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*Plenary sitting*

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# **REPORT**

on the implementation of the Dublin III Regulation  
(2019/2206(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Fabienne Keller

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## EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

### Introduction

The refugee crisis of 2015-16 turned into a crisis in the asylum system, demonstrating the ineffectiveness of the Dublin III Regulation in responding to such a situation, its structural failings and the numerous shortcomings in its implementation.

The Commission has acknowledged that Dublin is a system ‘*which by design or poor implementation [of the regulation] places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows*’<sup>1</sup>. This is why in 2016 it put forward a new proposal to remedy this problem. However, despite the European Parliament approving a negotiating mandate in November 2017, the Council has still not adopted its general approach.

To break the deadlock, the Commission announced a ‘European Pact for Migration and Asylum’, including a new proposal for a revision of Dublin III.

An ambitious reform must be based on detailed knowledge of the strengths and weaknesses of the legal text in force. Although the Commission published two evaluations of the regulation, in December 2015 and March 2016 (Article 46), it has still not submitted its periodic assessment due in July 2018.

Against that backdrop, and in view of the failure of the Dublin III Regulation, the European Parliament has decided to prepare an updated analysis of the regulation, in keeping with its accountability to European citizens for the legislative acts which it adopts.

### Methodology

This assessment is based on a range of complementary sources: a public hearing in the LIBE committee held on 19 February 2020, field visits, interviews with stakeholders, two questionnaires sent to all the permanent representations and national parliaments of the Member States applying the regulation, a study by the European Parliamentary Research Service (EPRS)<sup>2</sup> and regular coordination meetings between the rapporteur and the shadow rapporteurs.

## 1. PART I: Post-crisis feedback, learning lessons to overhaul Dublin III

### 1.1. The emergence of the Dublin Regulation: gradual harmonisation

At EU level, the establishment of the area of free movement went hand in hand with the launch of European cooperation on asylum. In 1990, the Schengen and Dublin Conventions came into force at roughly the same time.

From the outset, the primary purpose of the Dublin system was to determine the Member State responsible for dealing with an application for asylum in the EU, in an effort to rule out multiple applications. On the basis of the guidelines agreed at the Tampere European Summit in 1999, a Common European Asylum System (CEAS) was set up with a view to bringing about closer harmonisation.

In 2003, the Dublin Convention was incorporated into EU law in the form of the Dublin II Regulation.

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<sup>1</sup> COM(2016) 197 final.

<sup>2</sup> EPRS, ‘Dublin Regulation on International Protection Applications, European Implementation Assessment’, February 2020.

In 2007, the Treaty of Lisbon incorporated the solidarity principle into asylum policy (Article 80 TFEU) and provided for the use of the ordinary legislative procedure. The Council is still required to act unanimously, however, partly explaining the current deadlock.

In 2008, the Commission launched the second phase of the CEAS, with a ‘Policy Plan on Asylum’<sup>3</sup>, including a revision of Dublin III.

## **1.2. Unprecedented pressure on the CEAS**

In recent years, the EU has faced the greatest migration challenge since the Second World War. In three years, the number of asylum seekers has increased more than fourfold. In 2015-16, 2.5 million people applied for asylum in the EU, compared to 562 000 in 2014 and 278 000 in 2012<sup>4</sup>. The main countries of origin are still Syria, Afghanistan and Iraq, countries torn by civil war, violence and conflict<sup>5</sup>. According to the International Organization for Migration, 33 000 people have died trying to reach Europe since 2014.

Early in 2020, 855 000 asylum applications were still pending, significantly fewer than five years ago<sup>6</sup>. As the European Court of Auditors (ECA) has pointed out, however, in the Greek hotspots people who submitted an asylum application in 2018 were given an interview appointment only in 2022, or even in 2023. Moreover, the ineffectiveness of European policy on the return of persons who are not eligible for asylum is a further significant factor in the overloading of asylum systems.

## **1.3. Deep imbalances in asylum matters**

The exceptional influx of migrants has highlighted imbalances within the EU.

Between 2008 and 2017, one-third of the Member States hosted 90% of the asylum seekers in the EU. In 2018, Germany recorded the largest number of applications (184 180, or 28% of the total), followed by France (120 425 applications, or 19%), Greece (66 695 applications, or 11%), Italy (59 950 applications, or 10%) and Spain (52 700 applications, or 9%). Countries of first entry, such as Greece, Malta and Cyprus, also receive a large number of asylum applications in proportion to their population.

In response to this crisis, some Member States stopped applying the regulation in 2015-16. Many migrants arriving via Greece, Italy or Spain were not registered on Eurodac, owing to a shortage of resources, but also in protest at a lack of solidarity among the Member States.

There is no escaping it: the ‘Dublin system’, almost unchanged since 1990, has failed.

## **1.4. Emergency measures during the crisis**

In response to the 2015 migration spike, the Commission took emergency measures: ‘hotspots’ were set up to manage the reception of migrants and the registration of asylum applications, a temporary relocation mechanism for applicants was introduced, and the operational and financial resources of Frontex and EASO received an unprecedented boost.

These emergency measures failed to remedy the shortcomings in the CEAS and Dublin III. The Greek hotspots are notorious for massive overcrowding and unacceptable health conditions<sup>7</sup>. Early 2020 they were still housing 42 000 migrants, as against a planned capacity of 6 000.

To curb the influx of migrants and deter them from making perilous journeys from the Eastern

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<sup>3</sup> COM(2008)360 final.

<sup>4</sup> Eurostat.

<sup>5</sup> EPRS, ‘The reform of the Dublin system’, March 2019.

<sup>6</sup> EASO, ‘Special Report: asylum trends and Covid-19’, April 2020.

<sup>7</sup> EU Fundamental Rights Agency (FRA), Opinion 3/2019, March 2019.

Mediterranean, on 18 March 2016 the European Council concluded an agreement with Turkey. The Declaration, drawn up outside the international legal framework and without consulting the European Parliament, was intended as a temporary solution to the refugee crisis. However, the constant diplomatic pressure from the Turkish President, in particular regarding the situation at the Greek-Turkish border, has highlighted the fragility of this agreement and emphasised the need for a sustainable European solution.

The humanitarian situation of migrants, in particular in Greece, means that it is essential to establish a sustainable mechanism for the sharing of responsibility among Member States for the registration of asylum seekers.

### **1.5. Hotspots, ad hoc agreements and relocation: first signs of solidarity**

According to the European Council on Refugees and Exiles (ECRE), the Dublin III Regulation was generally well applied in the hotspots between 2016 and 2018<sup>8</sup>. Invoking the family reunification criterion, Greece transferred 8 604 asylum seekers to other Member States. With the support of EASO, it issued 19 784 requests to take charge of refugees, 43% of which concerned persons in the hotspots.

The ECA is critical of the EU's efforts to support Greece and Italy from 2015 onwards. It identifies operational weaknesses hampering the efficiency of relocation, the use of EASO expert support and poor compliance with deadlines<sup>9</sup>.

In 2015, with the support of Parliament, the Council adopted two decisions on the relocation of 160 000 asylum seekers from Greece and Italy<sup>10</sup>. However, the Member States committed themselves to relocating only 98 256 asylum seekers, and ultimately actually relocated only 34 705. Some Member States which were opposed to the decision simply refused to apply it.

In the central Mediterranean, Italy and Malta were under heavy pressure from increased arrivals of migrants transiting through Libya. In the face of the deadlock among the EU27, a number of ad hoc agreements were concluded in 2019 to relocate people rescued at sea. The Dublin III legal framework provided for voluntary transfers to Member States which were signatories to the Malta Declaration.

### **1.6. Responsibility of the country of first entry and solidarity between Member States**

Starting in 1990, the principle of country of first entry was intended to make Member States responsible for the management of the EU's external borders. However, this principle places a disproportionate burden on the countries concerned and makes the provision of operational support by Frontex officers essential.

In addition, while the number of new asylum applications fell in 2017 (654 600) and 2018 (580 000) compared to the 2015-16 peak, 2019 brought a fresh increase of 18%, with 714 000 new asylum applications. That trend was confirmed in the early part of 2020: +20% compared to 2019. Migration routes and countries of origin are also becoming more diverse. Following on from Syrians and Afghans, Venezuelans and Colombians are now arriving in large numbers. The EU therefore needs a solidarity mechanism which makes for fair sharing of burdens and responsibility among Member States, including through relocation on the basis of objective criteria.

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<sup>8</sup> EPRS 2020, p. 39.

<sup>9</sup> ECA 2019, p. 4, 51.

<sup>10</sup> Council Decision (EU) 2015/1601, recital 23.

## **2. PART II: Structural shortcomings, differences in interpretation, operational difficulties and political roadblocks**

### **2.1. Obstacles to determining the State responsible for dealing with an asylum application**

#### **2.1.1. Requirement to register in Eurodac**

When registering an asylum application submitted by a refugee entering the EU, the Member State in question is required to record the person's fingerprints in the Eurodac database. By consulting the Eurodac file, the authorities can verify that the person has not been registered or has not lodged an application for asylum in another Member State.

In 2015, however, before the hotspots were established, the two countries with the highest irregular entry rates, Greece (885 000) and Italy (154 000), recorded only 11 370 and 83 245 asylum applications respectively<sup>11</sup>. These shortcomings significantly undermine the Dublin system and the country-of-first-entry principle and result in numerous secondary movements.

#### **2.1.2. Skewed application of the hierarchy of criteria for determining the State responsible**

Chapter III of the Dublin Regulation establishes a hierarchy of criteria to be used to determine which country must 'take charge' of an asylum seeker. Priority is given to maintaining the family unit (Articles 8 to 11), after which the order is possession of residence documents and visas (Article 12), irregular entry or stay (Article 13), visa-waived entry (Article 14), applications in an international transit area of an airport (Article 15) and the first country in which the application was made (Article 3(2)).

However, requests to take charge do not reflect this hierarchy. In 2018, the family unit criterion was invoked in 5% of cases in France (out of 12 000) and in 3.7% of cases in Germany (out of 17 500). The figures are even lower in Belgium, Sweden, Switzerland or Austria<sup>12</sup>, in stark contrast to Greece: 79.3%.

Applications for family reunification are less frequently accepted: in only 48% of cases, compared to an average rate of 67.6% for all procedures. All too often, Member States impose rules to regulate and restrict family reunification by requiring a binding standard of proof (e.g. DNA test, age assessment).

#### **2.1.3. Administrative burden of the Dublin procedures and their inconsistent application**

The number of Dublin procedures increased from around 90 000 in 2014 to 160 000 in 2016-17. Between 2016 and 2019, Germany and France issued by far the most requests: 68% of the total for the two countries alone. Spain, Estonia, Lithuania, Latvia, Slovakia, Bulgaria, Poland and Czechia issue few Dublin requests. Surprisingly, Spain issues almost no Dublin requests (7 in 2016; 11 in 2017; 7 in 2018), despite a large and growing number of asylum applications (16 544 in 2016; 31 738 in 2017; 55 570 in 2018). By way of a comparison, Greece issued 2 886

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<sup>11</sup> Eurostat, CP 44/2016: [http://www.assemblee-nationale.fr/dyn/15/rapports/du/115b2342\\_rapport-information.pdf](http://www.assemblee-nationale.fr/dyn/15/rapports/du/115b2342_rapport-information.pdf) (see page 23); <https://www.senat.fr/rap/r15-795/r15-7952.html>; [https://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annual\\_Risk\\_Analysis\\_2017.pdf](https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf) (see page 18-19).

<sup>12</sup> CoA 2019, p.48.

requests in 2016 (against 51 091 asylum applications), 9 784 in 2017 (against 58 661 asylum applications) and 5 211 in 2018 (against 66 969 asylum applications).

The Dublin system therefore generates a considerable administrative, human and financial burden, while only 11% of transfers are actually carried out. There are also significant differences between countries: 54.6% of transfers carried out in Greece, and 42.2% in Sweden, but only 11.2% in Germany, 6.7% in France, and 1.6% in Italy between 2016 and 2019.

Moreover, the discretionary clauses (Article 17) are rarely applied. The sovereignty clause was only invoked just under 2 000 times in 2018 against a total of more than 155 000 asylum applications. Germany (65%), the Netherlands (13%) and France (10%) used it most frequently. Some countries have used it only once (Austria, Denmark, Poland), others never (Slovenia, Portugal, Romania, Bulgaria, Estonia).

#### **2.1.4. Procedures that are too complex and too lengthy**

The administrative formalities to be completed by asylum seekers upon arrival in Europe are complex<sup>13</sup>. The number of bodies involved (administrative, legal, medical, police, NGOs), their geographic dispersal and the fact that they are not always available to help significantly slow down the processing of applications. The lack of cooperation between these bodies and in some cases poor morale among their staff are also factors. In France, for example, asylum seekers are registered in one of the country's 11 prefectures and must all travel to the Paris region for their interview at the National Asylum Agency (OFPRA).

The proportion of Dublin procedures in the total number of asylum applications increased from 15% in 2014 to 26-27% in 2016-17. The Dublin units in the Member States have therefore faced a significant increase in their workload, leading to backlogs and longer processing times.

Some national authorities have undergone a reorganisation in an effort to deal with the overload of cases. The lack of human resources (in particular protection officers and interpreters) is a major factor in delays. According to the information available, Greece, Spain and Cyprus have fewer asylum officers compared to the number of asylum applications. In 2019, Spain had 197 officers for 55 290 applications, compared with 1 121 officers for 5 780 applications in Austria. The growing reliance on temporary staff, for example in Greece and Cyprus, can undermine the authorities' ability to deal with applications.

The Dublin Regulation sets deadlines at each stage of Dublin procedures<sup>14</sup>. However, these deadlines are regularly missed by large margins, often several months. There are also differences in interpretation regarding the starting point of each of the procedures, necessitating clarification from the CJEU (see *Mengesteab* judgment).

The failure to apply certain clauses (e.g. family reunification, taking charge of unaccompanied minors) and to meet deadlines also highlights difficulties linked to the need to verify information concerning applicants. Many arrive without an identity document, complicating the task of determining their age, nationality and family ties and necessitating additional checks.

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<sup>13</sup> La Cimade, Dublin Regulation, European asylum machine, April 2019.

<sup>14</sup> See EPRS 2020, p. 68.

## **2.2. Obstacles to the transfer of asylum seekers**

### **2.2.1. Too short a period of responsibility for Member States**

Once a transfer decision has been taken, Member States have six months (18 months if the applicant absconds) to carry out the transfer. After that, the issuing State becomes responsible for the request.

In practice, this limited period of responsibility can encourage Member States who have been asked to take in asylum seekers to delay transfers. It also prompts asylum seekers to stay out of the procedure, and then to apply in another State<sup>15</sup>.

Extending the period of responsibility would make it possible to combat secondary movements and irregular stays.

### **2.2.2. Multiple obstacles**

The obstacles are many and varied. They range from refusal or unwillingness to cooperate on the part of the Member States to which requests are made, to the annulment of decisions by national appeal bodies or a failure to meet deadlines. Another important factor is that persons being transferred seek to escape the system. At operational level, the national authorities cite the difficulties in making transfers and the restrictions on transport (often by air) imposed by airlines (limit on the number of persons per flight, requirement to have a ticket bearing a name, no connecting flights, etc.).

The lack of proper reception facilities or non-compliance with Dublin procedures have been the subject of cases brought before the ECJ and the European Court of Human Rights (ECtHR). The courts ruled out transfers to Member States where applicants would be unjustly denied international protection or exposed to violations of their fundamental rights<sup>16</sup>.

Appeals against Dublin decisions are also very common. It is a fundamental right, but it prolongs many Dublin procedures, as the rate of appeal is high in all States, up to 80%. In some cases the appeal is used as a way to remain on the territory of a Member State by asylum seekers who do not wish to be transferred.

## **2.3. Migrants' pathways, an underestimated factor in the European asylum system**

### **2.3.1. Secondary movements, enemy of the principle of the single asylum application**

A secondary movement is the movement of a person from the Member State responsible for an asylum application to another Member State. This phenomenon has a profoundly disruptive effect on the Dublin machinery. It hampers the process of designating the responsible Member State, increases the number of Dublin procedures and undermines the principle of a single application for asylum in the EU.

According to the Dutch Advisory Committee on Migration Affairs<sup>17</sup>, although the number of asylum applications fell after 2015-16, the number of secondary movements increased considerably. Germany and France are the two main destinations for asylum seekers who undertake secondary movements. The reasons for making them are many: family ties, presence

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<sup>15</sup> Dutch Advisory Committee on Migration Affairs 2019.

<sup>16</sup> EPRS 2020, p. 63.

<sup>17</sup> Dutch Advisory Committee on Migration Affairs 2019.

of a diaspora, knowledge of a language, reception conditions, labour market opportunities, refusal of a transfer.

Secondary movements are also prompted by another major flaw in the system: differences in rates of protection. To give one striking example, the rate of protection enjoyed by Afghans varies between 6% and 98%, depending on the Member State concerned. For Iraqis it varies between 8% and 98%. In the absence of a European list of safe countries of origin and a shared analysis of country risks, these differences of assessment push asylum seekers to move to the Member State where they are most likely to receive international protection. Differences in reception conditions for asylum seekers are also an incentive to undertake secondary movements.

An analysis of secondary movements and the relevant trends casts doubt on the pertinence of some of the original Dublin III principles. Differences in living conditions among Member States have an impact on reception conditions. The failure to take account of asylum seekers' aspirations and the limited period of responsibility of Member States push people to move to their desired Member State and to remain outside the system, in order to be able to apply for asylum elsewhere.

National strategies that focus only on sanctions or restrictions on access to asylum, as favoured by a majority of Member States to date, offer only a partial response to this phenomenon. A system that fails to take at least some account of asylum seekers' pathways and their reasons for seeking asylum in a given country is bound to fail<sup>18</sup>.

### **2.3.2. Trends in migratory flows**

It is essential, therefore, to analyse migrants' pathways in order to respond to influxes in a more structured manner and streamline asylum procedures.

There has been an increase in the number of asylum applications submitted by people who have entered a country lawfully, on a visa waiver or a residence visa. According to EASO, in 2019 one-quarter of applications were submitted by persons who entered the EU on a visa waiver. The countries they come from, although regarded as safe, offer a very low rate of protection: North Macedonia (1%), Moldova (1%), Venezuela (5%), Albania (6%), Colombia (7%), Ukraine (9%). These many applications, which have little chance of being accepted, clog up asylum systems.

The lack of data on migrants' pathways is a barrier to a better understanding of the dysfunctions of Dublin III. Interoperability of asylum data is therefore essential. EASO should also be given access to Eurodac data under secure conditions to carry out this analysis work and expand eu-LISA's role.

### **2.3.3. The human impact of the failure of the Dublin system**

The ineffectiveness of the Dublin Regulation primarily affects migrants who have already been traumatised in their home countries or during their journey to Europe. The months, even years, of administrative toing and froing, of insecurity, constitute a new trauma and enable human traffickers to maintain a hold on migrants, through prostitution or forced labour networks. The failure of the Dublin system and the CEAS has given rise to numerous violations of fundamental rights. Conditions in the Greek hotspots are now deplorable, and inhumane.

Particular attention needs to be paid to the protection of the best interests of children and unaccompanied minors. A number of Member States (Belgium, France, Hungary) have set up specialist units to deal with unaccompanied minors, others (Germany, Poland, Cyprus) employ

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<sup>18</sup> Position supported by the Committee of the Regions. Resolution of 8 December 2018 on the CEAS.

specially trained personnel. But these good practices are not universal. One of the main obstacles is the difficulty of determining migrants' ages. Practices differ from one Member State to another and the reliability of the assessments, for example those based on medical tests, is uncertain. Multidisciplinary approaches, carried out by qualified experts, make it possible to compile sets of relevant indicators and to establish a person's age more reliably (the United Kingdom, Malta, Italy, Greece, the Netherlands and France use such approaches). In addition, although the appointment of a legal representative to accompany or represent minors in asylum procedures is compulsory (Article 6), there are significant gaps in implementation. Lastly, some States do not provide information tailored to minors' needs. The right to information (Article 4) is another principle that is not properly complied with. Problems include: provision of partial information; limited access to legal aid for applicants; language barrier and lack of interpreters; delays in providing information<sup>19</sup>. A lack of resources on the ground can explain these shortcomings, but they are also the result of political decisions.

#### **2.4. Discontinuation of the CEAS and Dublin procedures during the COVID-19 crisis**

During the health crisis, and as a result of the lockdown measures imposed, Dublin procedures have been significantly cut back or even suspended completely. This is the case in particular for asylum interviews. While some countries have opted for 'remote' sessions, many interviews have been postponed<sup>20</sup>. On 16 April 2020, EASO published recommendations designed to ensure continuity of the right to asylum, but there is no crisis management plan tailored to the current circumstances, which is further undermining the application of Dublin III.

#### **2.5. Emerging governance arrangements, the growing role of EU agencies**

The many disparities in the interpretation and application of Dublin III between Member States are undermining the effectiveness of the regulation. Some are the result of national strategies to combat secondary movements or reduce processing times. Others reflect historical practices or a lack of dialogue between national asylum authorities. The Community interest suffers each time: secondary movements prevented in one country become a problem for another.

Moreover, bilateral agreements have been concluded between Member States and third countries, or between Member States, to improve the efficiency of procedures or ensure the transfer or return of asylum seekers whose applications have been rejected (e.g. the Spain-Morocco agreements; Germany-Albania). Lessons must be learnt from these agreements and replicated on the largest possible scale, to prevent future mistakes.

Convergence in visa policy between Member States is also likely to improve the functioning of the CEAS and of Dublin III, as many asylum seekers arrive lawfully on the territory of the EU, because they qualify for a visa or visa waiver.

To improve convergence between national systems, the Commission runs a network of Member States' Dublin experts. However, it meets too infrequently (once or twice a year) to have an operational role.

It is EASO which is playing an increasingly important and proactive role in improving convergence and mutual trust between Member States and developing a common asylum culture. In 2016, EASO set up the Dublin Units Network, which is more active than its Commission counterpart. EASO also produces many guidance documents<sup>21</sup>. Lastly, the agency

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<sup>19</sup> EPRS 2020, pp. 35-37.

<sup>20</sup> EASO April 2020: CEAS Information Sheets.

<sup>21</sup> E.g.: EASO, Practical guide on the implementation of the Dublin III Regulation, October 2019.

carries out training sessions for staff in Dublin units.

Operational support to Member States is thus far the most significant input from EASO in the implementation of the Dublin system. Fostering EASO's emergence as a genuine independent agency is a priority to improve the effectiveness of the CEAS.

Lastly, in the context of the implementation of Dublin III the Commission must also ensure greater consistency with the other CEAS provisions (reception, asylum procedures). An overhaul of the CEAS would be pointless without a significant improvement in the rate of return of persons not eligible for asylum.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the implementation of the Dublin III Regulation (2019/2206(INI))

*The European Parliament,*

- having regard to Article 78(2)(e) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 80 of the TFEU, on the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States,
- having regard to Articles 1, 2, 3, 4, 18, 19 and 47 of the Charter of Fundamental Rights of the European Union,
- having regard to Articles 2, 3, 5, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),
- having regard to Article 14 of the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948,
- having regard to the UN Global Compact on Refugees,
- having regard to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva Convention),
- having regard to Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 on 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), known as the Dublin III Regulation<sup>1</sup>,
- having regard to Council Decisions (EU) 2015/1523 of 14 September 2015<sup>2</sup> and (EU) 2015/1601 of 22 September 2015<sup>3</sup> establishing provisional measures in the area of international protection for the benefit of Italy and of Greece,
- having regard to the Commission proposal to the European Parliament and the Council (COM(2016)0270) to reform the Dublin III Regulation,
- having regard to the negotiating mandate adopted by the Committee on Civil Liberties, Justice and Home Affairs on 19 October 2017, which was approved in Plenary on 16 November 2017, and confirmed by the Conference of Presidents on 17 October 2019,
- having regard to its resolution of 12 April 2016 on the situation in the Mediterranean

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<sup>1</sup> OJ L 180, 29.6.2013, p. 31.

<sup>2</sup> OJ L 239, 15.9.2015, p. 146.

<sup>3</sup> OJ L 248, 24.9.2015, p. 80.

and the need for a holistic EU approach to Migration<sup>4</sup>,

- having regard to the judgements of the Court of Justice of the European Union related to Regulation (EU) No 604/2013, in particular C-695/15 PPU *Mirza* (ECLI:EU:C:2016:188), C-63/15 *Ghezelbash* (Grand Chamber) (\*) (ECLI:EU:C:2016:409), C-155/15, *Karim* (ECLI:EU:C:2016:410), C-578/16 PPU *C.K. and others* (\*) (ECLI:EU:C:2017:127), C-528/15 *Al Chodor* (ECLI:EU:C:2017:213), C-36/17 *Ahmed* (Order) (ECLI:EU:C:2017:273), C-490/16 *A.S.* (Grand Chamber) (ECLI:EU:C:2017:585), C-646/16 *Jafari* (Grand Chamber) (\*) (ECLI:EU:C:2017:586), C-670/16 *Mengesteab* (Grand Chamber) (ECLI:EU:C:2017:587), C-60/16 *Khair Amayri*, ECLI:EU:C:2017:675, C-201/16 *Shiri*, (ECLI:EU:C:2017:805), C-360/16 *Hasan* (ECLI:EU:C:2018:35), C-647/16 *Hassan* (ECLI:EU:C:2018:368), C-213/17 *X* (ECLI:EU:C:2018:538), C-56/17 *Fathi* (ECLI:EU:C:2018:803), C-47/17 *X* (Grand Chamber) (ECLI:EU:C:2018:900), C-661/17 *M.A. and others* (Grand Chamber) (\*) (ECLI:EU:C:2019:53), C-163/17 *Jawo* (Grand Chamber) (\*) (ECLI:EU:C:2019:218), C-582/17 *H.* (Grand Chamber) (\*) ECLI:EU:C:2019:280, and C-715/17, C-718/17 and C-719/17 *Commission v Poland, Hungary and the Czech Republic*,
- having regard to the judgements of the European Court of Human Rights related to Regulation (EU) No 604/2013, and in particular *Sharifi v. Austria* of 5 December 2013 (Chamber judgment), *Mohammadi v. Austria* of 3 July 2014 (Chamber judgment), *Sharifi and Others v. Italy and Greece* of 21 October 2014 (Chamber judgment), and *Tarakhel v. Switzerland* of 4 November 2014 (Grand Chamber judgment), and *ECtHR - M.S.S. v Belgium and Greece* (GC), Application No. 30696/09, Judgement of 21 November 2011, related to Regulation (EC) No 343/2003 of 18 February 2003 (Dublin II),
- having regard to the Commission’s European Agenda on Migration of 13 May 2015 (COM(2015)0240),
- having regard to the so-called Malta Declaration of September 2019,
- having regard to the study by the United Nations High Commissioner for Refugees of August 2017 entitled ‘Left in Limbo’, on the implementation of the Dublin III Regulation,
- having regard to the evaluation of the Dublin III Regulation of 2015 and the evaluation of the implementation of the Dublin III Regulation of 2016, carried out on behalf of the Commission by ICF International,
- having regard to the European Court of Auditors’ Special Report 2019/24 of November 2019 entitled ‘Asylum, relocation and return of migrants: time to step up action to address disparities between objectives and results’,
- having regard to the Commission communication entitled ‘COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement’ (2020/C 126/02),
- having regard to the report of the European Asylum Support Office of 2 June 2020 on

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<sup>4</sup> OJ C 58, 15.2.2018, p. 9.

COVID-19 emergency measures in asylum and reception systems,

- having regard to the report entitled ‘Annual Report on the Situation of Asylum in the European Union’ of the European Asylum Support Office (EASO) of June 2020,
  - having regard to the implementation assessment by the European Parliament Research Service (EPRS) of the Dublin Regulation of January 2019, drawn up by Dr Amandine Scherrer of the Ex-Post Evaluation Unit of Parliament’s Directorate for Impact Assessment and European Added Value (first part) and by the research team of the European Council on Refugees and Exiles (ECRE), at the request of the Ex-Post Evaluation Unit (second part),
  - having regard to other studies commissioned by the European Parliament, in particular the EPRS’s implementation appraisal of the Dublin Regulation and asylum procedures in Europe by Gertrud Malmersjö and Milan Remáč of 2016, the study of the Policy Department for Citizens’ Rights and Constitutional Affairs (Directorate-General for Internal Policies) on the reform of the Dublin III Regulation by Francesco Maiani of June 2016, the EPRS study ‘The Cost of Non-Europe in Asylum Policy’ by Wouter van Ballegooij and Cecilia Navarra of October 2018, and the EPRS study on the reform of the Dublin system by Anja Radjenovic of March 2019,
  - having regard to the hearing of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) held on 19 February 2020,
  - having regard to the replies by Member State Parliaments on their work on the Dublin III Regulation provided through the automated European Centre for Parliamentary Research and Documentation system,
  - having regard to the answer provided by Germany to a list of five questions sent by the LIBE Chair and the rapporteur to all national authorities involved in the Dublin procedure,
  - having regard to the fact-finding journeys by the rapporteur to Bochum (Germany), Ter Apel (Netherlands), Bucharest (Romania), and Lampedusa (Italy),
  - having regard to Rule 54 of its Rules of Procedure, as well as to Article 1(1)(e) and Annex 3 of the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the letter from the Committee on Women’s Rights and Gender Equality,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0245/2020),
- A. whereas 1 393 920 asylum seekers applied for international protection in EU+ countries in 2015 and 1 292 740 in 2016, a fourfold increase compared to 2012 (373 375 applications) and 2013 (464 515); whereas the number of applications for international protection in EU+ countries rose again between 2018 (665 920) and 2019 (738 425), equivalent to 0.13 % of the total population of the EU in 2019;

- B. whereas children account for almost half of the asylum requests filed in the EU, and about 17 700 unaccompanied minors lodged an application for international protection in 2019; whereas 86 % of them were boys, and 90 % were aged between 14 and 18;
- C. whereas a Member State that issues a visa to a third-country national is responsible for examining the application for international protection according to Article 12 of the Dublin III Regulation; whereas, according to Article 14 of the Dublin III Regulation, the application of a third country national or a stateless person who entered the territory of a Member State granting a visa waiver shall be examined by this Member State;
- D. whereas there were 145 000 decisions on Dublin requests in 2019; whereas the acceptance rate for decisions on Dublin requests was 62 % in 2019;
- E. whereas one-third of Member States hosted 90 % of asylum seekers between 2008 and 2017;
- F. whereas the criteria for establishing the responsibility of a Member State for an asylum application include, in hierarchical order, the family unit, the issuance of residence permits or visas, irregular entry or stay, and visa-waived entry; whereas, if none of these criteria apply, the Member State in which an asylum application was first made becomes the Member State responsible under Article 3(2); whereas, as a consequence of the disproportionate use of Article 13, according to which it is the responsibility of the Member State of first irregular entry to examine an asylum application, responsibilities are not distributed fairly among the Member States; whereas several ‘first-entry’ Member States in the Mediterranean, namely Greece, Italy, Malta, Cyprus and Spain, received a large proportion of first time applications, in particular during the 2015-16 crisis;
- G. whereas in 2018, Germany (82.8 million inhabitants, 18,6 % of total EU population) recorded the largest number of applications (184 180, or 28 % of total applications, equivalent to 0.22 % of its population), followed by France (66.9 million inhabitants, 15 % of total EU population) with 120 425 applications (19 % of total applications, equivalent to 0.18% of its population), Greece (10.74 million inhabitants, 2.4 % of total EU population) with 66 695 applications (11 % of total applications, 0.62 % of its population), Italy (60.48 million inhabitants, 13.6 % of total EU population) with 59 950 applications (10 % of total applications, 0.01 % of its population), and Spain (46.66 million inhabitants, 10.49 % of total EU population) with 52 700 applications (9 % of total applications, and 0.11 % of its population);
- H. whereas between 2016 and 2019, Germany and France issued by far the most Dublin requests (68 % of the EU total), while Spain, Estonia, Lithuania, Latvia, Slovakia, Bulgaria, Poland and Czech Republic issued few requests; whereas Spain issued almost no Dublin requests, despite a large and growing number of asylum applications; whereas there are significant differences between countries, with 54.6 % of transfers carried out from Greece, 42.2 % from Sweden, 11.2 % from Germany, 6.7 % from France, and 1.6 % from Italy between 2016 and 2019; whereas there is a significant information gap for a number of countries;
- I. whereas the Dublin III Regulation is based on the core assumption that asylum seekers are afforded equal rights across Member States, and that each claim gets a fair examination, wherever the claim is lodged in the EU; whereas this is far from being a

reality;

- J. whereas Member States have made only very limited use of the dependent persons clause (Article 16) or the humanitarian and discretionary (Article 17) clause in the Regulation; whereas these clauses provide reasonable solutions for family reunification or relocations, including following disembarkations;
- K. whereas in most Dublin procedures the provisions on the hierarchy of criteria and the deadlines established are not properly implemented, and transfers are not carried out; whereas in situations involving children and families, these shortcomings are particularly harmful to the best interests of the child and the right of asylum seekers to family reunification;
- L. whereas data and studies on the implementation of the Dublin III Regulation highlight routine disregard for family provisions and incorrect application of the principle of the best interests of the child; whereas, for instance, in 2018, the family unit criterion was invoked in just 5 % of ‘take charge’ requests in France (out of 12 000) and in 3.7 % in Germany (out of 17 500), with even lower figures in Belgium, Sweden, Switzerland; underlines that in contrast Greece issued 79.3 % of its ‘take charge’ requests on the basis of the family unity criterion in 2018; whereas applications for family reunification are less frequently accepted (48 % of cases), compared to the average rate of acceptance for all procedures (67.6 %); whereas effective implementation of Articles 16 and 17 of the Regulation might ensure the effectiveness of asylum seekers’ right to family life and family unity;
- M. whereas there have been significant shortcomings in the implementation of the Dublin III Regulation, including during the high number of arrivals in 2015 and the COVID-19 pandemic, undermining trust between Member States and the right to international protection, and leading to violations of fundamental rights; whereas the Dublin III rules have proven to be unsuited to dealing with substantial influxes of migrants, resulting in a system that places excessive responsibility and burdens upon a few Member States;
- N. whereas the temporary solidarity mechanism for search and rescue in the Mediterranean agreed in the Malta Declaration, and signed on 23 September 2019 by Germany, France, Italy and Malta, was valid for a period of at least six months; whereas no other Member State joined this ad hoc agreement;
- O. whereas the preventive action provision (Article 33) has never been used;
- P. whereas Article 28 of the Dublin III Regulation allows detention as an exceptional measure ‘to secure transfer procedures’ if there is a ‘significant risk’ of the applicant absconding; whereas this definition remains unclear and its interpretation varies between Member State;
- Q. whereas there is lack of compliance on procedural guarantees and safeguards for asylum seekers, especially children; whereas the length of the procedures and the lack of predictable outcomes coupled with poor reception conditions and social precariousness have impacts on the well-being of asylum-seekers, who in many cases have undergone traumatic experiences back home and/or on their way to the EU;
- R. whereas the implementation of the Dublin III Regulation is closely linked to the

implementation of other European asylum and migration policy files; whereas, in particular, flaws in the implementation of the recast Asylum Procedures Directive (2013/32/EU), the recast Reception Directive (2013/33/EU) and the recast Qualification Directive (2011/95/EU) have had an impact on the implementation of the Dublin III Regulation; whereas the European Commission should do more to ensure Member States comply with these Directives, including through infringement procedures;

- S. whereas some of these flaws are inherent to the design of the Dublin Regulation and cannot be solved through better implementation alone;
- T. whereas information gaps prevent a comprehensive evaluation of the implementation of the Dublin III Regulation; whereas statistical information is not systematically and consistently provided by Member States, and not with the same level of detail or frequency; whereas key information gaps cover grounds for requests, duration of procedures, resources, withdrawn applications, failed transfers, appeals processes and detention;
- U. whereas on 6 November 2017 Parliament adopted a legislative Resolution on the Dublin IV recast proposal by a two-thirds majority;

### ***Incorporating the principle of solidarity into the Common European Asylum System***

1. Considers that the current Dublin III Regulation imposes a disproportionate responsibility on a minority of Member States, in particular when high numbers of arrivals occur; considers that owing to their geographical location the first country of entry criterion in the Dublin III Regulation puts an unprecedented and disproportionate burden on frontline countries in terms of registration and reception of asylum seekers; points out that the Dublin III Regulation, as designed and implemented, has failed to guarantee its main objective, namely swiftly determining the Member State responsible for an asylum application, and thus to ensure a fair distribution of responsibility between Member States, and effective and swift access to asylum procedures;
2. Stresses that the introduction of hotspots combined with the temporary relocation programme proposed by the Commission in 2015 was intended to facilitate the management of asylum applications when applicants enter EU territory, and was a pragmatic approach that levels out the flaws in the Dublin III Regulation that were becoming apparent at that time; recalls, further, the contribution of EU agencies such as EASO and Frontex to supporting Member States facing excessive burdens in the implementation of the asylum acquis, and stresses the need to improve cooperation between these agencies;
3. Stresses that the inappropriate application of the hierarchy of criteria, in particular the excessive use of the first country of entry criterion and the ineffective execution of transfers, has increased the disproportionate responsibility borne by certain Member States, especially frontline Member States; takes the view that the EU therefore needs a sustainable solidarity mechanism which establishes fair rules for the allocation of responsibility between Member States in accordance with article 80 of the TFEU, and in full respect of the fundamental right to safety and the protection of asylum seekers;
4. Considers it essential to provide more resources and capabilities to frontline Member States, for instance via EASO, as long as Dublin is not reformed;

5. Recalls that the right to asylum is a fundamental right; stresses that the asylum procedure serves to examine applications and grant international protection to applicants who qualify, while providing for a swift and fair decision for those who do not;
6. Notes that, according to article 24(4) of the Dublin III Regulation, Member States may either request to take back a person or carry out a return procedure in the case of persons whose application for international protection has been rejected by a final decision in a Member State; stresses that, in the context of the application of article 24(4), the return of persons who do not qualify for international protection, especially on the basis of voluntary compliance, could help the functioning of EU migration policies;
7. Welcomes the Council Decisions on relocation of 2015 and 2016 that were adopted as an urgent solidarity measure; expresses its disappointment at the Member States' unfulfilled commitments to solidarity and responsibility sharing, while acknowledging the positive contribution of some Member States; recalls that the European Commission did not follow Parliament's call in its resolution of 18 May 2017 for a proposal to extend the relocation measures until the adoption of the reform of the Dublin III Regulation; stresses that ad hoc agreements on relocation are not a substitute for a harmonised and sustainable Common European Asylum System (CEAS);
8. Deplores the fact that the Council, unlike Parliament, did not adopt a position on the Dublin IV recast proposal, and therefore blocked efforts to reform the Dublin III Regulation, in spite of its well-documented failings; takes the view that this blocking might be interpreted as a violation of the principle of mutual and sincere cooperation between the EU institutions in Article 13(2) of the TEU, and also in view of the fact that the Council has always sought unanimous agreement even though qualified majority is prescribed by the Treaties; finds it particularly regrettable that the Union still has the same set of rules which have proven to be ineffective in managing a high number of arrivals; calls for a swift reform of the CEAS;
9. Notes that the mechanism for early warning, preparedness and crisis management in Article 33 has not been applied to date, not even during the high number of arrivals in 2015-16; notes, further, that the provisions in the Temporary Protection Directive that aimed to address temporary protection in case of mass influxes of displaced person unable to return to their country of origin have yet to be invoked;
10. Considers that a solidarity-based mechanism in the EU should be established to ensure continuity of the fundamental right of asylum in the EU with a view to ensuring access to asylum and responsibility sharing among Member States; emphasises that the protection of asylum applicants' fundamental rights should always remain at the centre of this mechanism; considers that such a mechanism should allow for the participation of civil society organisations providing professional assistance to people in need of international protection, particularly where this is of a legal nature;
11. Underlines that the discretionary clause in Article 17, which enables a Member State to take responsibility for an asylum application, even if it has not been identified as the responsible Member State under the Dublin III Regulation, is used differently, rarely, and only by a few Member States; notes that Germany, the Netherlands and France

accounted for the majority of cases in 2018; calls on all Member States to make better use of the discretionary clause in Article 17 to deal with challenging situations and humanitarian emergencies in the absence of a permanent solidarity mechanism; takes the view that the discretionary clauses of Article 17 should be used as a solidarity tool for responsibility sharing, in particular in situations of high numbers of arrivals by land and sea, or to transfer asylum seekers currently living in the hotspots in inhuman, degrading, unsanitary and unsafe conditions and without sufficient access to physical and mental health support;

12. Takes the view that provisions on family unity, which are the first in the hierarchy of criteria for the establishment of responsibility, should be effectively implemented, and that the provisions on dependent persons (Article 16) and discretionary clauses (Article 17) could be used more widely to support family unity;
13. Highlights the many challenges involved in implementing the Dublin III Regulation; notes the significant operational and technical support provided by EASO to Member State authorities in implementing the Dublin procedures, in particular in the hotspots;
14. Calls on the Commission and the Member States to facilitate the work of EASO staff by allowing interviews of asylum seekers to be held in a language other than that of the country in which it is conducted while ensuring that the applicant is provided with interpretation in a language they understand; stresses the need for EASO to abide by the highest standards in its operational work, and to put the interests of applicants in need of international protection, including the best interests of the child, at the heart of its work; calls for the establishment of a European Asylum Agency, with sufficient financial and human resources, to support Member States with Dublin procedures; urges adequate organisation and staffing of European Dublin units in order to streamline and expedite the completion of Dublin-related procedures, and particularly to ensure the correct application of Chapter III of the Dublin III Regulation, which links an asylum-seeker to a particular Member State;

### ***Protecting fundamental rights***

15. Points out that the protection of fundamental rights must be at the heart of all the measures taken to implement the Dublin III Regulation, including the protection of children, victims of trafficking, LGBTI persons and other vulnerable people; points out the human cost that the deficiencies of the CEAS is causing asylum seekers, whose mental health is already weakened by the traumas they have experienced in their country of origin and potentially along migratory routes;
16. Recalls that asylum seekers have the right to be fully informed on procedures; regrets that the level of information provided to asylum seekers differs considerably between Member States; urges the Member States to guarantee that minors have tailored, child-friendly information and specific support; stresses that providing legal assistance and interpretation are key to ensuring applicants' right to information;
17. Points out that transfers of asylum seekers, and in particular of vulnerable people, minors and families, can result in violations of their human rights; reiterates that non-refoulement and human rights abuses are reason enough to suspend a transfer even when the destination country does not present systemic deficiencies; urges Member States to properly assess the risks to which applicants would be exposed in the Member

State of destination; stresses in particular that transfers must be carried out in a way that under no circumstances exposes individuals to a risk of refoulement;

18. Notes that, as set out in Article 28, detention of asylum seekers under the Dublin procedure may take place only as a last resort, only if it complies with the proportionality principle, and if no alternative and less coercive measure can be effectively implemented to ensure the transfer procedure can be carried out in cases where there is a significant risk of absconding; calls on Member States to make concrete efforts to find valid alternatives to detention;
19. Considers that such detention shall be as brief as possible, and be for no longer than the time reasonably necessary to fulfil the administrative procedures required with due diligence until the transfer under this Regulation is carried out; stresses that in the absence of harmonised criteria for determining the risk of absconding, Member States have adopted divergent and sometimes controversial criteria; calls on the Member States and the Commission to clarify a ‘significant risk of absconding’;
20. Urges the Member States and the Commission to clearly state that detention is never in the best interests of the child;
21. Recalls that according to the European Court of Human Rights<sup>5</sup> it is unlawful to impose a detention measure on a minor without any consideration of their best interests, of their individual situation as unaccompanied minors if applicable, or without a proportionality assessment or without alternatives to detention being available;
22. Stresses that the ultimate purpose of the protection of children, such as against child trafficking, shall always prevail, in order to ensure that children in migration have swift access to education, healthcare and appropriate accommodation; underlines that unaccompanied children should benefit from appropriate protection measures such as effective guardianship;
23. Points out numerous and systematic deficiencies in compliance with the hierarchy of criteria; stresses that family unity is far from being the most frequent criterion applied, although it is at the top of the hierarchy in Chapter III of the Regulation; considers that Member States, based on the principle of mutual cooperation, should help the competent authorities and third country nationals in improving the establishment of existing proven family links in the procedure for determining the Member States responsible; calls on the Commission to ensure full compliance with the hierarchy of criteria;
24. Regards it as essential to clarify the conditions for applying the family reunification criterion, and to give priority, as set out in Article 7(3) of the Regulation, to the application of Articles 8, 10 and 16 as the main criteria for determining the Member State responsible for examining an asylum application, in order to ensure the effectiveness of the right to family unity and quicker implementation of family reunification decisions; calls on the Commission and the Member States to harmonise the standard of proof required for family reunification in the direction of more achievable standards and requirements; points out that interpretations of what

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<sup>5</sup> EDAL, ECtHR - Rahimi v. Greece, Application No. 8687/08, Judgment of 5 July 2011: <https://www.asylumlawdatabase.eu/en/content/ecthr-rahimi-v-greece-application-no-868708-1>

constitutes a ‘family’ vary across Member States, contributing to the lack of compliance with the hierarchy of criteria and the dysfunctionality of the system; calls therefore on the Commission to carefully monitor the sound application of the family-related definitions by Member States, as defined in Article 3 of the Regulation;

25. Recalls that according to the Regulation the best interests of the child should be the primary consideration in all Dublin procedures and decisions concerning children; regrets that Member States apply different interpretations of the best interests of the child;
26. Deplores that inadequate identification mechanisms and sometimes erroneous methods of age assessment often further exacerbate the situation of minors, causing delays or negatively affecting the outcome of Dublin procedures; notes that good practices have been developed in certain Member States, such as the use of specialised staff for unaccompanied minors or a multidisciplinary approach to determine age;
27. Is seriously concerned that in many Member States due to practical challenges the appointment of a representative to assist unaccompanied minors in Dublin procedures is often delayed or is not guaranteed; notes also that in some countries these representatives are insufficiently informed about Dublin procedures, and that unaccompanied minors lack child-friendly support;

***Simplify procedures, significantly reduce processing times and uphold the right to an effective remedy***

28. Stresses that the number of transfer procedures increased significantly in 2016-17, generating considerable human, material and financial costs; deplors, however, that transfers were carried out in only 11 % of cases, a further factor in the frequent overloading of asylum systems, which clearly demonstrates the lack of effectiveness of the Regulation; regards efforts to guarantee access to information and swift procedures for family reunification and the transfer of asylum seekers as essential;
29. Highlights the important body of ECtHR and CJEU case law in recent years that has clarified the admissible grounds for preventing Dublin transfers, in particular any source of risk to the individual; notes in particular the increasing number of decisions by European and national courts to suspend transfers to Member States where an asylum seeker would be unfairly denied international protection (cases of indirect refoulement) or would be denied their rights in the Dublin procedure; deplors that asylum seekers are victims of inhuman or degrading treatment in certain Member States;
30. Notes that shortcomings in the structural organisation and functioning of national asylum authorities, together with shortages of resources, have contributed to delays in Dublin procedures and hindered the application of the regulation; notes that while most countries have a single specialised authority for asylum, some Member States have chosen to share the responsibility between different authorities, creating practical complexities for asylum seekers in certain cases and divergences in the implementation of the Regulation;
31. Stresses that the effectiveness of Dublin procedures also depends on the quality and staffing levels of each national asylum authority; notes important gaps between asylum authorities in terms of number of staff per asylum applicant; stresses that national

Dublin units are understaffed while facing a significant increase in their workload; calls on the Member States to increase the resources for making Dublin III operational, particularly the number of asylum officers;

32. Stresses the lack of cooperation and information sharing between Member States, which actively undermines the principle of EU solidarity, and directly contributes to the overburdening of systems in certain Member States;
33. Stresses that the excessive and partly inappropriate application of the ‘irregular entry’ criterion puts a disproportionate burden on first entry countries, which often lack the resources and capacity to host and register asylum seekers; notes that ‘take back’ requests have been the predominant form of Dublin procedure used in recent years, meaning that most persons placed in a Dublin procedure have already applied for asylum in another Member State; notes that adequate measures to prevent secondary movements should apply to Member States in the Schengen Area, and also those outside it;
34. Recalls that the time limits at each stage of the Dublin procedure are meant to keep the procedure short, and enable fast access to the asylum procedure; notes that there are still a lack of clarity and variations between Member States on the calculation of time limits and the time when the clock starts for each procedure; proposes the clarification and harmonisation of the conditions that trigger transfer procedures;
35. Considers that in some cases the rules on transfer of responsibility under Dublin III undermine the efficiency of asylum procedures and the carrying out of transfers by increasing the danger of absconding; deplors the often spurious reasons adduced by Member States for refusing transfers; considers that these factors, among others, have contributed to the increase in the number of secondary movements by encouraging asylum-seekers to remain outside the system; calls on the Commission to revise the rules in order to improve the execution of transfers and do away with the transfer of responsibility in cases where an asylum seeker absconds, to foster trust between Member States, to monitor the situation and, where necessary, impose penalties on Member States which refuse transfers;
36. Notes that the incorrect application of the rules on the hierarchy of criteria, particularly regarding family reunification and the situation of unaccompanied children, as well as the disproportionate use of the criterion of the first country of irregular entry also undermines asylum procedures; notes that these implementation gaps may encourage asylum seekers to remain outside the system; stresses that further harmonisation of the Member States’ asylum systems is key to a functioning Dublin III Regulation and to preventing secondary movements; calls on the Commission to propose a system which duly takes account of asylum seekers’ proven meaningful links to a Member State, such as previous legal residence or educational diplomas, and which ensures that the treatment of asylum seekers is equal in relative terms across the EU;
37. Considers that providing asylum seekers with legal assistance for Dublin procedures, in particular in the hotspots, is fundamental to ensuring applicants are informed of their rights and obligations during a Dublin procedure; stresses that this would enhance rights-compliant procedures, simplify Dublin procedures, and improve decision-making; notes that a legal representative can ensure that each case file is complete and

accurate, and contribute to reducing the rate of appeals and safeguarding the right to non-refoulement; notes with concern that some specific issues remain at national level, such as limited access to independent legal representatives in remote asylum centres, low rates of financial remuneration for legal assistance, a lack of adequate facilities for preparatory and private interviews, and inadequate provision of legal aid for applicants in detention centres; calls on the Member States and the European Commission to increase the funds available for the provision of legal assistance during the Dublin procedure;

38. Stresses that the quality and amount of information provided to the applicants during the Dublin procedure is far from satisfactory, varies significantly between countries, and in some cases, within countries; notes that different factors affect compliance with the right of information, such as the quality and clarity of information, access to an interpreter, the availability of translated documents, access to information in due time; recalls that the right to information under Article 4 of the Regulation is essential given the complex nature of Dublin procedures, and for guaranteeing access to a fair examination of an asylum application in the EU; underlines that gaps in this field can be attributed to a lack of resources, but also result from deliberate policy choices in certain countries where very few legal representatives have been appointed; urges the Member States, with the support of the Commission and the EASO, to improve the information made available to asylum seekers on complex Dublin procedures, to ensure that it is clear and accessible to everyone, particularly with regard to family reunification, in accordance with Articles 4 and 26 of the Regulation, and access to an effective remedy and legal assistance, in accordance with Article 27;
39. Calls on the Commission to assess the overall implementation of the CEAS, as well as any gaps and shortcomings in the Dublin III Regulation that lead to a disproportionate burden of responsibility being placed on countries at the external borders of the EU;

#### ***A single and rights-centred implementation of Dublin arrangements in asylum cases throughout the EU***

40. Stresses that the principle of a single EU asylum application cannot be upheld, a state of affairs at odds with the very purpose of the Dublin III Regulation; notes that implementation of this principle is hampered by various factors, meaning that there are multiple reasons for the submission of subsequent asylum applications; considers that the competent national authorities should share their relevant information, in particular on the granting and rejection of asylum applications, in a European database such as Eurodac, in order to speed up procedures and prevent multiple asylum applications, while protecting personal data; considers that registering all applicants and migrants crossing the borders irregularly is a priority;
41. Notes that the extent of protection for asylum seekers varies greatly between Member States for certain nationalities, and that this can contribute to onward movement; considers that taking into account applicants' individual needs in Dublin procedures would reduce secondary movements; believes that taking account of 'proven meaningful links' to a particular Member State is an effective approach to reducing secondary movements, and calls for this to be included as a criterion for relocation;

#### ***Strengthening governance and convergence between Member States***

42. Stresses that the Commission's network of Member States' Dublin units has met only once or twice a year, and has not played an operational role; considers that the non-coordinated use of the EASO Dublin Units Network prevents the Dublin III Regulation from functioning effectively; notes however that the EASO Dublin Network has been more active, and that EASO has carried out a number of useful missions to support Member States in implementing the Dublin III Regulation, such as the production of guidance documents and analysis, the organisation of training courses, or the deployment of agents; urges closer cooperation between national asylum authorities in order to share information, foster the development of uniform and best practices, streamline transfers and contribute to preventing cases of multiple applications; proposes that EASO be given the task of drawing up enhanced governance arrangements for the application of the Dublin III Regulation, including a monthly operational dialogue between national authorities, and a platform for the exchange and sharing of information and best practices;
43. Calls on the Commission and the Member States to include, among the sources used to monitor implementation of the Regulation, reliable, up-to-date information provided by non-state actors, in particular international organisations and NGOs;
44. Notes that between 2008 and 2017 a significant number of asylum applications were lodged by third country nationals who travelled visa-free or with a short-term visa to enter the Schengen Area<sup>6</sup>; notes, further, that some of these applications were submitted in a Member State other than the one for which the visa was issued; underlines that for subsequent Dublin procedures, it has been proven that the rules in Articles 12 and 14 are not sufficiently clear, thus hindering the determining of the Member State responsible; calls on the Commission to clarify how Articles 12 and 14 of the Regulation should be applied when determining what Member State should be responsible for an asylum application; proposes the evaluation, as one of the hierarchy of criteria, of the possible impact of visa-waived entry applications on the proper functioning of the Dublin system;
45. Notes that bilateral agreements have been concluded between Member States to improve the efficiency of Dublin procedures or ensure the transfer of asylum seekers; underlines however that they have also proven to have an adverse effect, in certain cases weakening the achievement of the objectives of the Regulation at European level; urges the Commission and all Member States to rather take stock of the factors contributing to greater efficiency, to take joint and coordinated action to optimise the effective implementation of the Dublin III Regulation, and work towards harmonising the implementation of the Regulation;
46. Notes that Member States may draw up preventive action plans, with the support of the Commission and in coordination with it, where the application of the Regulation may be jeopardised due to a substantiated risk of particular pressure on Member States' asylum systems and/or to problems in the functioning of their asylum systems, in accordance with Article 33; notes that these preventive measures may take into account information from the Commission and EASO, and may lead to genuine and practical solidarity, in accordance to Article 80 of the TFEU, with Member States facing particular pressures on their asylum systems in general, including as a result of mixed migration flows, and with applicants, allowing

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<sup>6</sup> European Commission, European Migration Network, 'Impact of Visa Liberalisation on Countries of Destination', March 2019: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00\\_eu\\_visa\\_liberalisation\\_2019\\_synthesis\\_report\\_en\\_0.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_visa_liberalisation_2019_synthesis_report_en_0.pdf)

for better preparedness in the event of a potential asylum crisis;

46. Considers that the implementation of the Dublin III Regulation is not proving effective, because its primary objectives are not being met, namely swift and fair determination of the Member State responsible for an application for international protection; recalls that significant implementation gaps have been identified for a number of Dublin provisions; stresses that the implementation of the Regulation is highly inefficient in relation to the efforts, human resources and staff dedicated to it by the Member States;
47. Calls on the Council to adopt qualified majority voting when reforming the Dublin III Regulation, and when acting with regard to Article 78(2) of the TFEU;
48. Deplores the fact that the Commission has still not published its Article 46 assessment report; calls on the Commission to ensure that the Dublin III Regulation is implemented more effectively;

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49. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States and the national parliaments.

## LETTER OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

Mr Juan Fernando López Aguilar  
Chair  
Committee on Civil Liberties, Justice and Home Affairs  
BRUSSELS

Subject: Opinion on the Implementation of the Dublin III Regulation (2019/2206(INI))

Dear Mister Chair,

Under the procedure referred to above, the Committee on Women's Rights and Gender Equality has decided to submit an opinion to your committee. At its meeting of 4 December 2019, the committee decided to send the opinion in the form of a letter.

The Committee on Women's Rights and Gender Equality considered the matter at its meeting of 16 July 2020. At that meeting<sup>1</sup>, it decided to call on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution.

Yours sincerely,

Evelyn Regner

### SUGGESTIONS

- A. Whereas women and girls account for a high share of vulnerable asylum seekers, as they are often subjected to multiple forms of discrimination and all forms of gender based violence, trafficking and exploitation in their countries of origin, transit and

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<sup>1</sup> The following were present for the final vote: Evelyn Regner (Chair), Robert Biedroń (Vice-Chair), Gwendoline Delbos-Corfield (Vice-Chair), Evelyn Regner (rapporteur for opinion), Elena Kountoura, Eugenia Rodríguez Palop (for GUE/NGL), Isabella Adinolfi (for NI), Rosa Estaràs Ferragut, Frances Fitzgerald, Cindy Franssen, Lívía Járóka, Arba Kokalari, Elżbieta Katarzyna Łukacijewska, Christine Schneider, Elissavet Vozemberg Vrionidi (for EPP), Karen Melchior, Samira Rafaela, María Soraya Rodríguez Ramos, Hilde Vautmans, Chrysoula Zacharopoulou (RE), Robert Biedroń, Vilija Blinkevičiūtė, Helène Fritzon, Lina Gálvez Muñoz, Maria Noichl, Pina Picierno, Evelyn Regner (for S&D), Gwendoline Delbos Corfield, Pierrette Herzberger Fofana, Diana Riba i Giner, Ernest Urtasun (for Greens/ALE), Derk Jan Eppink, Andželika Anna Możdżanowska, Jessica Stegrud (for ECR), Simona Baldassarre, Isabella Tovaglieri, Christine Anderson, Annika Bruna (for ID) pursuant to Rule 209(7).

destination, namely before getting a documented status;

1. Stresses the importance to detect and take into consideration women and girls' needs throughout the entire asylum procedure; calls for specific psychological help and access to sexual and reproductive rights for women who experienced trauma and namely gender-based violence (including emergency contraception, safe abortion services and HIV post-exposure prophylaxis) as well as the need for gender sensitive training for all actors across the asylum process including law enforcement and immigration caseworkers;
2. Is extremely concerned by the persistent gender-based violence perpetrated namely towards women, transgender people and all people experiencing violence because of their gender identity and/or sexual orientation which needs to be addressed to protect fundamental rights; condemns the use of coercive measures by law enforcement officials when implementing Dublin transfers reported in several Member States, whereby asylum seekers were handcuffed, sedated and subject to police violence; emphasises that women, particularly pregnant women, women with new-borns, women with disabilities and elderly women as well as LGBTI+ asylum-seekers are especially vulnerable and face long-term consequences;
3. Condemns the detention of asylum seekers and considers paradoxical the application of detention measures to victims of violence seeking asylum and considers it essential to avoid detention of pregnant women and women with new-borns, in the best interest of the physical and mental health of both mother and child; stresses that alternatives to detention should be actively explored and that violence-related asylum claims should be dealt with in a way that protects women and girls from secondary victimisation;
4. Reminds that the right to family life is essential, particularly with a view to their future life prospects including integration, and thus adequate tracing of family members in the EU MS for relevant family member information with a view to family reunification within the Dublin III procedure for the determination of the Member State responsible to the asylum claim is crucial.

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 27        | +  |
|-----------|--|
| GUE/NGL   | Elena Kountoura, Eugenia Rodríguez Palop   |
| NI        | Isabella Adinolfi  |
| PPE       | Rosa Estaràs Ferragut, Frances Fitzgerald, Cindy Franssen, Livia Járóka, Arba Kokalari, Elżbieta Katarzyna Lukacijewska, Christine Schneider, Elissavet Vozemberg-Vrionidi |
| Renew     | Karen Melchior, Samira Rafaela, María Soraya Rodríguez Ramos, Hilde Vautmans, Chrysoula Zacharopoulou  |
| S&D       | Robert Biedroń, Vilija Blinkevičiūtė, Helène Fritzon, Lina Gálvez Muñoz, Maria Noichl, Pina Picierno, Evelyn Regner  |
| Verts/ALE | Gwendoline Delbos Corfield, Pierrette Herzberger Fofana, Diana Riba i Giner, Ernest Urtaşun  |
| 7         | -  |
| ECR       | Derk Jan Eppink, Andżelika Anna Możdżanowska, Jessica Stegrud  |
| ID        | Simona Baldassarre, Isabella Tovaglieri, Christine Anderson, Annika Bruna  |
| 0         | 0  |

Key to symbols:

+ : in favour

- : against

0 : abstention

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

|   |   |
|---|---|
| <b>Date adopted</b>                           | 30.11.2020  |
| <b>Result of final vote</b>                   | +: 45<br>-: 10<br>0: 13   |
| <b>Members present for the final vote</b>     | Magdalena Adamowicz, Katarina Barley, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Patrick Breyer, Saskia Bricmont, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Marcel de Graaff, Anna Júlia Donáth, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Balázs Hidvéghi, Evin Incir, Sophia in 't Veld, Patryk Jaki, Livia Járóka, Marina Kaljurand, Assita Kanko, Fabienne Keller, Peter Kofod, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Nicola Procaccini, Emil Radev, Paulo Rangel, Terry Reintke, Diana Riba i Giner, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoş Tudorache, Milan Uhrík, Tom Vandendriessche, Bettina Vollath, Jadwiga Wiśniewska, Elena Yoncheva, Javier Zarzalejos |
| <b>Substitutes present for the final vote</b> | Beata Kempa, Leopoldo López Gil, Kris Peeters, Anne-Sophie Pelletier, Sira Rego, Franco Roberti, Miguel Urbán Crespo, Hilde Vautmans  |

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

| 45        | +   |
|-----------|---|
| PPE       | Magdalena Adamowicz, Vasile Blaga, Ioan-Rareş Bogdan, Lena Düpont, Andrzej Halicki, Jeroen Lenaers, Leopoldo López Gil, Nuno Melo, Kris Peeters, Emil Radev, Paulo Rangel, Ralf Seekatz, Tomas Tobé, Javier Zarzalejos                              |
| S&D       | Katarina Barley, Pietro Bartolo, Caterina Chinnici, Maria Grapini, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Lukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Franco Roberti, Birgit Sippel, Bettina Vollath, Elena Yoncheva |
| Renew     | Anna Júlia Donáth, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Ramona Strugariu, Dragoş Tudorache, Hilde Vautmans, Sophia in 't Veld, Michal Šimečka  |
| Verts/ALE | Patrick Breyer, Saskia Bricmont, Damien Carême, Alice Kuhnke, Terry Reintke, Diana Riba i Giner, Tineke Strik   |
| NI        | Laura Ferrara   |

| 10  | -   |
|-----|---|
| PPE | Balázs Hidvéghi, Livia Járóka, Nadine Morano  |
| ID  | Nicolas Bay, Nicolaus Fest, Jean-Paul Garraud, Peter Kofod, Tom Vandendriessche, Marcel de Graaff |
| NI  | Milan Uhrík   |

| 13      | 0  |
|---------|--|
| PPE     | Vladimír Bilčík  |
| ID      | Annalisa Tardino   |
| ECR     | Jorge Buxadé Villalba, Patryk Jaki, Assita Kanko, Beata Kempa, Nicola Procaccini, Jadwiga Wiśniewska |
| GUE/NGL | Cornelia Ernst, Anne-Sophie Pelletier, Sira Rego, Miguel Urbán Crespo                                |
| NI      | Martin Sonneborn   |

Key to symbols:

+ : in favour

- : against

0 : abstention