grounds for the requests. The nine providing data disaggregated by grounds are CH, UK, SE, EL, DK, SI, HR, RO, BG, EE and ES; all other Member States do not provide this information.<sup>370</sup>

<sup>368</sup> ECRE, [Comments on the Commission proposal amending the Migration Statistics Regulation](#), 2018, p. 11.

<sup>369</sup> Greek Asylum Service, [Statistical data – Dublin III Regulation procedures](#); Swiss State Secretariat for Migration, [Statistique en matière d’asile – Dublin: requêtes, règlements et transferts](#).

<sup>370</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2018, p. 8.

- **Duration of procedures:** Statistics on **the duration of Dublin procedures** are not available at EU level. For several states this information is obtained from national authorities, as documented in the AIDA reports; for all other states this information is not available.<sup>371</sup>
- **Resources allocated to Dublin:** An analysis of organisational structures, shows that the **financial and human resources** specifically allocated to Dublin Units is not made available for most Member States (see Organisational structure).
- **Withdrawn applications:** The number of withdrawn applications is not generally disaggregated into explicit and implicit withdrawals. This means that it is not possible to have a clear picture of **the phenomenon of abandoned applications and secondary movements** (see Secondary movement and abandoned procedures).
- **Failed transfers:** There is no consistent reporting of **transfers** that fail due to expiry of time limits (see Transfers)
- **Appeal processes:** There are no EU-wide statistics on the number of appeals against Dublin transfer decisions or on the duration of appeal procedures (see Appeal procedures).
- **Detention:** Eurostat does not collect statistics on **detention** (use and duration in relation to Dublin implementation but also more widely) of asylum applicants or on alternatives to detention, as they fall outside the scope of the Migration Statistics Regulation. Only partial figures collected by civil society organisations for certain countries are available for 2018 (see Detention during the Dublin procedure).

## 2.17. Good practices in the implementation of Dublin<sup>372</sup>

### Key findings

A number of Member States demonstrate one or more good practice in their implementation of Dublin. These often stem from policy decisions on how to apply the Regulation.

While good practice is judged here on the basis of conformity with the fundamental rights of applicants, the controversies and political priorities of surrounding Dublin – and allocation of responsibility in general – mean that there are multiple ways to judge what is good practice.

As Dublin III is a piece of legislation that primarily concerns people, good practices that put the human rights of applicants at the centre of the Dublin system are listed here. The good practices are grouped into categories that correspond to key rights applicants.

### 2.17.1. Information provision

- Systematic provision of information occurs in IE, CY, PL, NL, FR, RO, SE, SI, and CH (see section above on The right of information of the applicant).
- The obligation to provide Dublin data and statistics is fulfilled by the provision of monthly reports in EL and CH.<sup>373</sup>

<sup>371</sup> ECRE, [The Dublin system in the first half of 2019: Key figures from selected European countries](#), 2019, p. 3.

<sup>372</sup> The examples of good practices under this section are not exhaustive.

<sup>373</sup> Greek Asylum Service, [Statistical data – Dublin III Regulation procedures](#); Swiss State Secretariat for Migration, [Statistique en matière d'asile – Dublin: requêtes, règlements et transferts](#).

### 2.17.2. Best interests of the child

- Child-friendly accommodation, that ensures the specific needs of children for protection, care and education, is provided in PT, PL, SE and NL (see section on Unaccompanied children).
- Dedicated units or specialised staff arrangements for children are provided in BE, FR, HU, DE, PL, CH.<sup>374</sup>
- Good use of the family criteria and a policy decision not to routinely request applicants to present original documents or to undertake DNA tests is demonstrated by RO.<sup>375</sup>

### 2.17.3. Family considerations

- The Dublin Regulation is interpreted in a strict way that ensures respect for the hierarchy set out in the Regulation by SE.<sup>376</sup>
- Systematic application of the family criteria in Dublin requests and frequent use of the discretionary clauses is demonstrated by EL.
- A rights-oriented approach that ensures family unity and humanitarian considerations are decisive factors even in cases where the Dublin criteria do not apply or time limits have expired is also present in EL.<sup>377</sup>

### 2.17.4. Protection from inhuman and degrading treatment

- Suspension of transfers to Greece since the judgment in *M.S.S. v. Belgium and Greece*. is the policy of the UK, ES, HU and PT.<sup>378</sup>
- Most states do not implement transfers to Hungary. Some states have gone further, officially announcing a suspension of transfers to Hungary, specifically NL, SE and the UK.<sup>379</sup> This means that the suspension is a matter of policy and does not rely on the practice of Dublin Units or litigation to challenge a transfer decision.

### 2.17.5. Effective judicial protection

- Provisions on free legal assistance for Dublin appeals are in place in several Member States. However, free legal assistance for Dublin procedures is available in practice only in PL, RO, SI and AT.<sup>380</sup>
- The suspensive effect of appeals is automatic in HR, PT, FR and IE (i.e. the transfer of the person is automatically suspended pending the outcome of the appeal process; they do not have to resort to additional and costly legal procedures to assert their right to remain pending the outcome of the appeal).<sup>381</sup>

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<sup>374</sup> Ibid.

<sup>375</sup> AIDA, [Country Report: Romania](#), 2019, p. 38.

<sup>376</sup> AIDA, [Country Report Sweden](#), 2019, p. 30.

<sup>377</sup> ECRE, [The Implementation of the Dublin III Regulation in 2018](#), 2019, p. 9.

<sup>378</sup> ECRE, [The Implementation of the Dublin III Regulation in 2018](#), 2019, p. 19.

<sup>379</sup> Ibid.

<sup>380</sup> AIDA, Country Reports, 2018 Update: [Poland](#), p. 25, [Slovenia](#), p. 30, [Austria](#), p. 42 and [Romania](#), p. 44.

<sup>381</sup> AIDA, Country Reports, 2018 Update: [Croatia](#), p. 42, [Portugal](#), p. 36, [France](#), p. 47, [Ireland](#), p. 33.

### 2.17.6. Detention

- Detention of applicants is avoided when the responsibility of another Member State has been established for cases in SE.<sup>382</sup>

## 2.18. Assessment against the criteria in the Better regulation toolbox

The following criteria are set out in the Commission's Better regulation toolbox and will thus provide the basis for the assessment undertaken here: effectiveness, efficiency, coherence, relevance and EU added value.

### Effectiveness

#### Key findings

The implementation of Dublin III is not effective, in that the primary objectives of the Regulation are not being met.

Effectiveness refers to the degree to which an action achieves or progresses towards its objectives, here, therefore, extent to which the objectives of the Dublin Regulation have been achieved. As explained in the Introduction, the stated aims of the Dublin Regulation are twofold:

- to guarantee rapid access to asylum procedures for persons seeking protection
- to prevent multiple applications by the same person in different countries.

The evaluation of the implementation of the Dublin system in recent years demonstrates that these objectives are not being achieved, combined with continuation of perverse effects which further exacerbate ineffectiveness and have other troubling effects.

First, the use of a Dublin procedure in itself runs counter to the aim of swift access to asylum procedures in many cases. Member States, in particular DE and FR, maintain a policy of systematically placing asylum seekers in Dublin procedures for reasons of irregular entry or a previous application elsewhere. For legal or practical reasons, the overwhelming majority of these procedures never result in a transfer to the country claimed to be responsible. Accordingly, asylum seekers are only able to have their claim heard *in situ* after the sending country has become responsible by default due to non-compliance with the deadlines for performing a transfer.

As discussed in the section on [Time limits for transfers](#), for the main users of the system, the number of cases of responsibility by default is more than double the number of completed transfers. Delayed access to an asylum procedure is compounded by substantial human costs stemming from the use of coercive measures while waiting for the Dublin procedure to run its course; the psychological impact of being in limbo is already significant. The administrative costs for authorities are also considerable.

Second, the Regulation has not ended the practice of multiple applications by the same person in different Member States. The majority of Dublin procedures in recent years concern 'take back' cases of persons who had already sought asylum in another EU country (see [Criteria for the determination of the responsible Member State](#)). Movements of asylum seekers within the EU have continued to

<sup>382</sup> AIDA, [Country Report Sweden 2019](#), p. 32.

take place, despite the application of the Regulation and despite the high volume of transfer requests by countries including DE, FR, BE, NL, CH and AT.

The ongoing phenomenon of multiple asylum applications is due to a range of factors, as described in the section 2.11. on [Secondary movement and abandoned procedures](#). There is no evidence to suggest that the movements of asylum seekers within the EU are related to the design and implementation of the Dublin Regulation. The use of coercion and delayed access to the asylum procedure provided for by Dublin do not have a substantial effect on multiple applications and may indeed be generating onward movement.

In light of the above, practice in recent years confirms that the Dublin Regulation has not been effective in meeting its stated purposes.

## Efficiency

### Key findings

The Dublin Regulation appears to be inefficient, in that the costs of its implementation are significant and probably disproportionate given that its objectives are not being achieved. Nonetheless, a definitive assessment is difficult due to the absence of comprehensive information on the costs of Dublin.

The efficiency of the Regulation is to be assessed against the costs incurred in its application, covering both the costs to all stakeholders, being financial and other costs. The assessment of efficiency is not straightforward due to the inherent and practical challenges attached to ascertaining what the costs of the operation of the Dublin system actually are.

In its evaluation, ICF provides some of the best available figures on financial costs. It estimated that the direct and indirect costs of operating the Dublin Regulation in 2014 amounted to €1bn, of which the majority (€864m) concerned reception costs. However, the evaluation explains that this estimate is based on a number of assumptions as to the cost of transfers, staff costs for Dublin Units, duration of detention and so on,<sup>383</sup> which may affect the reliability of the figures.

A recent report by the European Court of Auditors assessed how EU-funded support to Italian and Greek authorities affected the speed of asylum and return procedures. It noted that both countries increased their capacities through EU support but this did not lead to swift processing of asylum applications and did not manage to prevent backlog.<sup>384</sup> Similarly, emergency relocation schemes did not reach their intended targets and were not able to alleviate the pressure on the Greek and Italian systems, further bringing cost-effectiveness into question.<sup>385</sup>

Despite these partial figures, a full picture of the exact financial costs of operation of the Dublin transfers, including relocation under the discretionary clauses of the Regulation, is not available. Even with estimates of costs of different actions taking place, the statistics on the number people and the length of the various procedures under Dublin are not available. A general assessment suffers from the persisting lack of information on the duration of procedures, the size of Dublin

<sup>383</sup> ICF, [Evaluation of the Dublin III Regulation](#), 2015, pp. 12-13.

<sup>384</sup> European Court of Auditors, Special Report: [Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results](#), 2019, p. 65.

<sup>385</sup> *Ibid*, p. 66.

Units, the difference in the cost of appeals (in EL, the cost of a Dublin appeal could amount to approximately €700<sup>386</sup>) and so forth.

Nonetheless, whatever the total costs the efficiency of the system is called into question by the limited success rate for transfers: Member States are undoubtedly spending a considerable amount on trying to effect transfers which do not then take place; this is inefficient in and of itself and regardless of the total cost of the exercise. The inefficiency can be illustrated through the evidence presented in this study related to DE and FR, the top senders of outgoing requests in recent years, mostly on 'take back' grounds or the irregular entry criterion (see 2.10. on [Transfers](#)).

- DE and FR issued 172,510 and 111,979 outgoing requests respectively from 2016 to 2018. The percentage of requests leading to a transfer was 11.2% for DE and 6.7% for FR. Thus, considerable administrative and direct financial costs in the overwhelming majority of Dublin procedures have been incurred to no effect, a highly inefficient situation;
- DE has been both the sender and the top recipient of actual transfers in the EU. From 2016 to the first half of 2019, it has received 27,865 persons and transferred 23,550 under the Dublin Regulation. DE has therefore ended up with a negative number of 'net transfers', despite initiating more procedures – and therefore almost certainly incurring more costs – than any other Member State.

On the other hand, costs should not only be assessed from a financial lens. Dublin is a system largely based on coercion and thereby entails significant human cost for the individuals affected by its application. Asylum seekers subject to Dublin procedures are at risk of being exposed to the harmful effects of deprivation of liberty and legal limbo for periods reaching up to 18 months, only for most of them to end up having their claim processed *in situ*.

## Relevance

### Key findings

In the absence of centralised asylum decision-making at EU level, having legislation that allocates responsibility among the states operating in a common system is necessary. It is also necessary to allocate responsibility in a manner that is – at very least – in compliance with the fundamental rights of the people affected by the system. These contextual factors indicate that the objectives of Dublin III remain relevant.

Nonetheless, the evidence on the implementation of Dublin III, combined with longstanding critiques of its design and the principles underlying it, indicate that the relevance of the Regulation in its current form should be questioned.

According to the European Commission's 2008 Policy plan on Asylum, the Common European Asylum System (CEAS) is understood as a coherent, comprehensive and integrated asylum system that ensures access to asylum procedures, establishes common procedures and qualification criteria, and fosters cooperation, responsibility and solidarity.<sup>387</sup> Three main pillars are to guide the development of the CEAS:

- harmonisation of protection standards,
- effective and well-supported practical cooperation

<sup>386</sup> Information obtained from the ELENA Network.

<sup>387</sup> European Commission, [Policy Plan on Asylum: An Integrated Approach to Protection across the EU](#), COM(2008) 360 final, 2008, p. 3.

- increased solidarity and sense of responsibility among EU States, and between the EU and non-EU countries.<sup>388</sup>

It is in respect of these policy objectives, and in light of the challenging reality of the past years, that the relevance of the Dublin Regulation should be assessed. The Dublin Regulation is still relevant to achieving the objectives of the CEAS, in that a piece of legislation is needed to provide rules on allocation of responsibility among states. In the absence of centralised decision-making on asylum claims, it must be possible to determine which of the states operating in the common system is responsible for implementing the other components of the system – provision of reception, management of procedures, status determination – in each individual case. The Regulation is also relevant in that legislation is needed to ensure that responsibility sharing mechanisms operate in full respect for the fundamental rights of the people concerned, and not just in the interests of Member States, given the efforts they make to minimise their responsibilities. Thus, considerations that derive from human rights, such as the right to family life, have to be part of legislation on allocation of responsibility.

The relevance of Dublin III as the legislation is currently formulated is open to question, however. Fundamental flaws in the design of legislation and the rules it embodies have long been the subject of political debate. This study shows that problems in implementation add to concerns about the relevance of Dublin III and add to reasons for a deeper overhaul.

In terms of the objective of harmonisation across the EU, the relevance of Dublin can be questioned. As stated in the section on [The right of information of the applicant](#), there are disparities between Member States when it comes to provision of Dublin-related information, in terms of access to information, and the quality and extent of the information provided. In some countries the information provided does not allow the applicants to understand the Dublin procedure, while in other countries information gaps seem to be a policy choice used to deter applicants. Thus, the implementation of the Regulation does not demonstrate a harmonisation of protection across the EU.

Similarly, divergent interpretation and practice regarding absconding criteria and Dublin detention, as analysed in section 2.15 on [Detention during the Dublin procedure](#), also moves Member States away from a harmonised approach towards asylum procedures. In addition, general ambiguity and abrupt changes in the interpretation of time limits for Dublin requests following the *Mengesteab* ruling have also reduced harmonisation as well as cooperation between Member States (see section 2.13 on [The duration of the different stages of the procedure](#)).

Effective cooperation and solidarity between Member States is undermined by decisions on the use of Dublin requests and transfers. The use of responsibility criteria, as analysed in section 2.7. on the [Criteria for the determination of the responsible Member State](#), points towards a general intention to avoid responsibility, including by ignoring the hierarchy of criteria, imposing excessive evidentiary requirements, and engaging in bureaucratic and costly procedures. The rare use of the discretionary clauses also indicates a lack of solidarity and focus on rights in cases where compulsory criteria do not apply (see section 2.8. on [The discretionary clauses](#)). In an analysis of Dublin practices following disembarkation and in hotspots (see 2.6. on [Application of the Dublin procedure in hotspots and following disembarkation](#)), the Regulation's relevance to the objectives of practical cooperation and solidarity is in question, however the challenge lies more in choices about the use of Regulation rather than its design.

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<sup>388</sup> Ibid, p. 4.

In the same vein, the dormant provision of Article 33, which includes an early warning mechanism to ensure protection of individuals and solidarity among Member States facing severe challenges, meant that Dublin's relevance in addressing the increasing pressure faced by Member States from 2015 is in question.

The implementation of the Regulation over the years has been characterised by divergence in the way Member States understand their obligations; disregard towards key components in provisions establishing responsibility and possibly deliberate use of the Dublin system to construct a hostile and complex reality for asylum applicants. Divergence and the scope to use the Regulation to create a hostile environment derives both from provisions that are not sharply defined (e.g. Article 17 – discretionary clauses) and from provisions that, although clearly constructed, explicitly leave a margin of discretion for Member States (e.g. Article 2 (n) – definition of 'risk of absconding'). Lack of clarity in the text of the Regulation has led to significant national and European litigation efforts to attempt to achieve legal certainty and guidance from the Courts for effective and reality-based implementation of the Regulation. This has occurred especially in cases of controversial state practice that effectively violates the human rights of asylum applicants. Nonetheless, these efforts have only partially succeeded.

Despite the pressing need for solidarity and clear and rapid allocation of responsibility, especially in light of increased migratory flows from 2015 onwards and current disembarkation controversies, the Dublin system has not been able to address the situation in Europe. It can be concluded that, although the 2008 objectives do have a place in Europe's current asylum context, the relevance of the Regulation as currently formulated and implemented is questionable.

## Coherence

### Key findings

The coherence of the Dublin Regulation is weak in three ways. First, internal coherence is lacking due to the differing interpretations of key articles across the Member States. Second, the coherence of the Regulation with fundamental rights is weak due to flaws in both the drafting and implementation. Third, coherence with the rest of the asylum *acquis* is not perfect, primarily due to differences in wording leading to differences in interpretation between the Dublin Regulation and the Asylum Procedures Directive.

The coherence of the Dublin Regulation with primary and secondary EU law, including with fundamental rights legislation and with the other instruments that make up the asylum *acquis*, is assessed both from the perspective of the legislative design of the Regulation and in terms of its implementation by Member States.

### Internal coherence

Certain provisions of the Regulation have led to widely diverging interpretations of Member States' obligations and their subsequent implementation.

**Article 17** allows Member States to deviate from the standard Dublin responsibility scheme and to decide to examine an asylum application on the basis of humanitarian, or other considerations. In their interpretation of the article, states follow a variety of approaches, although there is consistency in the use of these clauses to address health problems and to avoid the most flagrant violations of human rights. Some states (BG, ES, IT, CH, EL, DE, AT) use these clauses to handle vulnerable cases and dependent persons. However, several states apply the clauses in procedures involving technical or administrative issues (AT, EL), while DE and FR, the biggest users of the system, have used them in specific contexts, for relocation purposes and in relation to the situation around Calais. The

discretionary character of these clauses is of course a reason for divergent practices (see 2.8. on [The discretionary clauses](#)), however the full potential of the clauses is not then realised.

Another important point of divergence is in **the application and interpretation of Article 28** and the possibility to impose detention measures when the criteria for absconding are not set out in national law. As explained in 2.15. on [Detention during the Dublin procedure](#), the Court of Justice of the EU has confirmed that Dublin detention is unlawful if the objective criteria for determining a ‘significant risk of absconding’ have not been laid down in a national legal provision of general application.<sup>389</sup> Following this ruling, UK, BE, FR, CY laid down specific criteria in their national legislation; SI and EL continued to apply general criteria found in pre-removal detention provisions.<sup>390</sup> HU, NL, PL, RO, CH, DE and AT had already defined these criteria before the *Al Chodor* judgment.<sup>391</sup> IE, BG, IT, MT, ES and PT have not defined any such criteria.<sup>392</sup> As a result, at least 44 different criteria to justify Dublin detention can be identified in the national legislation of these countries.<sup>393</sup>

Member States also follow dissimilar approaches on **appeal remedies available under Article 27 of the Regulation**. Under Article 27 (2), Member States are required to provide for a ‘reasonable period of time’ for an individual to exercise their right to a remedy but in practice this provision has been interpreted in a significantly different manner with deadlines to appeal ranging from 3 days in HU and 5 days in RO and CH, to one week in DE, NL and BG, one month in BE and IT and two months in ES.<sup>394</sup> On the suspensive effect of appeals, states have used their discretion in similarly different ways with EL, PL, HR, MT, IE, FR, PT, RO and SI granting automatic suspensive effect, while DE, NL, AT, CH, BG and HU do not.<sup>395</sup>

Lastly, as described in section 2.13. on [The duration of the different stages of the procedure](#), ambiguity regarding **the calculation of time limits for carrying out a transfer** is significant in cases where the applicant submits an appeal against the transfer decision with Member States (e.g. AT, FR) taking different stances on whether or not the time limits are suspended during the examination of the appeal.

### Coherence with fundamental rights

Previous evaluations have noted that the provisions of the Dublin III Regulation have a ‘fundamental rights-oriented logic’ compared to its predecessor and are in full compliance with fundamental rights.<sup>396</sup> This position requires nuance in a number of respects.

First, certain provisions of the Regulation such as those on detention<sup>397</sup> are arguably incompatible with the permissible grounds for immigration detention under Article 6 of the Charter of Fundamental Rights as far as asylum seekers are concerned.<sup>398</sup> The CJEU ruling in *Al Chodor* laid

<sup>389</sup> EDAL, [CJEU – Case C-528/15 Al Chodor](#), Judgment of 15 March 2017.

<sup>390</sup> ECRE, [The implementation of the Dublin III Regulation in 2018](#), 2018, p. 14.

<sup>391</sup> Ibid.

<sup>392</sup> Ibid.

<sup>393</sup> Ibid, p. 16.

<sup>394</sup> AIDA, Country Reports, 2018 Update: [Hungary](#), p. 39, [Germany](#), p. 36, [Netherlands](#), p. 35, [Switzerland](#), p. 34, [Romania](#), p. 43, [Bulgaria](#), p. 27, [Belgium](#), p. 37, [Italy](#), p. 53, [Spain](#), p. 29.

<sup>395</sup> Ibid.

<sup>396</sup> ICF, [Evaluation of the Dublin III Regulation](#), 2015, p. 15.

<sup>397</sup> [Dublin III Regulation](#), Article 28.

<sup>398</sup> For a discussion, see ECRE, [The legality of detention of asylum seekers under the Dublin III Regulation, 2015](#).

down the conditions under which the Regulation permits detention, without however tackling questions as to the compatibility of Article 28 with the Charter.

Second, some provisions only partly reflect fundamental rights standards and have required long efforts of judicial interpretation and clarification in order to better reflect fundamental rights. The human rights constraints on transfers are an example of the narrow codification of such standards: Article 3(2) makes express reference only to circumstances where systemic flaws in an asylum procedure or reception system would create a risk of inhuman or degrading treatment – such as those seen in *N.S.* The Regulation therefore remains silent on states' duty to refrain from a transfer under Article 4 of the Charter where a risk of inhuman or degrading treatment would stem from any other source, as was the case in *C.K.* and *Jawo*. Despite helpful clarification from the CJEU, the limitations posed by the text of the Regulation have led to problematic implementation in practice (see section on [Suspension of transfers](#)).

Similarly, the issue of justiciability (ability to challenge before a Court) of a country's refusal to accept a 'take charge' request, due to which no transfer decision is issued, is not clarified, with divergent jurisprudence in European courts. The refusal to accept a 'take charge request' may effectively lead to violation of the right to family unity under Article 7 of the Charter of Fundamental Rights of the EU, a violation that will not be remedied by a court in jurisdictions where justiciability is not accepted. Given the lack of respect towards the hierarchy of the responsibility criteria, the importance of this point is central to the assessment of the Regulation's coherence with fundamental rights.

Another example relates to appeals against transfer decisions. Article 27(1) spells out individuals' right to an effective remedy. Yet, national practice has often sought to restrict the scope of such a right only to cases where a risk of inhuman or degrading treatment would ensue. Domestic courts have requested guidance from the CJEU on multiple occasions to clarify that, pursuant to Article 47 of the Charter, applicants should be entitled to challenge the application of the responsibility criteria (*Ghezelbash, A.S.*) and to invoke the clauses on cessation of responsibility (*Karim*) and the expiry of time limits for requests (*Mengesteab*) and transfers (*Shiri, Jawo*) when appealing a decision. The condition of Article 27 (6) that free on-request legal aid may be provided in cases where legal costs are not affordable by the applicant may be connected to reports of restrictive practices of legal aid in Dublin procedures, contrary to Article 47 of the Charter of Fundamental Rights of the EU.<sup>399</sup>

#### Coherence with the asylum *acquis*

According to the ICF evaluation,<sup>400</sup> a lack of coherence between Dublin and the following were identified:

- the right to information under the recast Asylum Procedures Directive<sup>401</sup>
- the definition of family under the Family Reunification Directive<sup>402</sup>
- the condition of risk of absconding in the Return Directive.<sup>403</sup>

In addition, the concept of the "lodging" of an asylum application under the *acquis* is another point of divergence, despite largely being defined in similar terms in Article 6(4) of the recast Asylum Procedures Directive and Article 20(2) of the Dublin Regulation. According to the CJEU in *Mengesteab*, the provisions of the recast Asylum Procedures Directive slightly differ in one of their

<sup>399</sup> ECRE/ELENA, [Legal note on access to legal aid in Europe](#), 2017, p. 6.

<sup>400</sup> ICF, [Evaluation of the Dublin III Regulation](#), 2015, pp. 17-18.

<sup>401</sup> [Directive 2013/32/EU](#) (recast Asylum Procedures Directive).

<sup>402</sup> [Council Directive 2003/86/EC](#) of 22 September 2003 on the right to family reunification.

<sup>403</sup> [Directive 2013/32/EU](#) (recast Asylum Procedures Directive).

requirements and the aforementioned Article 6 (4), although similar to Article 20 (2) of the Regulation, is actually an exception to Article 6 (3), which describes a way of lodging applications that has no equivalent in the Dublin Regulation III. These slight differences in the wording of the two instruments were sufficient for the Court to consider them in a distinct way that casts doubt on the coherence of the Regulation with the recast Asylum Procedures Directive on a very important issue relating to the start of procedures and time limits. It should be noted that, in her Opinion on that case, Advocate General Sharpston argued for a consistent interpretation to bridge this gap in wording. The Court did not follow the same reasoning.<sup>404</sup> The Court's interpretation resulted in a change of practice in the calculation of time limits for Dublin requests, as noted in section 2.13. on [The duration of the different stages of the procedure](#).

The provision of legal aid/legal assistance under the Regulation also indicates another point of inconsistency between Dublin and the recast Asylum Procedures Directive. There is a strong obligation to provide free legal assistance in appeal procedures under Article 20 of the Directive with limited conditions for refusing it, while Article 27 (6) of Dublin adds the existence of unaffordable costs as a condition for the applicant to be able to request free legal assistance. The way the two provisions are formulated points to a significant variation in the standards of judicial protection for asylum applicants. Although the possibility for Member States to refuse free legal aid under the Directive, in cases where there is no 'tangible prospect of success', may restrict the right to an effective remedy to a concerning extent,<sup>405</sup> the standard of protection under the Directive is higher than that of Dublin.

The two judicial remedies aim to secure rights that are different in nature but the Dublin remedy should be covered by equally strong guarantees, mainly due to the legal technicalities of the Dublin system that can effectively be addressed only with the help of quality legal representation.<sup>406</sup> Lastly, it should be noted that the instruments vary in legal nature, as the Directive concerns minimum common denominators that need to be transposed into the domestic legal order, whereas the Regulation is directly applicable legislation. The difference may inevitably affect the way their content is worded but both documents should still comply with Article 47 of the Charter of Fundamental Rights of the EU, as far as effective judicial protection is concerned. In practice, it has been reported that access to legal aid/assistance in Dublin procedures is generally more restricted than in regular asylum procedures, either due to absence of provision or significant practical/legal obstacles.<sup>407</sup>

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<sup>404</sup> Curia, [Opinion of Advocate General Eleanor Sharpston, Case C-670/16, Tsegezab Mengesteab](#), 20 June 2017, paras. 134-137.

<sup>405</sup> ECRE, [Information Note on Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection](#), 2014, p. 26.

<sup>406</sup> ECRE, [Comments on Regulation \(EU\) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 \(recast\)](#), 2015, p. 30.

<sup>407</sup> ECRE/ELENA, [Legal note on access to legal aid in Europe](#), 2017, p. 6.

## EU-added value

### Key findings

The added value of having EU law on the areas covered by the Dublin Regulation is clear: it is necessary to have standardised responsibility criteria and related evidentiary requirements if there is to be a common system. Where there is EU competence and EU legislation has been developed, the EU can add value through supporting implementation.

Nonetheless, the flaws in the design and implementation of Dublin raises questions as to the added value of the Dublin Regulation as currently formulated.

The European Commission's previous study on the implementation of the Dublin Regulation described the EU-added value of the Regulation as the following:

- the establishment of standardised responsibility criteria;
- standard evidentiary requirements;
- the DubliNet communications system (mentioned in section 2.3. on Organisational structure).<sup>408</sup>

Indeed, the self-executing nature of Regulations may make them the best type of legal act to address issues that generate divisive policies and practices for Member States. In this sense, there is an added value in deploying EU legal tools that are directly applicable in Member States and should thus ensure consistent progress in the achievement of the Union's harmonisation objectives.

Nonetheless, the study of the implementation of the Regulation has touched upon concerning practices that interfere with the human rights of applicants who apply for international protection. Along with the European Commission's infringement procedures, the use of rights-focused Regulations and Directives may be one of the most effective ways to converge on the issue of basic human rights protection. The practical and geographical aspects of irregular entry and movement may be best addressed by a European legal act that advances and consolidates solidarity and responsibility sharing by alleviating pressures for Member States and supporting national authorities in a practical and effective way.

## 2.19. Recommendations

Given the scope of the study, the recommendations primarily concern the implementation of Dublin III. While there is a wealth of literature on flaws in the design of Dublin Regulation and on alternatives to it, the Recommendations do not comment extensively on these areas. Instead, they draw on the evidence presented in the study in response to the research questions (see the section on Methods in the introduction) and suggest how implementation could be improved. As the assessment notes, some of the flaws are inherent in the design of the Regulation, thus implementation alone will not resolve the problems.

### Effective and harmonised application of the Regulation

- Avoid applying the Regulation in an ineffective, costly or otherwise unreasonable manner; the unnecessary use of human and financial resources by administrative authorities should be discouraged in cases where the application of the Regulation provisions could be reasonably avoided.

<sup>408</sup> ICF, [Evaluation of the Dublin III Regulation](#), 2015, pp. 18-19.

- For example, a less stringent standard of proof should be applied in family cases to allow for completion of more transfer requests based on family unity.
- Provisions on dependent persons (Article 16) and the discretionary clauses (Article 17) could be used far more widely to support family unity.
- Tying up resources in transfers should be avoided where the rigid application of the law would result in avoidable human cost, e.g. long waiting times that affect the length of asylum procedures (situation of *requalifiés* in FR – see Transfers), unsuccessful transfers (situation in DE and FR – see Transfers), and disregard of wider family links.
- Encourage comprehensive and frequent reporting of statistics on all aspects of Dublin, in order to promptly identify worrying practices and address emerging problems.
- Clarify key provisions to ensure full compliance with primary EU law and to assist the authorities responsible for the implementation of the Regulation in practice. This will minimise risks of incorrect interpretation of provisions and costs of litigation, especially regarding the criteria for the use of detention (see Detention during the Dublin procedure), the context in which discretionary clauses of Article 17 should be used (the discretionary clauses), the calculation of time limits (see The duration of the different stages of the procedure), and the individualised assessment before the execution of a transfer (see Transfers).
- Direct the focus of Europe-wide networks of Dublin Units to address widely reported divergences and bad practices.

### Compliance with human rights standards

- Avoid coercion in the context of implementation of the Regulation by domestic authorities. While Dublin III remains the legal framework, a more humane approach can be achieved by the creation of policy guidance and legislation at the domestic level. The elimination of coercion, either to achieve a transfer or in relation to detention, has wide-ranging positive consequences: it minimises human suffering; considerably reduces the financial and operational costs of transfers; and minimises litigation related to transfers and related costs.<sup>409</sup> It could also reduce irregularity by providing asylum seekers with incentives to engage with the authorities and follow the rules, especially if there is the option of rights after obtaining status.
- Any potential reform of the Dublin system needs to put fundamental rights at its centre, for example, any revision of the criteria for allocation of responsibility should not ignore the applicant's individual circumstances, such as meaningful links, reasonable expectations or social connections with specific countries. It should also be combined with an expansion of mobility rights after the awarding of status, which will reduce the attempt to move before status determination.
- In line with CJEU and ECtHR jurisprudence (see Transfers) disconnect systemic deficiencies and the suspension of transfers. It is not necessary to show the presence of systemic deficiencies before suspending transfers. Risks demonstrated in assessment of individual circumstances, non-refoulement and human rights abuses are reason enough to suspend a transfer even when the destination country does not present systemic problems.

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<sup>409</sup> The elimination of coercion has been called for *inter alia* by Elspeth Guild et al., [New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection](#), PE509.989, 2014; Elspeth Guild et al., [Enhancing the CEAS and alternatives to Dublin](#), PE519.234, 2015; Francesco Maiani, [The Reform of the Dublin III Regulation](#), European Parliament, Policy Department, June 2016.

- Support realisation of the right to family life by ensuring that family unity is one of the primary considerations in the application of the Regulation, as dictated by the hierarchy in the Regulation. Otherwise provisions on family unity remain illusory.
- Better data provision and more expansive data reporting obligations are necessary to identify violations that emerge through bad practice.
- When patterns of unlawful practices can be established, consistent use of Recommendations by the European Commission should be encouraged to protect applicants and, in the absence of compliance, gradual resort to infringement procedures should be considered.
- Encourage the correct use of discretionary clauses of Article 17 and promote their application on the basis of solidarity and rights rather than exceptionality and emergency.
- Expand the use of the discretionary clauses of Article 17 to address challenging situations, including as a tool for sharing responsibility. This includes their use in situations of large number of spontaneous arrivals and in the specific context of sea arrivals and disembarkation procedures.
- Member States should use Dublin transfer channels in these contexts, instead of attempting to outsource responsibility to third countries.
- Monitor rights-based CEAS implementation by conducting a thorough assessment of the application of the Dublin Regulation III on the basis of compliance with the Charter of Fundamental Rights of the European Union.
- Consistent evaluation activities by the European Commission and Charter-based analysis of the application of the Regulation by the Fundamental Rights Agency of the EU should be promoted as an institutional form of monitoring and impact assessment, along with engagement with civil society actors and relevant stakeholders.

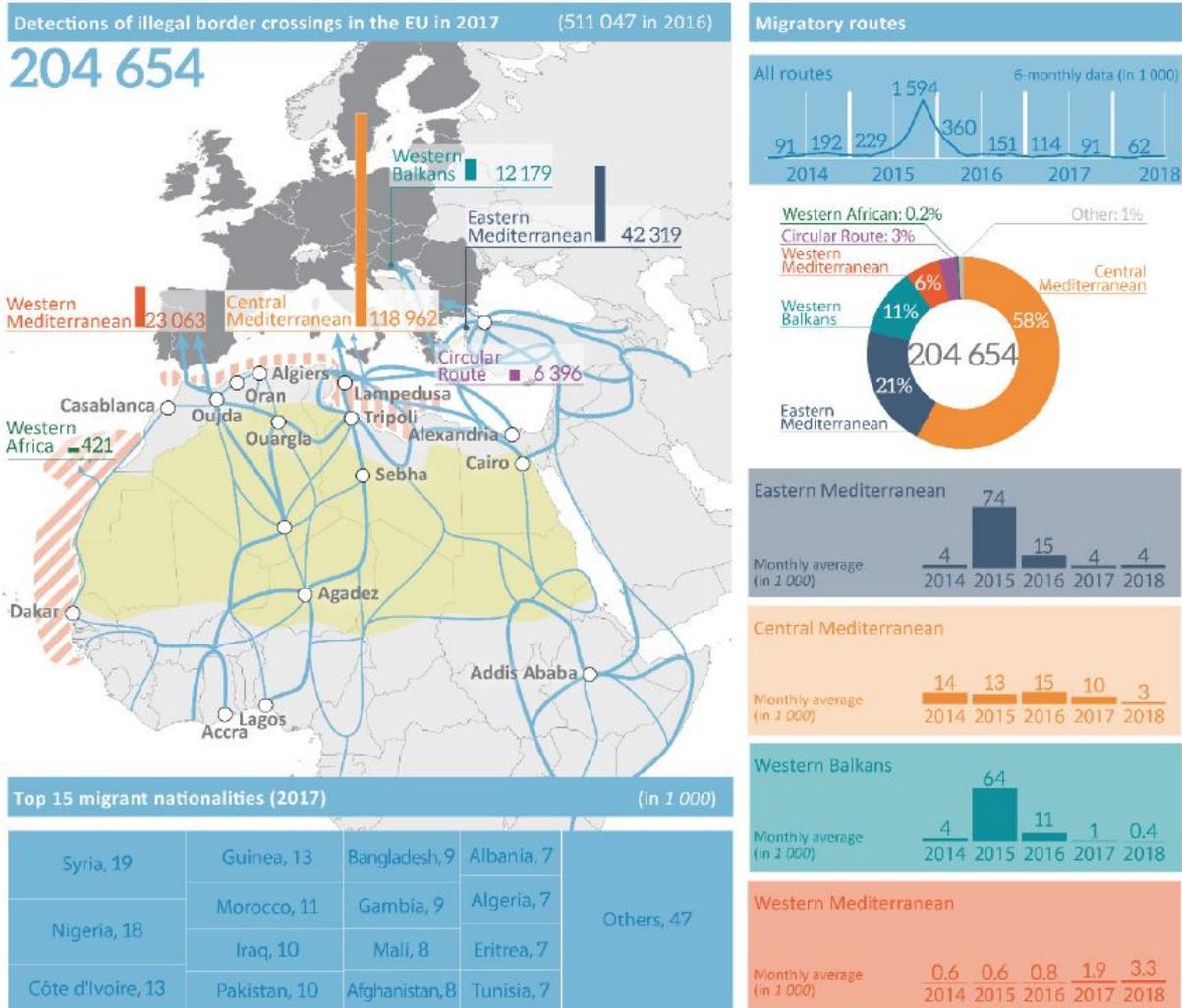
### Solidarity and accountability

- In the absence of a temporary suspension mechanism, ensure prompt activation of mechanism in Article 33 enabling the Commission to make recommendations and take preventive action in response to challenging situations jeopardising the Dublin system.
- Where action is not swiftly taken by the European Commission, Member States should make use of their discretion under the same article, which allows them to draw preventive action plans and to call for the assistance of other Member States, the Commission and EASO. The protection of fundamental rights of asylum applicants should always remain at the centre of the mechanism's function.
- Support responsibility sharing practices, instead of responsibility assigning approaches that resort to strict and technical application of the Regulation regardless of the humanitarian considerations.
- The existence of discretionary clauses should be used to alleviate pressure on Member States facing challenges.
- In the absence of a fundamental reform or permanent corrective mechanisms, the discretionary clauses can help to ensure that the Regulation is applied in a humane manner and in line with the principle of solidarity among Member States.
- A fairer system of allocation should be a priority for any reform of the Dublin system otherwise the value of engaging in reform is questionable.
- In the short term, *ad hoc* temporary solidarity and responsibility sharing mechanisms provide a method for mitigating some of the damaging consequences of the system e.g. formal relocation arrangements can promote predictability and certainty so long as they operate within the existing legal framework of the CEAS.

- Expand the sources used for the monitoring and identification of unlawful practices to include information provided by international and non-governmental organisations where it is reliable, up-to-date and specific.
- Reliable and qualified reports by international and non-governmental organisations should form part of the European Commission's action against unlawful state behaviour, whether in the context of recommendations or in the initiation of infringement proceedings.
- Engage with civil society including/and persons subject to the Dublin Regulation on an ongoing basis to ensure that monitoring of implementation takes into account those directly affected.

# ANNEX 1 – Migration routes and asylum applicants in the EU (2016-2018)

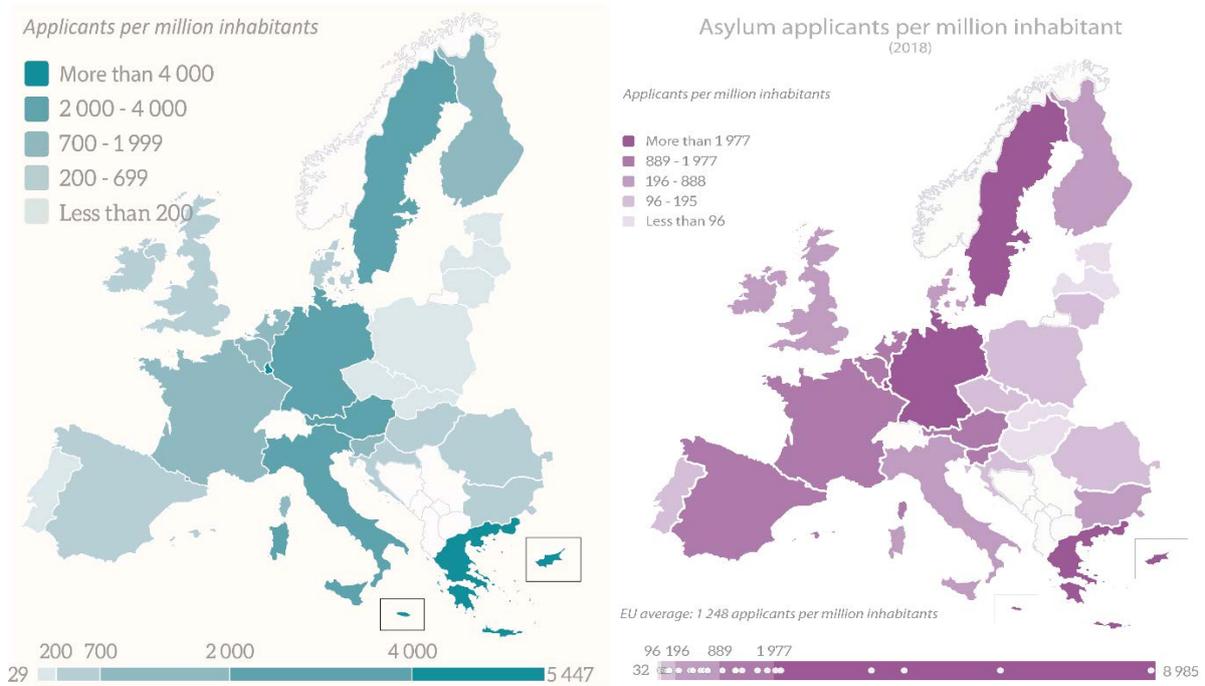
## Main migration routes:



Data source: [Frontex](#).

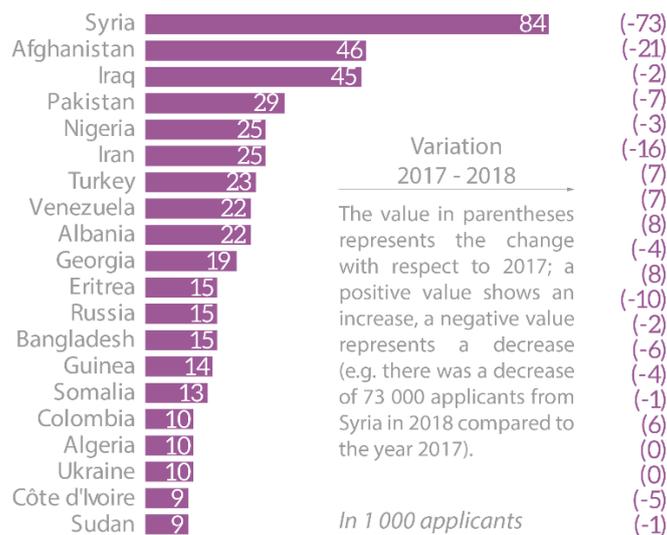
© European Union, EPRS

The maps below show the relative weight of the number of applicants per million inhabitants in the 'country of arrival' (the EU Member State in which asylum has been requested). The map on the left covers the period from January to June 2017. The EU average was then 669 applicants per million inhabitants. The map on the right shows the evolution in 2018.



© European Union, EPRS

### Top 20 countries of origin (in 1 000 applicants, 2018)

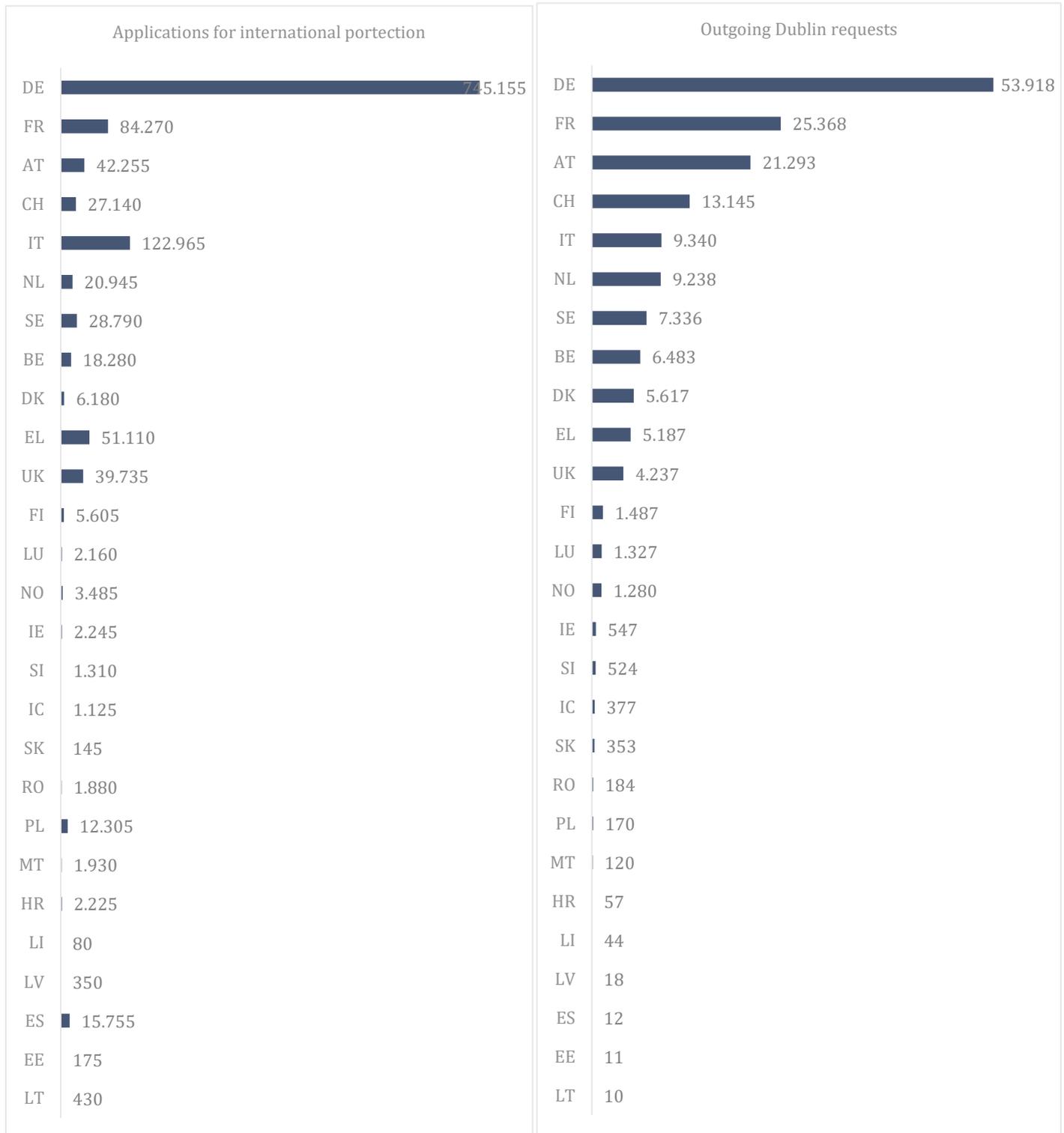


Data source: Eurostat

EPRS | European Parliamentary Research Service  
EUI | European University Institute

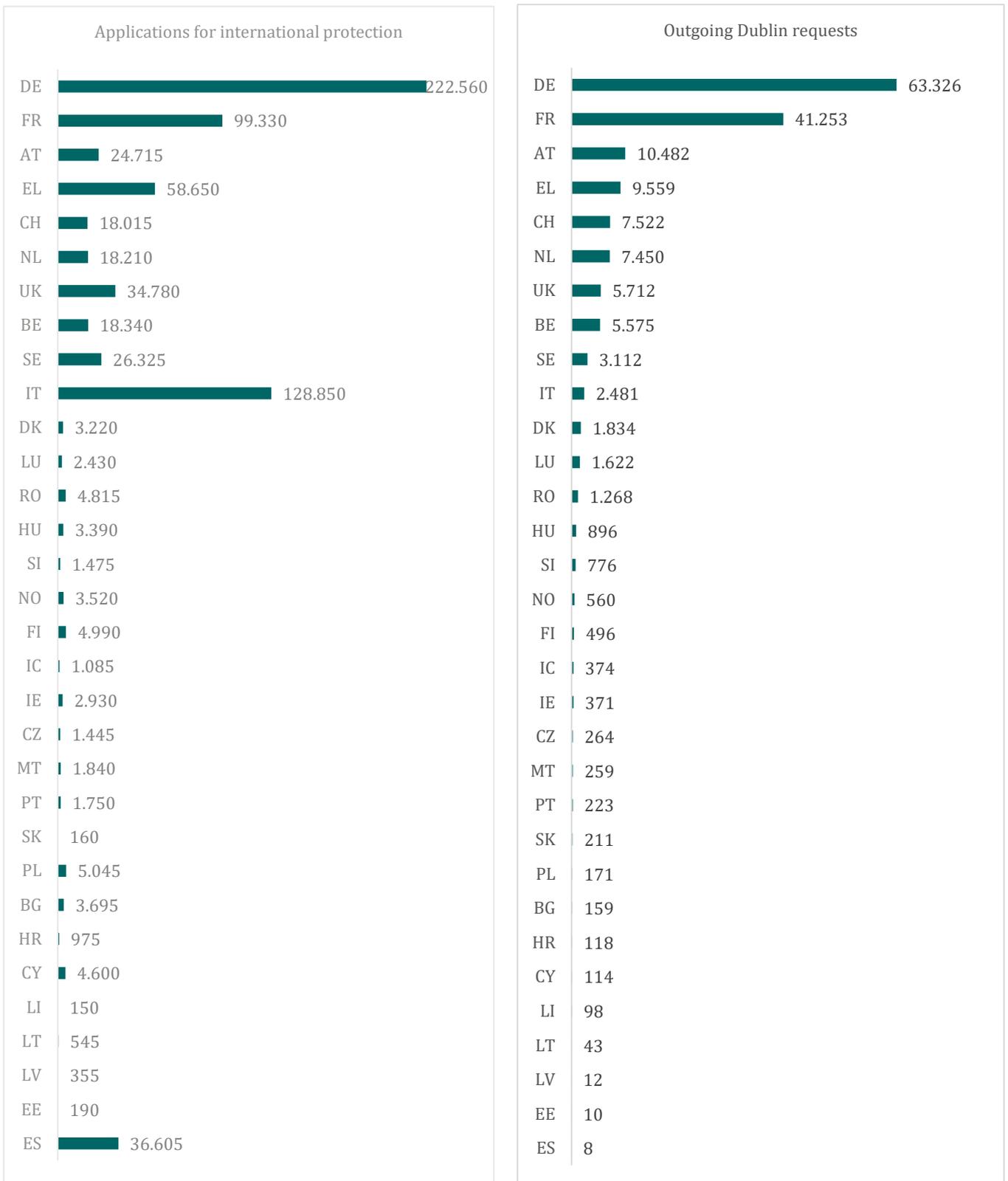
## ANNEX 2 – Statistical tables

Figure.i: Number of applicants and outgoing Dublin requests by sending Member State: 2016



Source: Eurostat, migr\_asy

Figure.ii: Number of applicants and outgoing Dublin requests by sending Member State: 2017



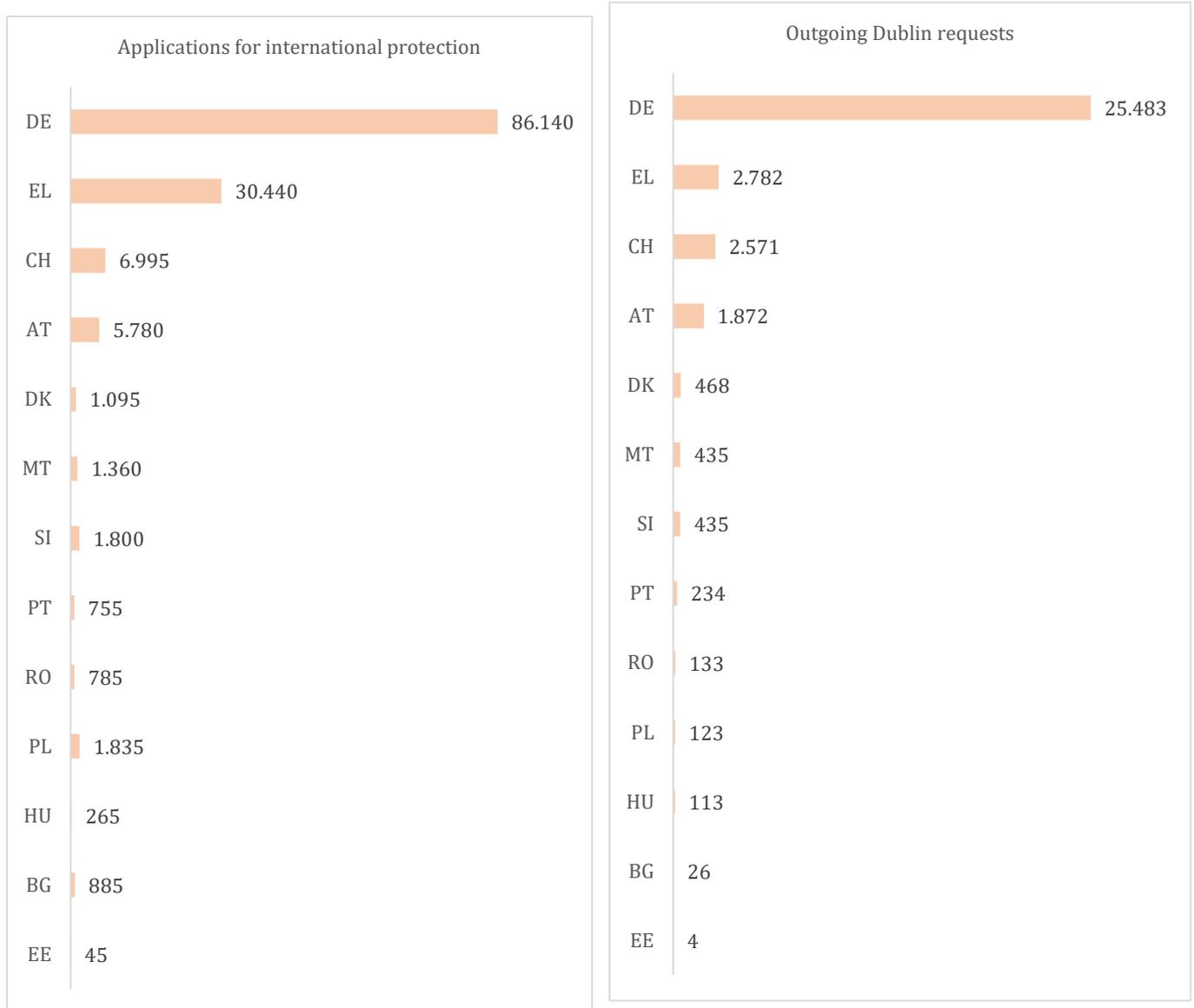
Source: Eurostat, migr\_asy

Figure.iii: Number of applicants and outgoing Dublin requests by sending Member State 2018



Source: Eurostat, migr\_asy

Figure.iv: Number of applicants and outgoing Dublin requests by sending Member State: first half 2019



Source: AIDA, [The Dublin system in the first half of 2019](#), p. 10; Eurostat, migr\_asy

## ANNEX 3 – Jurisprudence: summary of recent CJEU judgments on the Dublin III Regulation

The following section provides a summary of relevant judgments on the Dublin Regulation delivered by the CJEU in the period 2016-2019, as compiled by ECRE:<sup>410</sup>

Case	Provision(s)	Decision
<a href="#">C-695/15 Mirza</a>	3(3), 18	The right to send an applicant to a safe third country may be exercised by a Member State after it has accepted responsibility in a “take back” procedure, even if the sending Member State has not been informed of its practice vis-à-vis safe third countries.
<a href="#">C-155/15 Karim</a>	19(2), 27(1)	The applicant can invoke Article 19 when appealing a transfer decision. Article 19(2) applies to an applicant who, after lodging an application in one Member State, left the territory of the Member States for at least three months before applying in another country.
<a href="#">C-63/15 Ghezelbash</a>	27	An applicant can plead the incorrect application of the responsibility criteria when appealing a transfer decision.
<a href="#">C-578/16 PPU C.K.</a>	17(1)	Even in the absence of systemic flaws, a transfer is unlawful where it would result in a real risk of inhuman or degrading treatment. This includes cases where the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in their state of health. A Member State may choose to apply the “sovereignty clause” in these cases.
<a href="#">C-528/15 Al Chodor</a>	2(n), 28(2)	Member States must establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of detention.
<a href="#">C-36/17 Ahmed</a>		The Regulation does not apply in the case of persons who apply for asylum after being granted subsidiary protection in another Member State.
<a href="#">C-490/16 A.S.</a>	13, 27	An applicant can plead the incorrect application of the responsibility criteria when appealing a transfer decision. Tolerated entry by the authorities in the event of exceptionally large numbers of arrivals is regarded as “irregular entry” under Article 13 of the Regulation.
<a href="#">C-646/16 Jafari</a>	2, 12, 13	Tolerated entry by the authorities in the event of exceptionally large numbers of arrivals is not tantamount to issuance of a “visa” under Article 12 of the Regulation. It is regarded as irregular entry” under Article 13 of the Regulation.
<a href="#">C-670/16 Mengesteab</a>	20(2), 21(1), 27	An applicant can rely on the expiry of time limits for issuing a request when appealing a transfer decision. An application is “lodged” for the purposes of the Regulation if a written document certifying that the person has requested international protection has reached the authority responsible for the Dublin Regulation.

<sup>410</sup> ECRE/ELENA, 2019, [List of Relevant Asylum Judgments and Pending Preliminary References from the Court of Justice of the European Union](#)

<a href="#">C-60/16 Amayry</a>	28(3)	Rules specifying that detention can be applied for up to two months are permissible insofar as detention does not exceed six weeks from the date when the appeal ceases to have suspensive effect.
<a href="#">C-201/16 Shiri</a>	27, 29	Upon expiry of the six-month time limit for transfer, responsibility automatically shifts to the sending Member State. An applicant can rely on the expiry of time limits for transfer when appealing a transfer decision.
<a href="#">C-360/16 Hassan</a>	24	When an applicant returns to a Member State after being transferred to the responsible Member State, a “take back” procedure must be initiated.
<a href="#">C-647/16 Hassan</a>	26	A Member State cannot take a transfer decision before receiving the explicit or tacit agreement of the Member State requested to be responsible.
<a href="#">C-213/17 X</a>	18(2), 23(3), 24(5)	A Member State issuing a “take back” request to the responsible country is not required to inform it that an appeal against a decision on the application previously lodged in the first Member State is pending.
<a href="#">C-56/17 Fahti</a>	3(1)	A Member State need not take an explicit decision declaring itself responsible for an application before processing it.
<a href="#">C-47/17 C- 48/17 X and X</a>	5(2) Reg. 1560/2003	In the spirit of sincere cooperation, a Member State must aim to reply to a re-examination request within two weeks. If no reply has been received, the re-examination procedure is definitively terminated.
<a href="#">C-661/17 M.A.</a>	17(1), 27	Article 17(1) does not require a Member State notifying its intention to withdraw from the EU to process an application. The Regulation does not require there to be a possibility to appeal a Member State’s choice not to apply the “sovereignty clause”.
<a href="#">C-163/17 Jawo</a>	27, 29(2)	“Absconding” requires deliberate evasion of the reach of the national authorities in order to prevent the transfer. This may be assumed where the applicant has left the accommodation place without informing the authorities. An applicant can rely on the expiry of time limits for transfer when appealing a transfer decision. The prohibition on transferring an applicant to a country where they would face inhuman or degrading treatment includes an assessment of living conditions they are expected to encounter there as a beneficiary of international protection.
<a href="#">C-582/17 C-583/17 H. and C.</a>	27	In principle, an applicant cannot challenge a decision not to transfer them under Article 9 of the Regulation in the context of a “take back” procedure. Exceptionally, this is permitted if the applicant can demonstrate that Article 20(5) applies.

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The Dublin Regulation aims at determining which Member State is responsible for examining an asylum application and ensuring that each claim gets a fair examination in one Member State. This study presents an analysis of the implementation of the various provisions of the Regulation.

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