
NOT ADDING UP

THE FADING PROMISE OF EUROPE'S DUBLIN SYSTEM

EU ASYLUM: TOWARDS 2020 PROJECT



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By Susan Fratzke

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The research project aims to contribute to development of the Common European Asylum System (CEAS) consistent with the European Union's interests, values, and obligations, through research on challenges and options on asylum to inform the development of evidence-based policies and laws. The project will involve broad consultations with Member States, EU institutions, civil society, international organisations, and academics, to draw on their expertise and seek to work towards consensus on the many key questions around responses to asylum on which perspectives differ.

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EXECUTIVE SUMMARY

Europe's Dublin system has been the subject of intense political debate since its inception. It has, on the one hand, been lauded as the cornerstone of the Common European Asylum System (CEAS), and on the other vilified as a failure of solidarity and burden-sharing among European Union (EU) Member States.¹

In truth, the Dublin system was not designed to equalise or share asylum burdens. Rather, its chief purpose is simply to create a mechanism that swiftly assigns responsibility for processing an individual asylum application to a single Member State. By establishing a legal framework for assigning responsibility, the Dublin Regulation (and its predecessor, the Dublin Convention) seeks to ensure quick access to protection for those in need, and to discourage abuses of the asylum system by preventing applicants from 'shopping' for the Member State with the most favourable procedures or reception conditions. Dublin—or a mechanism like it—will remain a necessity as long as separate national asylum systems exist within a European area that lacks internal border controls. As implemented, however, the Dublin Regulation is largely failing to achieve its two primary goals.

Low effective transfer rates and a persistently high incidence of secondary movement among asylum seekers (both before and after filing an application) have undermined the efficiency of the Dublin system. In addition, Dublin has been criticised for leading to unnecessary transfers, particularly when cases could be dealt with quickly (as with manifestly unfounded claims) or when Member States exchange similar numbers of cases. Asylum advocates, meanwhile, have raised serious concerns about the delays that Dublin procedures cause in the evaluation of protection claims. Such delays may disrupt family unity and put vulnerable individuals at risk. Applicants may be returned to nations (e.g., Greece) whose struggling asylum systems lack the capacity to process their claims or provide them with adequate reception conditions.

The criticism most often levelled at the Dublin Regulation is that it has prompted a transfer of asylum-processing responsibilities from Europe's north to its southern borders—a charge that is not borne out by the evidence.

The criticism most often levelled at the Dublin Regulation, however, is that it has prompted a transfer of asylum-processing responsibilities from Europe's north to its southern borders—a charge that is not borne out by the evidence. While northern European states clearly send more transfer requests than do southern ones, and those in the south are most likely to be on the receiving end of requests, the disparity in numbers of actual transfers is relatively small. In fact, many of those countries perceived to be 'sending' states also receive a substantial number of transfers.

The 2013 recast of the Dublin Regulation seeks to address some of these concerns by clarifying how Dublin assigns responsibility for asylum claims, by tightening deadlines and by creating an 'early warning and preparedness mechanism' to support Member States whose asylum systems are under strain. Most significantly, the recast Dublin (known

¹ Throughout this report "Member State" refers both to Member States of the European Union and non-EU states that have acceded to the Dublin Regulation: Iceland, Norway, Switzerland, and Liechtenstein. All EU Member States opted to participate in the Dublin II Regulation, including Ireland and the United Kingdom. The participation of Denmark, which is not bound by the asylum acquis, is governed by a specific treaty with the European Union (Council of the European Union, 'Council Decision of 21 February 2006 on the Conclusion of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No. 343/2003 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 and Council Regulation (EC) No. 2725/2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention', *Official Journal* (OJ) 2006 L 66/37, 21 February 2006, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1425413295979&uri=OJ:L_2006_066_R_0037_01). Participation by non-EU Members is also negotiated via bilateral treaties: for Iceland and Norway see Council of the European Union, 'Council Decision of 21 February 2006 on the conclusion of a Protocol to the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway Text with EEA relevance', OJ 2006 L 57/15, 21 February 2006, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1425413813517&uri=OJ:L_2006_057_R_0015_01; for Switzerland and Liechtenstein see Council of the European Union, 'Council Decision of 28 January 2008 on the conclusion on behalf of the European Community of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland', OJ 2008 L 53/3, 28 January 2008, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1425413997843&uri=OJ:L_2008_053_R_0003_01. The same legal basis allowing these states to participate in Dublin II applies to 2013 Dublin III Regulation.

as Dublin III) recognises the responsibility of the transferring Member State to ensure that applicants' rights are respected at destination—reasoning used by courts to halt transfers to Greece.

The practical effects of the amended regulation remain to be seen (and will likely depend in part on the interpretation of European courts); what is obvious, meanwhile, is that critical gaps in the system remain unfilled. Crucially, the regulation does not recognise or address the main factor underlying the Dublin system's problems: despite the harmonisation efforts of the CEAS, essential differences remain in the asylum procedures, reception conditions, and integration capacity of EU Member States. Such differences invalidate Dublin's core assumption that asylum applicants will receive equal consideration and treatment wherever they submit their claims. Addressing this key issue, however, may lie beyond the scope of the Dublin Regulation as it now stands.

There is growing agreement among Member States and advocates alike that the Dublin system is in need of adjustment to reflect the divergent realities of Member States' asylum systems (although opinions differ on the extent of the adjustment required). The European Commission's scheduled 'fitness check' of the Dublin recast in 2016 presents a unique opportunity to consider future adjustments to the responsibility distribution mechanism. In particular, the following two topics are ripe for review:

- **Priorities for further information gathering.** There is a dearth of high-quality data on the implementation of many aspects of the Dublin system; exploring these under-researched areas should be a priority. Better information is needed on the following items in particular: the duration of Dublin procedures, causes of delays, barriers to completing transfers, the costs of Dublin mechanisms at the national level, and the impact of Dublin transfers on successful applicants' integration prospects.
- **Avenues for further policy development.** Small-scale measures to improve communication and collaboration among Member States' asylum authorities on individual cases might streamline decision-making and transfer procedures. Also, it may be worth revisiting previous proposals for mechanisms to reduce unnecessary transfers by fast-tracking certain cases or 'cancelling out' transfers between Member States exchanging similar numbers of transfer requests.

Finally, the scale of current pressures on asylum systems in Europe suggests another possibility: there may be room to move beyond limited policy adjustments and consider deeper changes to how the CEAS assigns responsibility for cases. Possibilities include capacity-sharing arrangements such as joint processing or mutual recognition of asylum decisions. Measures like these would not only negate the need for the Dublin system, but could also contribute to reducing irregular movement within the European Union by accommodating asylum seekers' preferences, a major driver of onward migration. In the coming years the Commission and Member States will need to seriously consider whether it is best to continue investing in the Dublin system as it stands or to explore more comprehensive changes.

I. INTRODUCTION

The crises repeatedly plaguing individual asylum systems across Europe in recent years have refocused public attention on the need for a truly common asylum system, in law and practice, within the European Union (EU). This is not a new objective. Building a functioning Common European Asylum System (CEAS) has been a stated goal of successive Council of the European Union presidencies since the Council's 1999 Tampere conclusions.² The various directives and regulations on asylum procedures, qualification standards, and reception conditions adopted by the EU Council and European Parliament since 1999—and their subsequent revisions—have sought to move the European Union and its Member States closer to achieving this goal. But as some Member States face increased asylum pressures, a consensus has begun to build among asylum advocates, some national governments, and EU officials alike that key parts of the CEAS, and their implementation in practice, require extensive rethinking.

² In a special meeting in Tampere, Finland in 1999, the European Council committed to 'work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention'. Among the specific measures called for by the Council Conclusions was 'a clear and workable determination of the State responsible for the examination of an asylum application'. See European Council, 'Presidency Conclusions: Tampere European Council, 15 and 16 October 1999', accessed 1 February 2015, www.consilium.europa.eu/en/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm. More recently, both the Hague (2005) and Stockholm (2010) programmes have made further development and implementation of the Common European Asylum System (CEAS) a priority. See European Council, 'The Hague Programme: strengthening freedom, security and justice in the European Union', OJ C 53/1, 3 March 2005, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422827009672&uri=CELEX:52005XG0303%2801%29>; European Council, 'The Stockholm Programme—An Open and Secure Europe Serving and Protecting Citizens', OJ C 115/01, 4 May 2010, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2010:115:TOC>.

At the heart of the debate over the CEAS are the 2003 Dublin Regulation (Dublin II, which took the place of the Dublin Convention of the 1990s) and its 2013 recast (Dublin III). (See Box 1.) This regulation determines which Member State is responsible for examining an asylum claim lodged within the European Union. It has on one side been unequivocally affirmed as a ‘cornerstone’ of the CEAS³ by many of the top asylum-receiving Member States, and on the other borne intense criticism from asylum advocates and Europe’s border states.

Box 1. Evolution of the Dublin system

The Member States of the then-European Community first negotiated the Dublin Convention in 1990 in conjunction with the agreement of the Schengen Convention removing internal borders for most states within the European Community (known as the Schengen zone). The Dublin Convention was initially signed by Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. Austria and Sweden joined in 1997, and Finland joined in 1998.

The Dublin Regulation (known as Dublin II) replaced the Dublin Convention in 2003. Dublin II essentially maintained but clarified the criteria for determining responsibility under the Dublin Convention, and brought the Dublin system fully under EU governance procedures, which had evolved since the signing of the original Convention. Dublin II was accompanied by the EURODAC Regulation, which established a database for recording fingerprint data of asylum applicants to aid implementation of the Dublin system. All EU Member States except Denmark acceded to Dublin II; Denmark, which is not bound to EU asylum rules, joined the same year via a bilateral agreement. Non-EU Schengen zone members also participated in Dublin II: Norway and Iceland joined in 2006 and Switzerland and Luxembourg in 2008 (although Norway and Iceland had prior agreements under the Dublin Convention).

In 2013, the European Council and Parliament agreed upon a revision of the Dublin Regulation (known as Dublin III) that sought to address some criticisms of the 2003 legislation. In particular, Dublin III further clarified the hierarchy of criteria determining Member State responsibility and established a mechanism to warn of potential problems with Member States’ asylum systems. Dublin III came into effect in January 2014.

Source: European Community, ‘Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities’, OJ C 254/01, 19 August 1997, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:41997A0819\(01\)&qid=1422831783789](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:41997A0819(01)&qid=1422831783789); Council of the European Union, ‘Council Regulation EC No. 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’, OJ 2003 353/2003, 25 February 2003, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422877999721&uri=CELEX:32003R0343>; European Union, ‘Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 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)’, OJ 2013 L 180/31, 29 June 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422877999721&uri=CELEX:32013R0604>.

While some Member States believe Dublin is essential to the effective operation of their asylum systems, others feel it unfairly burdens them with additional responsibilities that jeopardise their ability to provide protection. Asylum advocates have continually expressed concerns that Dublin interferes with asylum seekers’ ability to quickly access protection, and may expose them to additional, unnecessary risks by returning them to Member States that lack the capacity to effectively process their applications or by separating them from family members. Meanwhile, several of the Member States that consistently receive the most asylum applications—and whose systems have effectively processed them—have pointed to Dublin as an important mechanism for ensuring other governments are fulfilling their responsibilities under the CEAS.⁴

While Dublin fills a crucial gap in the CEAS—by providing a mechanism to determine responsibility for asylum claims—the system as it currently functions is failing to achieve its twin goals of streamlining asylum procedures and providing swift access to protection.

In recent years, various stakeholders, including the European Commission and advocacy groups, have conducted extensive evaluations of Dublin II’s impact and functioning, and made numerous recommendations on how to mitigate some of its less desirable consequences. This report draws on the existing literature and on interviews with select

3 See the European Council’s 2009 Stockholm Programme, European Council, ‘The Stockholm Programme’, last updated 16 March 2010, http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/jl0034_en.htm.

4 See the 2010 declaration of the French and German delegations to the European Asylum Conference: Council of the European Union, ‘Joint French-German Contribution to the European Asylum Conference on 13th and 14th September 2010’, Brussels, 5 October 2010, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014507%202010%20INIT>.

Member State officials to present a critical assessment of the Dublin system. The report finds that while Dublin fills a crucial gap in the CEAS—by providing a mechanism to determine responsibility for asylum claims—the system as it currently functions is failing to achieve its twin goals of streamlining asylum procedures and providing swift access to protection. A mechanism such as Dublin will be necessary as long as separate national asylum systems exist in a European area without internal border controls. But adjustments are needed—within the framework of the current legislation—to enable the system to live up to its potential.

The report begins by examining the key criticisms of Dublin II, with special attention to those that address the efficient operation of the European asylum system and the ability of applicants to quickly access asylum procedures and protection. The report then evaluates the potential of the recently adopted recast of the Regulation (Dublin III), and concludes by recommending several topics for consideration during the European Commission’s scheduled 2016 review of the Dublin system.

II. BACK TO THE BASICS: DUBLIN’S FOUNDING PRINCIPLES

While the at-times perverse consequences of the Dublin system have been described as a failure of ‘responsibility sharing’ among EU Member States, the Dublin II Regulation⁵ and the preceding Dublin Convention were not originally designed as a mechanism to share responsibility. Adopted in 2003 as the first element of the new Common European Asylum System, Dublin II aimed simply to establish a mechanism *swiftly* to determine the Member State responsible for examining an asylum application based on agreed-upon criteria—and to ensure that all asylum claims receive a substantive examination.

The principles underpinning today’s system originated in the 1990 Dublin Convention, adopted shortly after the implementation of the border-free Schengen zone within what was then the European Community. It soon became clear to Member States that removing Europe’s internal borders had created a need for greater harmonisation in other policy areas, including asylum. In facilitating internal mobility, Schengen made it possible for asylum seekers to move across EU borders, and thus introduced grounds for Member States to dispute responsibility for examining asylum claims. The Dublin Convention was therefore designed to forestall the anticipated twin phenomenon of ‘asylum shopping’ (i.e., asylum seekers choosing to submit applications to those Member States perceived as most likely to accept them or to offer the most generous reception benefits) and ‘asylum seekers in orbit’ (when no Member State accepts responsibility for an application, delaying access to protection).

The Dublin II Regulation and the preceding Dublin Convention were not originally designed as a mechanism to share responsibility.

The two main purposes of the Dublin system, as affirmed in its 2013 recast (Dublin III), are therefore (1) to ensure quick access to protection for those in need, and (2) to improve the efficiency of asylum procedures and reduce costs to Member States by deterring asylum seekers from submitting multiple applications.⁶ To achieve this, the Regulation sets out a hierarchy of criteria to allocate responsibility for a claim, of particular use when an applicant may have transited through more than one Member State (see Box 2).

⁵ Here and throughout, the Dublin II Regulation refers to Council of the European Union, ‘Council Regulation (EC) No. 343/2003’. Dublin III is used to reference European Union, ‘Regulation (EU) No. 604/2013’. This report draws on research and analysis of the 2003 Dublin II and EURODAC regulations, which applied to asylum claims and requests to assume responsibility submitted before 1 January 2014. Dublin II’s implementation has been the subject of the most relevant and comprehensive analysis to date. Where applicable, the report also refers to the recast Dublin III Regulation, adopted in June 2013, which applies to asylum claims and requests for take back or take charge submitted after 1 January 2014.

⁶ See Recitals 4 and 5 of the Dublin III Regulation: European Union, ‘Regulation (EU) No. 604/2013’.

Box 2. The Dublin hierarchy of criteria

The Dublin Regulation stipulates that the criteria for determining the Member State responsible for examining an asylum application are to be applied in the following order:

Family unity. The first three criteria for determining responsibility (Articles 8 through 11 in Dublin III; Articles 6 through 8 in Dublin II) prioritise family unity and the welfare of unaccompanied minors. Asylum seekers who have family members with recognised refugee status or who are in the process of applying for asylum will have their claims determined in the state where their nuclear family members are located. Where an unaccompanied minor has family present in another Member State, that Member State will be responsible for examining his or her claim (but only when in the best interests of the minor).

Legal residence or visas. In cases where no family is present, asylum seekers with a valid (or recently expired) residence document or visa will have their claims assessed by the Member State that issued the documentation (Articles 12 and 14 in Dublin III; Article 9 in Dublin II).

Illegal entry. If none of the above criteria applies, applicants without residence documents or family present who have illegally transited through another Member State when entering the territory of the European Union are the responsibility of the first Member State in which they arrived (Article 13 in Dublin III; Article 10 in Dublin II).

Place of application. Finally, where none of the above criteria applies, responsibility lies with the first Member State in which the applicant filed a claim of asylum (Article 13 in Dublin II).

Source: Council of the European Union, 'Council Regulation (EC) No. 343/2003'; European Union, 'Regulation (EU) No. 604/2013'.

Both Dublin II and Dublin III are clear that family unity should take precedence over criteria involving documentation or entry, which fall near the bottom of the list. In practice, however, asylum authorities do not always apply the hierarchy of criteria as intended. In fact the criteria involving documentation or point of entry are most often used⁷—and are often at the centre of the debates surrounding Dublin procedures.

Both Dublin II and its recast allow Member States to choose to examine an application for which they would not normally be responsible (through the 'discretionary clause', Article 17[1] of Dublin III). Member States can also request another state to take charge of an application for humanitarian reasons, such as serious health concerns or family unity (where an extended family member is present in the hosting or requested state, Article 17[2] of Dublin III).⁸

Several mechanisms have been instituted to assist Member States in implementing the Dublin system. The EURO-DAC Regulation, adopted alongside the Dublin II Regulation in 2003, created a centralised system and database for taking and storing the fingerprints of asylum applicants and individuals apprehended while crossing the external borders of the European Union. Through the EURODAC central unit, authorities are able to check whether the fingerprints of an asylum seeker have been recorded in the database, potentially indicating that she or he has already applied for asylum elsewhere or transited through another Member State upon entering the European Union (suggesting that responsibility for examining the application lies elsewhere). Recently, asylum authorities have also had access to information on the visa applications of asylum seekers, as provided to Schengen states by the new Visa Information System (VIS),⁹ in the final stages of implementation.

The European Asylum Support Office (EASO), which became operational in 2011, also provides technical assistance to Member States, although its responsibilities are not limited to implementation of the Dublin Regulation.¹⁰ EASO supplies information, training, and emergency assistance to Member States to support the effective operation of their asylum systems in line with international standards and EU law.

⁷ See analysis of Eurostat data in Section III of this report.

⁸ The predecessor to Article 17(1) was Article 3(2) of the 2003 Regulation, which was also known as the 'sovereignty clause'. Article 17(2) of the 2013 Regulation replaced Article 15 of the 2003 Regulation, which was referred to as the 'humanitarian clause'.

⁹ The Visa Information System (VIS) was established in 2008 by 'Regulation No. 767/2008 of the European Parliament and of the Council of 9 July 2008 Concerning the Visa Information System (VIS) and the Exchange of Data between Member States on Short-Stay Visas'. The VIS records biometric data on applicants for visas to participating Member States, in addition to data on the types of visas issued and their dates of validity. VIS fingerprint data are available to asylum officials for the purposes of determining the appropriate application of Dublin's 'hierarchy of criteria'. The full text of Regulation 767/2008 is available here: European Commission, 'Regulation (EC) No. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)', OJ L 218 13 August 2008, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008R0767>.

¹⁰ The European Asylum Support Office (EASO) was established in 2010 through 'Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office', OJ L 132/11, 29 May 2010, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1418771066395&uri=CELEX:32010R0439>.

The necessity of the Dublin system

While Dublin II has been the target of heavy criticism for the additional burden it places on some Member States and the barriers to protection it may create, there can be no doubt that it fills a crucial gap by creating an orderly legal framework for determining states' responsibilities for assessing asylum claims. A 2007 evaluation by the European Commission found that the Dublin system was essentially fulfilling its goals, as it provided 'a workable system for determining responsibility for the examination of asylum applications' that had broad support from Member States.¹¹ Some Member State officials are quick to point out that Dublin is far better than the alternative: ad hoc negotiations between Member States to determine responsibility for protection applications (as done throughout most of the 1990s, before the Dublin Convention came into effect in 1997).¹² It is worth noting that the United Nations High Commissioner for Refugees (UNHCR) welcomed the adoption of the original Dublin Convention as a tool that would enable states to provide protection more effectively by reducing abuse of the asylum system—widely perceived to be a problem at the time—and preventing lengthy disputes over responsibility for asylum claims.¹³

The system has clearly proven to be an effective mechanism for Member States to communicate about responsibility for asylum claims.

The system has clearly proven to be an effective mechanism for Member States to communicate about responsibility for asylum claims—a key goal of the original Convention. And data on requests for another Member State to assume responsibility for an applicant indicate its frequent use. Between 2008¹⁴ and 2013 EU Member States exchanged more than 300,000 requests to take back or take charge of asylum applications.¹⁵ By way of comparison, Member States reported more than 1.7 million asylum applications during the same period.¹⁶ This suggests that around 17 per cent of asylum applications filed in the European Union¹⁷ in 2008-13 resulted in a request that another Member State take back or take charge of the application.

The EURODAC Regulation has been one of the most successful elements of the Dublin system, and may in fact be key to the system's functioning.¹⁸ The overwhelming majority of take-back and take-charge requests submitted in recent years have been based on EURODAC hits.¹⁹ In 2013, for example, almost 65 per cent of total outgoing requests were based on EURODAC data.²⁰

- 11 European Commission, 'Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin System', EUR-Lex COM(2007) 742, 6 June 2007, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007DC0299>; and European Commission, 'Commission staff working document accompanying document to the Report from the Commission to the European Parliament and the Council on the Evaluation of the Dublin system—Annex to the communication on the evaluation of the Dublin system', EUR-Lex COM(2007) 299 final, 5 June 2007, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0742>.
- 12 Interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014; interview with official in the Department of Asylum, Rescue, and Return, Directorate General for Immigration, Dutch Ministry of Security and Justice, 27 June 2014.
- 13 United Nations High Commissioner for Refugees (UNHCR), 'UNHCR Position on Conventions Recently Concluded in Europe (Dublin and Schengen Conventions)', (news release, 16 August 1991), www.unhcr.org/43662e942.html; see also Kay Hailbronner, 'The Concept of "Safe Country" and Expeditious Asylum Procedures: A Western European Perspective', *International Journal of Refugee Law* 5, no. 1 (1993): 31–65, <http://ijrl.oxfordjournals.org/content/5/1/31.short>.
- 14 Dublin II request and transfer data are available for most Member States beginning in 2009.
- 15 Note that this includes all countries participating in Dublin, not just EU Member States. Eurostat, 'Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubro]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubro&lang=en.
- 16 Eurostat, 'Asylum and New Asylum Applicants by Citizenship, Age, And Sex, Annual Aggregated Data (rounded)' [migr_asyappctza], updated 8 October 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en.
- 17 This includes applications filed in both EU and non-EU Dublin states.
- 18 Without a EURODAC hit (see definition in footnote below), some Member States report difficulty reaching agreement with other Member States on which party is responsible for claims. Interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014.
- 19 A 'hit' occurs in the EURODAC database when fingerprint data submitted after an asylum application has been filed (or after an individual has been apprehended for illegal residence or entry) match data already in the EURODAC system. A hit indicates that an individual has already filed an asylum application or illegally entered the territory of the European Union. Hits may be either foreign or domestic: foreign hits occur against data previously registered by another Member State, while domestic hits occur against data filed by the same Member State. For further information, see European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), *Annual report on the 2013 activities of the Central Unit of Eurodac pursuant to Article 24(1) of Regulation (EC) No. 2725/2000* (Brussels: European Commission, 2013), www.eulisa.europa.eu/Publications/Reports/eulisa_report_eurodac_en.pdf.
- 20 The significant share of requests that use EURODAC hits as evidence has led many asylum advocates to voice concern. Some recent evaluations criticise Member States for relying too heavily on EURODAC hits to determine responsibility for examining applications, potentially overlooking evidence that may point to the relevance of other, higher-ranked criteria (such as family unity, see Table 1). See the 2013 report of the Dublin Transnational Project, which synthesises national nongovernmental organisation (NGO) reports from 11 Member States: Dublin Transnational Project, *Dublin II Regulation: Lives on hold* (Brussels: European Council on Refugees and Exiles, 2013), www.dublin-project.eu/dublin/content/download/6193/75371/version/6/file/Dublin+FINAL+REPORT.pdf.

Box 3. Dublin terminology defined

Take charge. When asylum authorities determine that another Member State is responsible for an asylum application based on the Dublin hierarchy of criteria, the first Member State may request the second Member State to ‘take charge’ of the application. A request to take charge must be submitted within three months of receiving an application for asylum (or two months from a EURODAC hit); the receiving Member State then has two months to accept or reject the request. If the request is accepted, the transfer of the applicant must be completed within six months, or up to 18 months if authorities believe the applicant has absconded.

Take back. One Member State may request another to ‘take back’ an asylum seeker when the applicant is found to have a protection claim under review in that Member State. Take-back requests may also be filed for applicants who have filed and withdrawn a claim or have already had an asylum application rejected in another Member State. A request to take back must be filed within three months of when a protection application was submitted or when authorities became aware that another Member State may be responsible (or within two months of a EURODAC hit), and the receiving Member State must reply within one month. Member States have six months to complete the transfer, or up to 18 months if the applicant absconds.

Take-charge procedures apply to applicants who have submitted their claim in only one Member State. By contrast, take-back requests are initiated in cases where applicants have submitted claims in more than one Member State.

Source: Council of the European Union, ‘Council Regulation (EC) No. 343/2003’.

Dublin’s supporters also point, somewhat controversially, to the Regulation’s role as an incentive for all Member States to ensure the effective operation of their asylum systems.²¹ The argument is that without a mechanism to ensure the participation of all Member States in the CEAS, those without fully developed procedures would ‘free ride’ on the efforts of other Member States to provide protection, violating the ‘principle of responsibility’ upon which the CEAS is built.²² Proponents of this view argue that the Dublin Regulation simply provides a legal framework for Member States to uphold their existing responsibilities.²³

Arguments on the other side, meanwhile, have put Dublin’s implementation at the centre of controversy for years. The rest of this report examines the concerns of critics, especially those related to Dublin’s impacts on (1) the efficiency of the European asylum system and (2) asylum seekers’ access to protection.

III. NOT MEASURING UP: EVALUATING THE EFFICIENCY OF THE DUBLIN SYSTEM

Dublin, including its 2013 recast, faces two key criticisms. First, it pushes responsibility for examining claims to Europe’s external borders—and to states that may be ill-equipped to handle this additional burden. Second, it causes delays that put the individuals and families subject to its provisions at risk for hardship and even rights violations. Dublin has also come under scrutiny for its costs and low effective transfer rates; meanwhile, the incidence of secondary movement remains high. Although Dublin II was established with the primary goal of increasing the efficiency of the European asylum system, some reports have suggested that in certain cases Dublin transfers may add unnecessary hurdles to the asylum process.²⁴ These challenges have been recognised by the Commission; improving the efficiency of the Dublin system was an explicit goal of the recast process.²⁵

21 Interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014.

22 For a full discussion of the concept of ‘free riding’ within the context of the CEAS, see Eiko Thielemann, ‘Towards a Common European Asylum Policy: Forced Migration, Collective Security, and Burden-Sharing’, in *Immigration Policy and Security: U.S., European, and Commonwealth Perspectives*, eds. Terri Givens, Gary P. Freeman, and David L. Leal (Abingdon, UK: Routledge, 2009).

23 See the 2010 declaration of the French and German delegations to the European Asylum Conference: Council of the European Union, ‘Joint French-German Contribution’.

24 Dublin Transnational Project, *Dublin II Regulation: Lives on hold*; Philip Amaral, *Protection Interrupted: The Dublin Regulation’s Impact on Asylum Seekers’ Protection (The DIASP Project)* (Brussels: Jesuit Refugee Service Europe, 2013), www.jrs.net/assets/Publications/File/protection-Interrupted-JRS-Europe.pdf.

25 European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions—Policy Plan on Asylum: An Integrated Approach to Protection across the EU’, SEC (2008) 2029, 17 June 2008, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52008DC0360>.

A. An uneven burden

Dublin has been most widely criticised for the additional burden it is seen to place on those Member States most likely to receive Dublin transfers. A common perception is that the Dublin Regulation results in a substantial transfer of responsibility from northern Member States to the borders of the European Union.²⁶ An initial look at data on Dublin II requests seems to confirm this: in 2012, more than 40 per cent of take-charge and take-back requests were submitted by just two Member States, Germany and Switzerland,²⁷ and in 2013 Germany alone accounted for 43 per cent of requests.²⁸ Together, Italy and Poland received approximately 40 per cent of requests in both 2012 and 2013 (see Table 1).

Table 1. Outgoing requests to take charge or take back, top five sending states, 2013

STATE	TOTAL OUTGOING REQUESTS	SHARE OF TOTAL BASED ON EURODAC (%)	TOTAL TAKE BACK	TAKE CHARGE			
				TOTAL	OF WHICH		
					FAMILY REASONS (ART. 6-8, 14)	DOCUMENTATION/ ENTRY (ART. 9-12)	HUMANITARIAN (ART. 15)
GERMANY	32,796	67.4	30,053	2,743	73	2,664	6
SWEDEN	10,162	53.5	5,350	4,812	57	4,737	18
SWITZERLAND	9,679	62.8	5,928	3,751	42	3,656	53
FRANCE	5,903	41.4	5,038	865	104	757	4
AUSTRIA	5,104	73.0	4,344	760	37	722	1
TOTAL (ALL DUBLIN STATES)	76,358	63.4	59,079	17,279	1,402	15,608	269

Notes: Because of discrepancies in how participating states report outgoing and incoming requests, the numbers here are based on outgoing Dublin request data only. The following countries had not yet reported outgoing request numbers for 2013: the Netherlands, the Czech Republic, Denmark, and the United Kingdom. Croatia joined the European Union in July 2013 and is therefore excluded. Totals here include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Source: Eurostat, 'Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubro]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubro&lang=en.

²⁶ See for example 'Europe's huddled masses: Rich countries must take on more of the migration burden', *The Economist*, 16 August 2014, www.economist.com/news/leaders/21612152-rich-countries-must-take-more-migration-burden-europes-huddled-masses.

²⁷ See Appendix Table A-1. It is important to note that data on Dublin requests and transfers are not exact. There are substantial differences between incoming and outgoing requests and transfers reported to Eurostat by participating states, and these self-reported data diverge to a large extent from that recorded by EURODAC.

²⁸ The number of requests submitted by Germany in 2013 almost tripled over 2012 (see Tables 1 and A-1), likely due—at least in part—to the substantial increase in asylum applications seen by Germany over the same period. By comparison, in 2010 and 2011 Germany submitted approximately 9,500 requests. See Eurostat, 'Outgoing "Dublin" Requests'.

Table 2. Outgoing requests to take charge or take back, top five receiving states, 2013

STATE	TOTAL REQUESTS	SHARE OF TOTAL BASED ON EURODAC (%)	TOTAL TAKE BACK	TAKE CHARGE			
				TOTAL	OF WHICH		
					FAMILY REASONS (ART. 6-8, 14)	DOCUMENTATION/ ENTRY (ART. 9-12)	HUMANITARIAN (ART. 15)
ITALY	18,827	64.7	10,678	8,149	71	8,070	8
POLAND	15,549	56.3	14,953	596	48	543	5
HUNGARY	7,219	79.2	6,821	398	46	350	2
BELGIUM	4,282	63.9	4,040	242	66	167	9
FRANCE	3,722	37.8	2,241	1,481	37	1,436	8
TOTAL (ALL DUBLIN STATES)	76,358		59,079	17,279	1,402	15,608	269

Notes: Because of discrepancies in how participating states report outgoing and incoming requests, the numbers here are based on outgoing Dublin request data only. The following countries had not yet reported outgoing request numbers for 2013: the Netherlands, the Czech Republic, Denmark, and the United Kingdom. Croatia joined the European Union in July 2013 and is therefore excluded. Totals include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Source: Eurostat, 'Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubro]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubro&lang=en.

A look at the number of transfers that are *actually carried out*, however, tells a different story. Dublin does not appear to result in a large-scale shift of asylum seekers to Europe's external borders. Italy and Poland have always been among the major receiving states.²⁹ Most of the major Dublin sending states, meanwhile, are substantial transfer destinations themselves. (Germany has consistently been among the top five receiving states since 2009. Austria and Sweden have been among the top ten destinations, each receiving between 500 and 900 transfers annually since 2009. Norway received between 400 and 700 transfers per year in the same period.)³⁰ This suggests more of a circulation of requests among the largest asylum destinations than a push to the borders.³¹

Dublin does not appear to result in a large-scale shift of asylum seekers to Europe's external borders.

In fact, application of the Regulation may in some cases make the distribution of asylum seekers among Member States *more* equal. Two of the countries sending the most Dublin transfers (Germany and Sweden) have also been among the European Union's top five destinations for asylum applicants since at least 2008—an argument often cited by these states in support of Dublin.³² Germany alone received close to 130,000 asylum applications in 2013, almost twice as many as the other four top Dublin receiving states combined (Italy, Poland, Belgium, and Spain).³³ Previous research indicates that even when relative burdens are considered (e.g., asylum claims per capita), few of the states that bear a disproportionate share of responsibility are at Europe's borders.³⁴ It is important to note, however, that

²⁹ Greece was also a substantial destination until most Member States halted transfers to the country in early 2011.

³⁰ Eurostat, 'Outgoing "Dublin" Requests'.

³¹ Ibid.

³² Council of the European Union, 'Joint French-German Contribution'.

³³ It should be noted that reports suggest many asylum seekers move through Italy without filing an application for protection. See Maria de Donato, *Asylum Information Database, National Country Report: Italy* (Brussels: European Council on Refugees and Exiles, 2014), www.refworld.org/docid/5406c8ab4.html. Also see UNHCR, UNHCR Recommendations; D. Parvaz, 'Italy's Disappearing Migrants', Al Jazeera, 23 July 2014, www.aljazeera.com/indepth/features/2014/07/italy-disappearing-migrants-2014714193539238141.html. Together, Italy, Poland, Belgium, and Spain received 67,575 applications for asylum in 2013. Eurostat, 'Outgoing Transfers by Receiving Country and Type of "Dublin" Request [migr_dubto]', updated 22 November 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubto&lang=en; Eurostat, 'Asylum and New Asylum Applicants'.

³⁴ An assessment by Eiko Thielemann based on 1994-2002 data found that Switzerland, the Netherlands, and Belgium are among the Dublin signatories with the highest protection responsibilities per capita; see Thielemann, 'Towards a Common European Asylum System'. A more recent analysis found that between 2008 and 2012, Sweden, Belgium, Greece, and Austria had all received substantially more asylum applications than would be expected if applications were distributed according to gross domestic product (GDP), population, land area, and unemployment rates. See Steffen Angenendt, Marcus Engler, and Jan Schneider, 'European Refugee Policy: Pathways to Fairer Burden-Sharing' (SWP Comments, German Institute

many applicants for asylum in Germany and Sweden did in fact arrive via border states such as Italy and Greece. If transfer or fingerprinting mechanisms were implemented with greater effectiveness, the shift of responsibility to border states would likely be more substantial.

Numbers of applications do not, meanwhile, take into account the *capacity* of Member States to process and accommodate additional asylum seekers. Asylum systems that lack proper reception facilities or adequately trained staff may find it difficult to accommodate additional applicants for international protection. Bulgaria, for example, received approximately 7,000 new asylum applications in 2013—less than one-tenth the number received by Germany, but enough to put substantial pressure on an already weak asylum system.³⁵ In response, UNHCR called for a temporary suspension of Dublin transfers to Bulgaria in early 2014 (conditions have since improved sufficiently for transfers to resume in cases where asylum seekers are not found to be especially vulnerable, e.g. unaccompanied children or cases with special needs).³⁶

Transfers to Italy have also come under heavy scrutiny in recent years, although the additional burden placed on Italy by Dublin is inarguable—and much more substantial than that placed on Bulgaria. In 2013 Italy received nearly one-quarter of all take-charge and take-back requests and nearly 30 per cent of total transfers—more than half of which came from Switzerland.³⁷ Under Dublin II, transfers to Italy represented 17 per cent of asylum applications in Italy in 2013 (by comparison, in Germany transferees were just over 1 per cent of applicants).³⁸

Accommodating Dublin transferees in addition to rising numbers of new arrivals has clearly been a struggle for the Italian asylum system. A 2011 joint report by Swiss and Norwegian nongovernmental organisations (NGOs) evaluating the state of Italy's asylum procedures and reception conditions, raised serious doubts as to whether Italy was fulfilling its obligations under the European Convention on Human Rights (ECHR) and EU law. A 2013 update to the report found continued deficiencies in the system.³⁹ More recently, UNHCR highlighted ongoing processing delays and inadequate accommodation for applicants in Italy.⁴⁰ Dublin transfers to Italy have been challenged in courts in Austria, Switzerland, and the Netherlands due to poor reception conditions (with limited success outside cases of particularly vulnerable individuals).⁴¹ In November 2014 the Grand Chamber of the European Court of Human Rights (ECtHR) found that gaps and shortcomings in the Italian reception system meant that Switzerland should have requested specific assurances of accommodation and appropriate treatment before returning a family with children to Italy (*Tarakhel v. Switzerland*, hereafter *Tarakhel*).⁴² The case reaffirmed the reasoning behind the Court's 2011 decision in *M.S.S. v. Belgium and Greece* (hereafter *M.S.S.*), finding that compliance with human rights cannot be presumed as a basis for Dublin transfers. Even where conditions are better than in Greece, sending states may need to request assurances of adequate treatment in individual cases from receiving states.

The legal challenges to Dublin transfers to Greece, Italy, Bulgaria, and elsewhere—as well as the serious concerns expressed by UNHCR and others regarding conditions for asylum seekers in these countries—put in question the added burden that Dublin places on Member States. This burden is felt particularly by those systems already struggling to process and accommodate applicants for international protection, or lacking the capacity to quickly scale up their operations to meet new demand. While the additional responsibilities placed on such states may not be large in terms of absolute numbers, transfers can severely tax already overburdened systems and have significant negative consequences for the asylum seekers concerned.

for International and Security Affairs, Berlin, November 2013), www.swp-berlin.org/fileadmin/contents/products/comments/2013C36_adt_engler_schneider.pdf.

35 Eurostat, 'Asylum and New Asylum Applicants'.

36 Austria, Belgium, Denmark, the Netherlands, and Poland temporarily suspended transfers in response to UNHCR recommendations. See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria* (Geneva: UNHCR, 2014), www.refworld.org/docid/52c598354.html; UNHCR, 'Bulgaria: UNHCR says Asylum Conditions Improved, Warns against Transfer of Vulnerable People', (news release, 15 April 2014), www.unhcr.org/534cfae69.html.

37 The impact of the Arab Spring and the corresponding resumption of boat arrivals from Libya is clearly evident: Dublin requests to Italy have increased substantially since 2011 (from 9,370 in 2010 to 18,827 in 2013); Eurostat, 'Outgoing Transfers by Receiving Country and Type of "Dublin" Request [migr_dubto]', updated 22 September 2014.

38 See Table 4.

39 Swiss Refugee Council, *Asylum Procedure and Reception Conditions in Italy: Report on the Situation of Asylum Seekers, Refugees, and Persons under Subsidiary or Humanitarian Protection, with Focus on Dublin Returnees* (Bern: Swiss Refugee Council, 2011), www.refworld.org/docid/4e2699b92.html; Swiss Refugee Council, *Reception Conditions in Italy Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in Particular Dublin Returnees* (Bern: Swiss Refugee Council, 2013), www.refworld.org/docid/5315872c4.html.

40 UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy* (Geneva: UNHCR, 2013), www.unhcr.org/500950b29.pdf.

41 Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

42 European Court of Human Rights (ECtHR), *Tarakhel v. Switzerland*, Application no. 29217/12, judgment of 4 November 2014 (ECtHR, 2014), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148070>.

Box 4. Greece and legal challenges to the Dublin system

Greece has long been the poster child for dysfunction within the Dublin system. Reports by the United Nations High Commissioner for Refugees (UNHCR), Amnesty International, and others dating to the early 2000s have pointed to major shortcomings in Greece's reception and asylum procedures that arguably amounted to grounds for suspending the Dublin mechanism under European human-rights law. These reports found that asylum seekers faced significant barriers to submitting claims (including a lack of facilities to apply outside Athens, long wait times amid a chronic shortage of capacity, lack of interpretation services, and lack of information about application procedures), appeal procedures were inoperative, and applicants were at risk of removal to Turkey and onward *refoulement*. Furthermore, recognition rates were extremely low (between 2007 and 2008, for example, refugee status was granted to fewer than 1 per cent of first-time applicants).

In early 2008 UNHCR called for Member States to utilise Dublin's 'sovereignty clause' to take responsibility for cases that would otherwise be transferred to Greece. At the same time the European Commission began infringement proceedings against the Greek government for denying Dublin returnees access to asylum procedures (the Commission's case was later withdrawn). Several countries (including Finland, Belgium, Norway, and the Netherlands) temporarily and partially halted transfers to Greece between 2008 and 2009.

By 2011 several cases brought before the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) were requesting a halt to Dublin transfers. In January 2011 the Grand Chamber of the ECtHR handed down a landmark judgment in *M.S.S. v. Belgium and Greece* that resulted in the suspension of transfers to Greece by most Member States. The court held that Belgium had violated an applicant's rights by returning him to Greece, where detention and reception conditions put him at risk of inhumane and degrading treatment. The ECtHR further held that Belgium had a responsibility to verify that the applicant's rights would be respected by Greece before conducting the transfer, as the Belgian authorities knew or ought to have known that conditions in Greece at the time would have amounted to a violation of these rights.

The underlying reasoning of the *M.S.S.* decision was echoed in the CJEU's December 2011 decision in the joined cases of *N.S. v. the United Kingdom and M.E. v. Ireland*. The court held that Member States may not carry out transfers in cases 'where they cannot be unaware that systemic deficiencies in the asylum procedure and reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment'.

The *N.S./M.E.* decision effected a near-universal halt in Dublin transfers to Greece. Furthermore, the language of the decision was incorporated in a new provision in Dublin III prohibiting transfers to states with systemic flaws in their asylum systems. The *M.S.S.* and *N.S./M.E.* decisions were welcomed by UNHCR and others for establishing that Member States are responsible for ensuring that applicants' rights are respected throughout Dublin procedures. How these decisions affect other cases remains to be seen. So far, most Member States have been reluctant to apply the logic of *N.S./M.E.* to other situations, including, for example, inadequate capacity in Italy or Bulgaria.

Sources: UNHCR, *UNHCR Position on the Return of Asylum-Seekers to Greece under the 'Dublin Regulation'* (Geneva: UNHCR), www.unhcr.org/482199802.html; Amnesty International, *The Dublin II Trap: Transfers of Asylum-Seekers to Greece* (London: Amnesty International Publications), www.amnesty.org/en/library/info/EUR25/001/2010; Eurostat, 'Outgoing Transfers by Receiving Country and Type of "Dublin" Request [migr_dubto]', updated 22 November 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubto&lang=en.

B. Actual transfer rates are low

While Member States exchange a substantial number of requests to take charge or take back asylum applications under the Dublin Regulation each year, the actual number of transfers effected remains quite low. Of the 76,358 outgoing requests to take back or take charge sent in 2013, 56,466 (almost three-quarters) were reported to have been accepted by the receiving Member State. Of those accepted, only 15,938 (just 28 per cent) resulted in actual transfers (see Table 3).⁴³

43 The case of Germany provides a further example. Despite an increase of more than 20,000 in requests sent by Germany between 2012 and 2013, only 1,000 more transfers were conducted in 2013 than in 2012. (It should be noted, however, that transfers may occur in the calendar year after a request's submission, with some effect on actual transfer rates.) Eurostat, 'Outgoing Transfers'; Eurostat, 'Decisions on Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubdo]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubdo&lang=en.

Table 3. Transfers, top five sending states, 2013

STATE	TOTAL OUTGOING REQUESTS ACCEPTED	TOTAL OUTGOING TRANSFERS	SHARE OF ACCEPTANCES TRANSFERRED (%)	OF WHICH	
				TAKE BACK	TAKE CHARGE
GERMANY	24,847	4,316	17.4	4,191	125
SWITZERLAND	7,592	4,165	54.9	2,797	1,368
SWEDEN	7,899	2,869	36.3	1,430	1,439
AUSTRIA	4,659	1,145	24.6	953	192
NORWAY	2,411	945	39.2	726	219
TOTAL (ALL DUBLIN STATES)	56,466	15,938	28.2	11,411	3,327

Notes: Because of discrepancies in how participating states report outgoing and incoming requests, the numbers here are based on outgoing Dublin request data only. The following countries had not yet reported outgoing request numbers for 2013: the Netherlands, the Czech Republic, Denmark, and the United Kingdom. Croatia joined the European Union in July 2013 and is therefore excluded. Transfer rates are calculated here on an annual basis, though it should be noted that transfers may occur in the calendar year after a request's submission. Totals include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Sources: Eurostat, 'Outgoing Transfers by Receiving Country and Type of "Dublin" Request [migr_dubto]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubto&lang=en; Eurostat, 'Decisions on Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubdo]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubto&lang=en.

Table 4. Transfers, top five receiving states, 2013

STATE	TOTAL TRANSFERS	OF WHICH		AS A SHARE OF TOTAL ASYLUM APPLICANTS (%)
		TAKE BACK	TAKE CHARGE	
ITALY	4,516	2,768	1,748	17.0
POLAND	2,876	2,708	168	18.9
GERMANY	1,350	677	673	1.1
BELGIUM	994	935	59	4.7
SPAIN	964	350	614	21.4
TOTAL (ALL DUBLIN STATES)	15,938	11,411	4,527	3.9

Notes: Because of discrepancies in how participating states report outgoing and incoming requests, the numbers here are based on outgoing Dublin request data only. The following countries had not yet reported outgoing request numbers for 2013: the Netherlands, the Czech Republic, Denmark, and the United Kingdom. Croatia joined the European Union in July 2013 and is therefore excluded. Totals include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Sources: Eurostat, 'Outgoing Transfers by Receiving Country and Type of "Dublin" Request [migr_dubto]' updated 22 September 2014; Eurostat, 'Asylum and New Asylum Applicants by Citizenship, Age and Sex Annual Aggregated Data (Rounded) [migr_asyappctza]', updated 29 October 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en.

Member States most often cite absconding asylum seekers as the main factor behind this persistently low transfer rate.⁴⁴ But the evaluations of advocacy groups suggest that absconding may not be as frequent as reported and that some Member States tend to interpret the term relatively broadly.⁴⁵ Other reasons for the low rate of effective transfers may include applicants' illness, trauma, or voluntary return to the country of origin; and difficulties coordinating transfer logistics. Appeals by applicants may also suspend the implementation of transfer decisions (in most cases under Dublin II, however, transfers were not automatically suspended by the initiation of an appeal; suspension required a court injunction).⁴⁶

44 Interview with officials in the Swedish Migration Board and the Swedish Ministry of Justice, 5 June 2014; and interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014. See also European Commission, 'Commission Staff Working Document'.

45 France, Austria, and Germany have been cited in particular. Dublin Transnational Project, *Dublin II Regulation: Lives on hold*; Amaral, Protection Interrupted.

46 One Greek official indicated that in some cases airlines may prevent transferees from traveling or may restrict the number of transferees on a particular flight, resulting in delays. Interview with UNHCR Liaison Office, Greek Asylum Service, 19 June 2014. See also European Commission, 'Commission Staff Working Document'.

Member States have also reported that, in some cases, a lack of formal evidence (such as a EURODAC hit) may prevent the acceptance of a take-back or take-charge request by the receiving Member State. Although both Dublin II and III Implementing Regulations include a list of approved circumstantial evidence for accepting a claim (such as statements by the applicant), many Member States do not accept requests without supporting evidence from EURODAC or, in the case of requests for family reasons, a DNA test.⁴⁷

The evaluations of advocacy groups suggest that absconding may not be as frequent as reported and that some Member States tend to interpret the term relatively broadly.

Finally, a lack of coordination between the transferring and receiving Member State may hamper effective transfer rates. In cases where a Member State has implicitly accepted to take back or take charge of an applicant (i.e., the time limit on responding to the request has expired), the receiving Member State may not be prepared to follow up with the transferring Member State regarding arrangements for implementing the transfer.⁴⁸ This may be especially problematic when vulnerable individuals or unaccompanied minors are to be transferred. Several Member States have reported difficulties communicating with Italy in particular on implementing transfers.⁴⁹

C. Member States often exchange similar numbers of requests

Evaluations of the system by asylum advocates, and the Commission itself, have noted that some Dublin transfers may be redundant or unnecessary. For example, several Member States frequently exchange similar numbers of asylum seekers.⁵⁰

A brief look at recent data on Dublin II requests confirms this. In 2012 three of the top five sending Member States (Germany, Sweden, and Belgium) were also among the top five Member States *receiving* the most Dublin II requests (see tables A-1 and A-2). A number of these requests involved exchanges with each other. Similarly in 2013 Germany sent 1,380 requests *to* Sweden and received 947 requests *from* Sweden; France received 355 requests *from* Belgium and sent 562 requests *to* Belgium; and Sweden sent 627 requests *to* Norway while at the same time receiving 403 requests *from* Norway.⁵¹

Exchanges like these have led the Commission, and asylum advocates, to ask whether there is a more efficient way to handle these sorts of transfers. In its evaluation of Dublin II, the Commission raised the possibility that Member States could cooperate to ‘annul’ redundant transfers, potentially saving transfer costs, expediting asylum procedures for the individuals concerned, and reducing secondary movement.⁵² However, a mechanism of this kind to limit transfers was rejected in the initial drafting of Dublin II and was not included in the 2013 recast. Other suggestions to avoid unnecessary transfers include adjusting procedures to encourage greater use of Dublin III’s ‘discretionary clause’ (known as the ‘sovereignty clause’ and ‘humanitarian clause’ in Dublin II) for claims that are manifestly unfounded and are returnable. This would free up additional capacity for claims that are well founded.⁵³

D. Secondary movement and ‘asylum shopping’ remain issues

Reducing the need for multiple Member States to examine an asylum application was an explicit goal of both the original Dublin Convention and both Dublin Regulations. However, secondary movement by asylum seekers within the Schengen zone remains common.

47 Interview with official, Immigration Department, Danish Ministry of Justice, 16 June 2014. See also European Commission, ‘Commission Staff Working Document’.

48 European Commission, ‘Commission Staff Working Document’.

49 Interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014. See also Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

50 European Commission, ‘Commission Staff Working Document’.

51 Eurostat, ‘Outgoing “Dublin” Requests’.

52 European Commission, ‘Commission Staff Working Document’.

53 Interview with Danish official, Immigration Department, Ministry of Justice, Denmark, 16 June 2014.

In 2013 more than one-third of asylum applicants registered with EURODAC (i.e., Category 1 transactions)⁵⁴ had already submitted an asylum claim in another Member State (classified as foreign Category 1 to 1 hits).⁵⁵ The largest share of these came from previous applications in Italy—more than 11 per cent of applicants with previous claims had first applied there. Significant shares had also submitted prior claims in Poland and Sweden (both close to 9 per cent). Of those who first applied for protection in Italy, most submitted their second applications in Germany (32 per cent), Sweden (19 per cent), or Switzerland (18 per cent).⁵⁶ Asylum seekers whose first claim was in Poland most often later applied for asylum in Germany (64 per cent) or France (14 per cent), while those with initial claims in Sweden tended to also submit applications in Germany (41 per cent) or Denmark (12 per cent).⁵⁷

Table 5. Total EURODAC hits by category, 2009-13

YEAR	TOTAL TRANSACTIONS	SUBSEQUENT APPLICATION (CATEGORY 1 TO 1, FOREIGN)		IRREGULAR ENTRY (CATEGORY 1 TO 2, FOREIGN)		ILLEGAL RESIDENCE (CATEGORY 3 TO 1, FOREIGN)	
		TOTAL	SHARE OF TOTAL CAT. 1 TRANSACTIONS (%)	TOTAL	SHARE OF TOTAL CAT. 1 TRANSACTIONS (%)	TOTAL	SHARE OF TOTAL CAT. 3 TRANSACTIONS (%)
2009	353,561	53,620	22.6	20,363	8.6	22,356	26.1
2010	299,459	57,575	26.7	11,939	5.5	22,099	30.3
2011	412,303	63,527	23.0	7,384	2.7	24,280	30.8
2012	411,236	86,471	30.2	17,319	6.1	32,046	37.3
2013	508,565	124,943	35.3	26,145	7.4	43,900	41.4

Note: Data for 2013 include Croatia, which became an EU Member State and party to EURODAC in July 2013.

Sources: European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2009*, EUR-Lex COM(2010)415 final, 2 August 2010 (Brussels: European Commission, 2010), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0415:FIN:EN:PDF>; European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2010*, EUR-Lex COM(2011) 549 final, 9 September 2011 (Brussels: European Commission, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0549:FIN:EN:PDF>; European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2011*, EUR-Lex COM(2012) 533 final, 21 September 2012 (Brussels: European Commission, 2012), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0533:FIN:EN:PDF>; European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2012*, EUR-Lex COM(2013) 485 final, 28 June 2013 (Brussels: European Commission, 2013), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0485:FIN:EN:PDF>; European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), *Annual report on the 2013 activities of the Central Unit of Eurodac pursuant to Article 24(1) of Regulation (EC) No. 2725/2000* (Tallinn, Estonia: eu-LISA, 2014), www.eulisa.europa.eu/Publications/Reports/eulisa_report_eurodac_en.pdf.

In fact, Germany was the most popular destination for asylum applications among people who had already filed claims in other Member States; asylum seekers in Germany generated 33 per cent of Category 1 to 1 hits in 2013.⁵⁸ Sweden also received a large share of asylum applications from claimants who had requested asylum elsewhere in 2013 (10

⁵⁴ Fingerprint data stored in the EURODAC Central Unit are categorised as 'Category 1' (data associated with applications for asylum of individuals over the age of 14); 'Category 2' (data on individuals apprehended illegally crossing an EU external border); or 'Category 3' (data on individuals present illegally in the territory of a Member State).

⁵⁵ Foreign Category 1 to 1 hits. See Table 5.

⁵⁶ The same three countries were also the top destinations for subsequent applications from Italy in 2012. European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2012*, EUR-Lex COM(2010)415 final, 2 August 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0415:FIN:EN:PDF>.

⁵⁷ European Commission, *Annual Report on EURODAC in 2012*.

⁵⁸ Of the asylum applications registered by Germany in EURODAC the same year, 50 per cent (41,617) had already submitted an application in another Member State. European Commission, *Annual Report on EURODAC in 2012*.

per cent). Given the substantial share of second applications directed at these two states, it is clear why some Member States perceive Dublin to be essential to their protection systems.

Reports by advocacy groups suggest that asylum seekers who make applications in another Member State often do so because of poor reception conditions in the country where they submitted their first application.⁵⁹ This is evident in Italy: even after receiving refugee status, applicants may choose to file an additional claim in another Member State in response to inadequate facilities or poor integration prospects in Italy.⁶⁰ Applicants who receive subsidiary protection (or another national form of protection) in one Member State—or who are not granted the full entitlements of such protection—may also choose to resubmit their claim in another Member State in hopes of receiving full refugee status⁶¹ (or at least the entitlements attached to subsidiary protection).

Perhaps more troubling are reports of migrants seeking to avoid being fingerprinted or filing claims in certain Member States, particularly those on the European Union's border. EURODAC data clearly indicate that a substantial number of asylum applicants who illegally entered EU territory later file a claim in a Member State other than the one in which they were first apprehended (see Table 5). Anecdotal evidence from Italy suggests that many others may refuse to have their fingerprints taken or to submit asylum applications in Italy in hopes of circumventing the Dublin Regulation and getting their claim evaluated elsewhere.⁶² There have been reports of a similar phenomenon in Greece, particularly among arrivals from Syria.⁶³ And some individuals with well-founded claims for protection (e.g., Syrians, among others) may choose to forgo filing an asylum application altogether.⁶⁴

Reports such as these have raised questions about the effectiveness of the Dublin regime as a whole, in the face of what is perceived as systemic abuse. Allegations have even been made that asylum officials in some Member States are actively helping applicants circumvent Dublin procedures.⁶⁵ Regardless of the accuracy of these claims, they are fuelling an ongoing political debate. As a result, continued and widespread secondary movement across the European Union has the potential to undermine trust in the Dublin system, and put its continued utility into question.

E. Costs

Another frequent criticism of the Dublin system is that it adds additional costs to the operation of asylum procedures. Meanwhile, the actual costs of operating Dublin at the Member State level are exceedingly difficult to determine, despite numerous inquiries and investigations both by external NGO evaluators and the Commission itself. In most cases, Member States have been unable to report detailed costs due to the challenge of disaggregating Dublin expenditures from the rest of their asylum systems. Estimates may also be difficult where certain functions of the Dublin or state asylum procedures are devolved (as in Germany and France).⁶⁶

Surveys of asylum authorities in Member States have shed some light on the costs of the Dublin system:⁶⁷

- **Transfers are the most expensive aspect of the system.** Member States report that travel costs associated with implementing transfers are the most costly element of the Dublin system. Costs vary by destination and the means of transport used; supervised or escorted transfers are the most expensive.

59 Amaral, *Protection Interrupted*.

60 Swiss Refugee Council, *Asylum Procedure and Reception Conditions*.

61 Amaral, *Protection Interrupted*.

62 Maria de Donato, *Asylum Information Database, National Country Report: Italy* (Brussels: European Council on Refugees and Exiles, 2014), www.refworld.org/docid/5406c8ab4.html; Also see UNHCR, *UNHCR Recommendations*; Parvaz, 'Italy's Disappearing Migrants'.

63 Interview with UNHCR Liaison Office, Greek Asylum Service, 19 June 2014.

64 See the report of the Lithuanian Presidency on Operation Perkunas in 2013. Syrian, Eritrean, and Palestinian nationals were among the largest groups detained for illegal residence in the operation. Most had not submitted asylum applications in any Member State before being detained. Council of the European Union, *Final Report on Operation Perkunas* (Brussels: Council of the European Union, 2013), www.statewatch.org/news/2014/oct/eu-council-operation-perkunas-16045-13.pdf.

65 Marcel Leubecher, 'Italien schickt Asylbewerber nach Deutschland', *Die Welt*, 22 August 2014, www.welt.de/politik/deutschland/article131492529/Italien-schickt-Asylbewerber-nach-Deutschland.html.

66 Dublin Transnational Project, *Dublin II Regulation: Lives on hold*; Amaral, *Protection Interrupted*; European Commission, 'Commission Staff Working Document'; Eiko R. Thielemann, Richard Williams, and Christina Boswell, *What System of Burden-Sharing Between Member States for the Reception of Asylum Seekers?* (Brussels: European Parliament, 2010), www.eurasyllum.org/wp-content/uploads/2013/12/Study-as-published.pdf; European Commission, *Ad-Hoc Query on 'Expenditure of Asylum System'* (Brussels: European Commission, 2013), http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/424_emn_ad-hoc_query_on_expenditure_of_asylum_system_26sept2012%28widers%29_.pdf.

67 Unless otherwise specified, information cited below is drawn from European Commission, *Ad-Hoc Query*; European Commission, 'Commission Staff Working Document'.

- **The use of detention increases costs.** Member States that regularly detain asylum seekers report spending more per application than those that do not, and detention costs make up a significant portion of total expenditure. For example, in a 2010 European Parliament evaluation, the United Kingdom (which systematically detains asylum seekers) reported costs per applicant that were two-thirds higher than those reported by Sweden; one-quarter of this was spent on detention.
- **Expenditures depend on the size of the Dublin Unit.** As might be expected, Member States with dedicated units for processing Dublin inquiries had higher expenses than those who handled Dublin procedures through their primary asylum system. However, those operating specialised Dublin Units were also responsible for more Dublin inquiries and transfers than those that did not.
- **Operation of EURODAC is not a major cost.** Of the Member States that reported costs for operating the EURODAC system, the expense of taking and storing fingerprints was not found to be a significant portion of overall expenditures. But for some countries, prohibitive equipment costs can interfere with the efficient operating of the system.⁶⁸

It is worth noting that asylum authorities in some Member States consider transferring asylum seekers using Dublin procedures to be less expensive than processing the applications themselves, as the duration of the process may be shorter.⁶⁹ Several Member States have also made it clear that Dublin's political goals are worth fulfilling regardless of the financial costs.⁷⁰

On the European level, the primary costs borne by the Commission are for the operation of the EURODAC central unit and EASO. In 2013 the total cost of operating the EURODAC central unit was 340,669.53 euros, or 0.83 euros per transaction.⁷¹

IV. DUBLIN'S UNINTENDED CONSEQUENCES: ACCESS TO PROTECTION AND OTHER IMPACTS

Since its inception, operation of the Dublin system has been based on the assumption that protection conditions are equal and sufficient in all Member States. In practice, this means that asylum seekers should receive access to determination procedures and reception facilities that meet the requirements of EU and international law, regardless of where they submit their application for protection. But recent legal challenges and assessments by UNHCR and asylum advocates clearly demonstrate that protection conditions vary considerably among Member States, and in some cases are not up to international standards. Greece is the most well-known and comprehensively documented example (see Box 4), but doubts have been raised recently over the capacity of Bulgaria, Italy, and Hungary to receive asylum applicants. In most cases, concerns centre on asylum authorities' ability to accurately and effectively process applications in a timely manner.

68 Greece, for example, only recently acquired electronic fingerprinting machines; *Dublin Transnational Project-AITIMA, Dublin II Regulation: National Report-Greece* (Brussels: European Council on Refugees and Exiles, 2010), www.dublin-project.eu/dublin/content/download/6228/75799/version/1/file/Rapport_Greece_WEB.pdf.

69 Interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014.

70 European Commission, 'Commission Staff Working Document'.

71 The costs for the years 2009 to 2011 were substantially higher due to additional expenses incurred during the upgrading of the EURODAC system to EURODAC Plus. Total costs were therefore 1,221,183.83 euros in 2009, 2,115,056.61 euros in 2010, 1,040,703.82 euros in 2011, and 421,021.53 euros in 2012. See European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2009*, EUR-Lex COM(2010)415 final, 2 August 2010 (Brussels: European Commission, 2010), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0415:FIN:EN:PDF>; European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2010*, EUR-Lex COM(2011) 549 final, 9 September 2011 (Brussels: European Commission, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0549:FIN:EN:PDF>; European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2011*, EUR-Lex COM(2012) 533 final, 21 September 2012 (Brussels: European Commission, 2012), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0533:FIN:EN:PDF>; European Commission, *Annual Report to the European Parliament and the Council on the Activities of the EURODAC Central Unit in 2012*, EUR-Lex COM(2013) 485 final, 28 June 2013 (Brussels: European Commission, 2013), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0485:FIN:EN:PDF>; European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), *Annual report on the 2013 activities of the Central Unit of Eurodac pursuant to Article 24(1) of Regulation (EC) No. 2725/2000* (Tallinn, Estonia: eu-LISA, 2014), www.eulisa.europa.eu/Publications/Reports/eulisa_report_eurodac_en.pdf.

The Dublin procedure itself may also expose asylum seekers to the risk of rights violations and other hardships by prolonging application times or separating family members. Numerous appeals have been brought before national courts regarding the separation of spouses from each other or of parents from minor children.⁷² In other cases, Dublin procedures have been found to place individuals with serious health concerns at particular risk, as Member States do not always communicate health-care needs during transfers.⁷³

A. *Disruption of family unity and risks to vulnerable individuals*

The risks that Dublin transfers can pose to family unity are apparent in Member States' application of the hierarchy of criteria. Although the 'family criteria' are clearly at the top of the Dublin hierarchy (Articles 8-11 in Dublin III), numerous assessments of Member States' Dublin procedures have found that these articles are not applied consistently, or in all relevant cases.⁷⁴ In Germany, for example, one report found evidence that asylum case officers (who often perform interviews and collect Dublin data) were not fully aware of the Dublin hierarchy of criteria or the significance of family connections. Additionally, the transmission of evidence from interviews to the Dublin processing unit may be delayed, and transfer decisions may be made before all relevant information is received, resulting in a misapplication of the hierarchy of criteria.⁷⁵

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Data on the types of requests sent by Member States also indicate that family criteria are not always applied where appropriate (see Table 1). In 2013 Member States submitted just 1,402 take-charge requests for family reasons—or 1.8 per cent of total requests.⁷⁶ By contrast, more than 20 per cent of the total were take-charge requests because of documentation or irregular entry reasons (Articles 9-12), and over 75 per cent were take-back requests.⁷⁷ Actual transfers for family reasons were even fewer than requests; in 2013 only 584 applicants (less than 4 per cent of total transfers) were transferred based on family criteria.⁷⁸

Dublin transfers may also pose particular risks for individuals in need of special medical care. In some cases, asylum authorities have failed to notify the receiving Member State of applicants' illnesses or special needs, or to confirm that adequate health-care facilities would be available after the applicant had been transferred.⁷⁹ Article 31 of the recast Dublin III requires Member States to communicate all necessary information regarding transferees' health care or other needs (the effectiveness of this provision in practice remains to be seen).

The Dublin Regulation does, however, contain provisions that aim to ensure that Member States preserve family unity or protect especially vulnerable individuals as needed. One option is for a Member State to examine the claim itself (known as the 'sovereignty clause' in Article 3[2] of the 2003 Dublin Regulation, now part of the 'discretionary clause' in Article 17[1] of the 2013 Regulation). Another option is to request a Member State containing members

72 See, for example, Austria—Asylum Court (no. S5 317.551-2/2010/2E), www.asylumlawdatabase.eu/en/case-law/austria-%E2%80%93-asylum-court-24-september-2010-s5-317551-220102e; Ireland—High Court, R.A. v Minister for Justice and Equality, Garda National Immigration Bureau, Ireland and Attorney General [2011] (no. IEHC 512), www.asylumlawdatabase.eu/en/case-law/ireland-%E2%80%93-high-court-29-december-2011-ra-v-minister-justice-and-equality-garda-national-immigration-bureau-ireland-and-attorney-general; Austria—Constitutional Court (no. U136/08), www.asylumlawdatabase.eu/en/case-law/austria-constitutional-court-27-april-2009-u13608#content; Asylum Court (no. S11 408.911-1/2009/3E), www.asylumlawdatabase.eu/en/case-law/austria-%E2%80%93-asylum-court-13-november-2009-s11-408911-120093e#content; Poland—Regional Administrative Court in Warsaw (no. VSA/Wa 351/11), www.asylumlawdatabase.eu/en/case-law/poland-regional-administrative-court-warsaw-1-september-2011-v-sawa-35111#content.

73 Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

74 Ibid.

75 Hessischer Flüchtlingsrat and Pro Asyl, *Dublin II Regulation: National Report—Germany* (Brussels: European Council on Refugees and Exiles, 2012), www.dublin-project.eu/dublin/content/download/6227/75785/version/1/file/Rapport_Germany_WEB.pdf; Amaral, *Protection Interrupted*.

76 The share of take-charge requests that are based on Articles 6-8 or 14 has increased substantially since 2009 (when it stood at 2.9 per cent). Much of this increase is due to greater use of the family criteria by Greece. In 2012 Greece submitted well over half of Article 6-8/14 requests (625), the majority of which were directed to Germany.

77 Eurostat, 'Outgoing "Dublin" Requests'.

78 Again, the majority of family transfers were completed by Greece. In 2013, 491 transfers for family reasons were from Greece (84 per cent). According to Greek officials, this increase in the use of family criteria is in large part due to the halt of transfers from other Member States. Applicants in Greece are therefore more likely to have family members in other Member States who have been granted protected status. Interview with UNHCR Liaison Office, Greek Asylum Service, 19 June 2014. Eurostat, 'Outgoing Transfers'.

79 Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

of an applicant's extended family to take responsibility for the claim on humanitarian grounds (Article 17[2] of Dublin III, corresponding to the 'humanitarian clause', former Article 15). However, Eurostat data suggest that these discretionary provisions are applied by Member States even less frequently than the family criteria—although reports suggest use of the 'sovereignty clause' has increased since most Member States halted transfers to Greece.⁸⁰ In 2013 the humanitarian clause was applied in just 269 cases, and 204 transfers for humanitarian reasons were actually carried out, most by Greece.⁸¹

One reason for the infrequent use of both discretionary provisions may be a lack of administrative or legal guidance on how the clauses should be applied.⁸² The judgments by the Court of Justice of the European Union (CJEU) and ECtHR in *N.S. v. the United Kingdom* and *M.E. v. Ireland* (hereafter *N.S./M.E.*) and *M.S.S.* clearly placed a new obligation on Member States to refrain from transferring cases when 'systemic deficiencies' are evident in the responsible state's asylum procedures (see Box 4). But interpretations of what qualifies as a systemic deficiency have varied substantially among Member States. Despite increasing evidence of failings in Italy's asylum procedures, for example, most asylum authorities have been hesitant to use the logic of the CJEU's decision in *N.S./M.E.* to refrain from transferring claims to Italy. In Austria asylum authorities have declined to do so on the grounds that, since the Commission has not instituted infringement procedures, Italy is still fulfilling its obligations under EU law. The ECtHR also found, in 2013, that returns to Italy were permissible in specific cases.⁸³ However, the ECtHR's Grand Chamber ruled in late 2014 that Member States' must obtain specific assurances prior to the transfer of a family with children, including appropriate reception conditions and the ability to remain together.⁸⁴

B. Delayed access to asylum procedures

Application of the Dublin procedures will, unavoidably, delay the review of an asylum applicant's claim. Even in successful cases, delaying access to protection has a cost for receiving communities, including delayed integration and lost human capital. The longer it takes to determine an application's status, the more time passes before those who are eventually recognised can access language courses or other integration support, or fully enter the labour force, raising the potential for long-term dependency and marginalisation.⁸⁵ Delays can also make the assessment of claims more difficult; gathering evidence by which to evaluate applications can be more challenging for authorities when there is a large gap between when a claim is filed and when it is assessed. In addition, returns after rejection become more complicated the longer an applicant is in the country of asylum.⁸⁶

Very little information is available, however, on the usual duration of Dublin procedures in Member States or the length of the delays that applicants experience.⁸⁷ External evaluations have found that Member States generally respected the deadlines set out in the Dublin II Regulation. But even when Member States fully comply with these time limits, applicants who are subject to transfers under *take-charge* procedures (under both the 2003 and 2013 Regulations) may still wait up to a year before their asylum claims are considered.⁸⁸ Applicants subject to *take-back* procedures under the old system may have waited even longer, as Dublin II did not specify a time limit for

80 Eurostat, 'Outgoing "Dublin" Requests'. Data on use of the 'sovereignty clause' are not available through Eurostat, but recent reports by advocacy groups suggest that it is applied more frequently than the humanitarian clause and has been used most often to halt transfers to Greece. Amaral, *Protection Interrupted*; Dublin Transnational Project, *Transnational Advisory and Assistance Network for Asylum Seekers under a Dublin Process: Final Report* (Villeurbanne Cedex, France: Dublin Transnational Project, 2011), www.asyl-in-not.org/uploads/rapportfinal-gb_%282%29.pdf.

81 In 2013, 60 per cent of Article 15 requests and two-thirds of transfers were conducted by Greece. Eurostat, 'Outgoing "Dublin" Requests'; Eurostat, 'Outgoing Transfers'.

82 Ibid.

83 ECtHR, *Daytbegova v. Austria*, Application no. 6198/12, judgment of 4 June 2013 (ECtHR, 2013), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122459>; ECtHR, *Abubeker v Austria and Italy*, Application no. 72874/11, judgment of 18 June 2013 (ECtHR, 2013), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122459>; on selected national case law, see also Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

84 ECtHR, *Tarakhel v. Switzerland*.

85 Changes in the recast Reception Conditions Directive seek to mitigate some of these negative effects by lowering the maximum wait time for access to the labour market to nine months for asylum applicants. Germany has gone even further by allowing labour market access just three months after an application is filed.

86 Interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014.

87 Available evidence suggests that the duration of procedures varies substantially by country. A 2013 UNHCR review of procedures in Italy, for example, suggested it can take up to 24 months to process applicants under Dublin procedures. See UNHCR, *UNHCR Recommendations*. In Sweden Dublin cases took an average of 69 days in 2013. Interview with officials in the Swedish Migration Board and the Swedish Ministry of Justice, 5 June 2014.

88 Under both Dublin II and III, the time limit for submitting a request to take charge is three months. The receiving Member State then has two months to issue a response. If the request is accepted (explicitly or by default), the sending Member State has six months to complete the transfer. See Council of the European Union, 'Council Regulation (EC) No 343/2003' and European Union, 'Regulation (EU) No 604/2013'.

submitting a take-back request.⁸⁹ Reports suggest that delays may be particularly long in Germany, where take-back requests are considered low priority.⁹⁰ In Sweden, Denmark, and Greece, officials have reported that communications between Member States on responsibility for an application can account for a substantial share of the processing time.⁹¹

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The Regulation allows Member States to extend the deadline for completing a transfer by up to 18 months in cases when an applicant is found to have absconded. Some Member States have tended to interpret absconding relatively loosely and extended deadlines for transfers somewhat automatically. Authorities in France, for example, may consider an applicant to have absconded after he or she has missed just one appointment at the asylum office. And in Austria applicants who are homeless are generally registered as having absconded, according to reports.⁹²

C. Detention

Applicants who are placed in detention have been found to be less well informed about Dublin procedures or their rights to appeal. Detention can be particularly hard on vulnerable individuals (such as unaccompanied minors, those with particular health needs, or victims of trauma). But as with other aspects of the Dublin system, data on the frequency or duration of detention during Dublin procedures are not readily available. What little information there is suggests that detention practices vary widely across Member States.

Responses to surveys of individuals subject to Dublin procedures in several Member States indicate that the share of Dublin applicants who are detained may be around 40 per cent.⁹³ In France detention tends to be used systematically, while authorities in Spain do not use detention at all.⁹⁴ Another study found that in Germany approximately half of applicants have been subject to detention.⁹⁵

According to surveys, the average duration of detention for Dublin applicants is almost two months, but this varies significantly by Member State, primarily based on how widely detention is used and at what point in the process it is applied. Applicants who were apprehended for illegal residence may be detained for the entire procedure in some Member States, while in others they may be detained for a few days directly prior to a transfer.⁹⁶

D. Access to protection after transfer

Asylum advocacy groups have also raised concerns about the ability of Dublin transferees to access asylum procedures after a transfer has been completed. In the case of Greece in particular, reports indicate that some transferees may have been returned to Turkey before their applications were fully evaluated, which could have amounted to *refoulement*.⁹⁷ In Bulgaria if an asylum seeker who previously submitted a claim is absent for three months or more, the application process is discontinued and the applicant returned to his or her country of origin without the opportunity to submit a subsequent application.⁹⁸ Asylum seekers whose applications are rejected while they are out of the

⁸⁹ The Dublin III regulation has since introduced a two-month time limit for submitting take back requests.

⁹⁰ Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

⁹¹ Interviews with officials in the Swedish Migration Board and the Swedish Ministry of Justice, 2 June 2014; UNHCR Liaison Office in the Greek Asylum Service, 19 June 2014; and official in the Immigration Department, Danish Ministry of Justice, 16 June 2014.

⁹² Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

⁹³ Amaral, *Protection Interrupted*.

⁹⁴ Dublin Transnational Project, *Transnational Advisory and Assistance Network*.

⁹⁵ Hessischer Flüchtlingsrat and Pro Asyl, *Dublin II Regulation: National Report Germany*.

⁹⁶ Amaral, *Protection Interrupted*.

⁹⁷ Amnesty International, *The Dublin II Trap: Transfers of Asylum-Seekers to Greece* (London: Amnesty International Publications, 2010), www.amnesty.eu/static/documents/2010/GreeceDublinIIReport.pdf.

⁹⁸ UNHCR, *UNHCR Observations*; Dublin Transnational Project, *Dublin II Regulation: Lives on hold*.

country may find it difficult to submit an appeal after being transferred and may be at higher risk for deportation and *refoulement*.⁹⁹

Most transferees do not appear to receive adequate information about asylum procedures in the country to which they are being transferred.¹⁰⁰ This can create particular difficulties in cases where there are strict deadlines for submitting a subsequent application or an appeal after an asylum seeker is transferred.

E. Other risks

Finally, some reports by asylum advocates have noted that the application of the Dublin criteria removes the element of individual agency from asylum seekers' decision on where to file an application for protection.¹⁰¹ While this may serve to decrease 'pull factors' for some states and reduce the burden on states perceived to have more generous asylum systems, it can also have implications for asylum seekers' integration or reception. Applicants choose destinations for a variety of reasons. While some individuals may in fact choose their destinations according to the availability of benefits or more generous asylum criteria—a common concern of Member State governments¹⁰²—others may prefer Member States where they have family, friends, or networks of co-nationals who could ease their transition. Others may choose to apply in Member States where they know the language or perceive economic conditions to be friendly to their labour market prospects. While these are not reasons for seeking protection, they are significant factors in determining an applicant's integration prospects in the destination country after protection is granted.

V. WHERE TO FROM HERE?

It is clear that the demands currently placed on the CEAS by the ongoing crises in Syria, Iraq, and Central and East Africa, among others, are unlikely to diminish in the immediate future. In the face of these pressures, debates among Member States on the appropriate sharing of responsibilities—and specifically the Dublin Regulation—will almost certainly continue.

In June 2013 the European Union completed a five-year effort to reform the Dublin system to address some of the concerns described in this report. While the recast Dublin III includes significant improvements in certain areas, problems remain. The recently implemented VIS and new legal challenges to Dublin in both the European Court of Human Rights and the Court of Justice of the European Union promise to further alter the context in which Dublin operates.

A. Evaluating the promise of Dublin III

1. Raising the bar: Improved access to protection

Much of the Dublin Regulation's recast involves clarifying portions of the original legislation that were interpreted and applied differently among Member States. In particular, the 2013 Regulation seeks to clarify the application of Dublin's hierarchy of criteria for assigning responsibility for claims, to tighten deadlines for Dublin procedures, and to improve asylum applicants' access to information about the Dublin Regulation.

Although the criteria for determining responsibility have not changed in essence (or the order in which they are to be implemented), the recast Regulation has expanded and significantly clarified how the criteria are to be applied. For example, it contains an exhaustive list of the members of an unaccompanied minor asylum seeker's family whose presence in another Member State may render that Member State responsible for the claim (when in the minor's best

99 Hessischer Flüchtlingsrat and Pro Asyl, *Dublin II Regulation: National Report Germany*.

100 Amaral, *Protection Interrupted*; Hessischer Flüchtlingsrat and Pro Asyl, *Dublin II Regulation: National Report Germany*.

101 Amaral, *Protection Interrupted*.

102 Council of the European Union, 'Joint French-German Contribution'.

interest)—something that was not adequately clarified in the 2003 Regulation. The recast also extends the family criteria to family members who are beneficiaries of subsidiary protection. Previously, the right to be reunited with family who already had international protection within the European Union extended only to recognised refugees or those in asylum procedures.

Dublin III slightly shortens the deadlines for completing certain parts of Dublin procedures. Most important, the recast sets a deadline for submitting a take-back request, filling a major gap in Dublin II. However, normal transfer procedures may still last a year or longer, and Member States can still extend transfer deadlines up to 18 months if an applicant is found to have absconded.

One of the primary problems observed during the implementation of the Dublin II Regulation was that asylum seekers had inadequate information about Dublin procedures. Surveys of Dublin applicants found that most respondents had very limited knowledge of the Dublin II Regulation itself; most were unaware of the hierarchy of criteria, their options for appeal, or the existence of the sovereignty and humanitarian clauses.¹⁰³

Applicants who are ill-informed about the relevance of Dublin to their cases are less prepared to provide authorities with pertinent details (e.g., the location of family members). Several investigations have suggested that inadequate information may contribute to secondary movement. Rejected asylum seekers who do not know about their options for appeal may choose to abscond rather than wait to be transferred.¹⁰⁴

The recast Dublin Regulation now requires asylum authorities to inform applicants of how responsibility for examining an asylum claim is determined (including the consequences of moving between Member States and the relevance of family members) and options for appealing a transfer decision.¹⁰⁵ In addition, the European Commission has created an information leaflet for individuals subject to Dublin Procedures, to ensure that they are provided with important facts in writing, and authorities are now required to perform a personal interview with all applicants before transfer decisions are made.¹⁰⁶

2. Early warning and preparedness mechanism

One of the most significant innovations of the Dublin recast is the introduction of an ‘early warning and preparedness mechanism’ in Article 33. The aim of this mechanism is to identify deficiencies in Member States’ asylum systems—and assist policymakers and authorities in these states to develop a plan of action to address them—before they develop into a ‘crisis’.¹⁰⁷ The Commission had originally proposed a mechanism that would automatically require Member States to halt Dublin transfers, at least on a temporary basis, to countries where asylum seekers would likely encounter limited access to protection or poor reception conditions. However, strong objections from several Member State governments prohibited the inclusion of such a mechanism.

One of the most significant innovations of the Dublin recast is the introduction of an ‘early warning and preparedness mechanism’.

How the early warning and preparedness mechanism will function in practice remains to be seen. According to a 2013 discussion paper from the Commission, the mechanism will have three primary components:

- An ‘early warning phase’ that includes analysing and monitoring existing data sources for evidence of particular pressures on and deficiencies in Member States’ asylum systems
- A ‘preparedness phase’ that allows the Commission and EASO to work—first informally and, if necessary, formally—with a Member State whose system has been deemed deficient to create a preventative action plan (PAP) to address deficiencies

¹⁰³ Amaral, *Protection Interrupted*.

¹⁰⁴ Ibid.

¹⁰⁵ See the recast Dublin III regulation: European Union, ‘Regulation (EU) No 604/2013’.

¹⁰⁶ See Annex X of the Implementing Regulation, European Commission, ‘Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014’, OJ L 39/1, 8 February 2014, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:039:0001:0043:EN:PDF>.

¹⁰⁷ European Union, ‘Regulation (EU) No. 604/2013’.

- Where needed, a ‘crisis management phase’ during which the Member State in question would be required to submit a crisis management action plan (CRIS-MAP) with input from not only the Commission, but also the Justice and Home Affairs Council.

The Commission has also laid out an initial ‘suitability test’ for triggering the mechanism. This evaluates the relevance of observed deficiencies to the operation of Dublin III, the severity of the problem, the urgency of the risks posed, and the resilience of the asylum system to the pressures it faces.¹⁰⁸

It is clear that EASO will play a significant role throughout the implementation of the early warning mechanism. The support office will be responsible for gathering the data and conducting the analysis envisioned in phase one, and may be called upon to provide technical assistance and support to Member States during phases two and three.

By addressing the underlying causes of protection gaps in Member States’ asylum systems, the early warning mechanism represents a necessary and highly valuable step (particularly for the long-term sustainability of the CEAS). But Member States’ reactions to the mechanism have been mixed. Some have highlighted its potentially important role in enabling them to make timely decisions to halt transfers to particular asylum systems (for example, information on Bulgaria provided by EASO and UNHCR encouraged some Member States to quickly adjust their transfer policies to conditions on the ground).¹⁰⁹ However, the exact nature, extent, and timeliness of the practical support that will be available from EASO or other Member States when the mechanism is triggered have not been specified. This raises concerns that the early warning process will simply place an additional reporting burden on already-strained Member States.¹¹⁰

Most significantly, the mechanism does not address a key concern of asylum advocates: unless transfers are halted, Dublin transferees may still be at risk *while* a PAP or CRIS-MAP is being implemented. It is also unclear if the interventions proposed under the early warning mechanism will be sustainable. For example, EASO expressed concerns that Greece may lack the capacity to take over responsibility and operation of its asylum system without ongoing EASO support.¹¹¹ Most recently, a December 2014 assessment by UNHCR found that Greek asylum services required continued assistance from UNHCR and the European Union in order to maintain the improvements made since 2011.¹¹² This could be a risk in other cases where the early warning and preparedness mechanism is applied.

By addressing the underlying causes of protection gaps in Member States’ asylum systems, the early warning mechanism represents a necessary and highly valuable step.

Dublin III does include a separate provision placing a new responsibility on the transferring Member State to ensure that the applicant’s rights and ability to access protection will be respected in the receiving state (Article 3). In doing so, the Regulation incorporates much of the language from CJEU’s 2011 decision in *N.S./M.E.*, but does not provide any further definition of a ‘systemic flaw’ that would require Member States to halt transfers.

¹⁰⁸ See European Commission, Directorate General for Migration and Home Affairs, ‘A Mechanism for Early Warning, Preparedness, and Crisis Management in the Dublin Area’ (Commission Services’ Non-Paper, European Commission, 2013), http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/non-paper_art33_dublin_regulation_en.pdf.

¹⁰⁹ Interview with official in the Immigration Department, Danish Ministry of Justice, 16 June 2014.

¹¹⁰ Interview with UNHCR Liaison Office, Greek Asylum Service, 19 June 2014.

¹¹¹ EASO support in Greece ended in December 2014. While EASO’s interim assessment report in July 2014 indicated significant progress had been made since April 2011, when EASO operations in Greece began, the report also flagged significant remaining gaps. These gaps included a substantial backlog of cases, insufficient accommodations for applicants, a lack of mechanisms for cooperation among agencies, and a lack of capacity to monitor and evaluate reception procedures and services. Officials from the UNHCR Liaison Office in the Greek Asylum Service also raised doubts about the sustainability of the system without external support. Interview with UNHCR Liaison Office, Greek Asylum Service, 19 June 2014. See EASO, *Interim Assessment for Greece* (Valletta Harbour, Malta: EASO, 2014), <http://easo.europa.eu/wp-content/uploads/Interim-Assessment-Greece.pdf>; and EASO, *Annual Report 2011* (Brussels: EASO, 2011), http://ec.europa.eu/dgs/home-affairs/pdf/easo_annual_report_final.pdf.

¹¹² UNHCR, *Greece as a Country of Asylum: UNHCR Observations on the Current Situation of Asylum in Greece* (Geneva: UNHCR, 2014), www.refworld.org/docid/54cb3af34.html.

3. The role of the courts in implementation and interpretation

National and European-level courts will likely be called upon to shape the implementation of the recast Dublin Regulation. Since the *M.S.S.* and *N.S./M.E.* rulings, both courts have produced several more judgments further refining their analysis of the circumstances under which Member States are obliged to halt Dublin transfers. These include two ECtHR decisions that elaborate on the conditions under which Member States' asylum authorities can be presumed to know that a Dublin transfer would expose an asylum seeker to 'inhumane or degrading treatment' in violation of the ECHR (as in *M.S.S.*). Both decisions have helped develop a legal rationale that may influence Member State interpretations of Dublin's new Article 3 provisions for halting transfers.¹¹³

Another case heard by CJEU has specifically shaped Member States' implementation of Dublin III's requirements for the treatment of applications by minors.¹¹⁴ In its June 2013 decision in *M.A. and Others v. Secretary of State of the Home Department*, the Court held that where an unaccompanied minor has lodged an application in multiple Member States and has no family within the territory of the European Union, the Member State where the minor is present will be responsible for processing the application.¹¹⁵ The ruling has forced a change of practice in many Member States, where minors without family present were often subject to the same Dublin procedures as adults, and has not been without controversy. Officials in several Member States have expressed concerns that the ruling will place an additional burden on the Dublin system, particularly since procedures for determining age are not harmonised across the CEAS.¹¹⁶

B. A rocky road ahead

As Member States work to adapt to and implement the recast Regulation, several further developments have potential to once again alter how the system operates. The expanding use of the new VIS is one such development. Since it provides a new source of evidence for assigning claims, the system has the potential to change request and transfer patterns. Several Member State officials state that VIS has already enabled them to transfer individuals based on visa reasons that otherwise would not have shown up in EURODAC or been flagged as Dublin cases.¹¹⁷ VIS also makes the identification of family members already residing in EU territory easier, allowing for better application of Dublin's family criteria. Officials indicate that VIS may help to facilitate returns in cases of unsuccessful applications, since it links nationality and family information to biometric data.¹¹⁸

Conditions in Italy and Greece continue to be the most significant moving pieces of the Dublin puzzle.

¹¹³ In both cases the court drew a line between information on asylum deficiencies that is developing and 'open for the exercise of particular discretion' and the level of information provided to the Belgian authorities in *M.S.S.* (which included a direct letter from UNHCR 'unequivocally' asking for a halt of Dublin transfers by Belgium). See ECtHR, *Case of Sharifi v. Austria*, Application no. 60104/08, European Court of Human Rights, 5 December 2013, www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CASE%20OF%20SHARIFI%20v.%20AUSTRIA.pdf; ECtHR, *Case of Safai v. Austria*, Application no. 44689/09, European Court of Human Rights, 7 May 2014, www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CASE%20OF%20SAFAI%20v.%20AUSTRIA.pdf.

¹¹⁴ As the judgment in this case was handed down within weeks of the adoption of the Dublin III recast, the Council asked the Commission to propose language amending the recast regulation to bring it in line with the Court's ruling. The Commission did so, and the proposed amendment was under consideration at the time of writing. See European Commission, 'Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EU) No. 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling, or relative legally present in a Member State', 26 June 2014, COM(2014) 382 final, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/examination-of-applicants/docs/commission_proposal_to_amend_the_dublin_regulation_en.pdf.

¹¹⁵ See European Court of Justice, *The Queen, on the Application of MA and Others v Secretary of State for the Home Department*, EUR-Lex C-648/11 (Luxembourg: European Court of Justice, 2013), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0648:EN:HTML>.

¹¹⁶ Another concern is that the revised procedures will lead to 'asylum shopping' by minors, who may now submit asylum applications in multiple Member States without penalty. Interviews with the Swedish Migration Board and the Swedish Ministry of Justice, 5 June 2014; and Dutch Ministry of Justice, 27 June 2014.

¹¹⁷ In Sweden, for example, officials cited an increase in take-charge requests to France and Spain based on new VIS data indicating that applicants were issued EU entry visas by these two countries. Interviews with the Swedish Migration Board and the Swedish Ministry of Justice, 5 June 2014.

¹¹⁸ Interviews with the Swedish Migration Board and the Swedish Ministry of Justice, 5 June 2014, and official in the Immigration Department, Danish Ministry of Justice, 16 June 2014.

But conditions in Italy and Greece continue to be the most significant moving pieces of the Dublin puzzle. The decision in the *Tarakhel* case raises further concerns among Member States about the functioning of a Dublin system in which they are required to seek assurances of asylum seekers' legal rights—even where gaps do not amount to 'systemic deficiencies' in a given asylum system. In addition, the end of EASO support operations in Greece, which occurred in December 2014, will likely prompt many Member States to review their policies regarding transfers to the country. Some may choose to resume returns, even as both advocates and Greek officials raise doubts that Greece is ready (amid a substantial backlog of asylum cases).¹¹⁹ Political debate on the application of the Dublin system in Greece and Italy is almost certain to remain heated.

VI. CONCLUSIONS AND RECOMMENDATIONS

The pressures placed on the CEAS in recent years by a rising number of refugee arrivals, many driven by the Arab Spring and the Syria crisis, have thrown the deficiencies of the Dublin system into sharp relief. The evidence accumulated in numerous studies and evaluations since 2003 suggests that the Dublin system has not fully achieved its original goals, and has in fact had several unintended and adverse consequences.

Since its inception in the 1990 Dublin Convention, the aim of the Dublin system has always been to improve the efficiency of Member States' asylum systems by discouraging multiple applications and preventing disputes over responsibility for examining claims. Yet today, secondary movement remains significant, and Member States continue to disagree over the distribution of responsibility for asylum applications. In addition, Dublin procedures have tended to delay asylum seekers' access to protection and in some cases exposed them to potential *refoulement* or insufficient reception conditions (when returned to Member States with systems ill-prepared to cope with more arrivals).

The current Dublin Regulation, as recast in 2013, seeks to address some of these challenges. It requires Member States to provide asylum seekers with better access to information on Dublin procedures, clarifies how responsibility for claims is to be decided (Dublin's 'hierarchy of criteria'), sets processing deadlines, and creates a new 'early warning mechanism' for detecting problems in Member States' asylum systems. But it does not touch on the problem at the heart of the Dublin system: the variation in Member States' capacity for receiving, processing, and integrating asylum applicants. In addition, the Regulation does not take into consideration the reasons why asylum seekers may choose one destination over another (e.g., personal networks, language skills, employment opportunities), reasons that will continue to drive secondary movement.

The new early warning mechanism will provide some needed support to asylum authorities, and the clarifications provided by the 2013 Regulation may streamline some processes. But the recast overlooks the fact that the European Union may have outgrown the Dublin system. Although Dublin was not created as a burden-sharing mechanism, procedures specifically designed to share responsibility or asylum capacity might just be what the CEAS needs to succeed.

Although Dublin was not created as a burden-sharing mechanism, procedures specifically designed to share responsibility or asylum capacity might just be what the CEAS needs to succeed.

As they prepare for a review of the Dublin Regulation, scheduled for 2016, the European Commission and Member States have a unique opportunity to explore the underlying causes of Dublin's struggles—and viable opportunities for change. The following areas are ripe for review:

- **Implementation of Dublin procedures in practice.** Information on the duration of Dublin procedures, states' use of detention, and barriers to transfers of applicants is anecdotal or nonexistent. Procedural delays and Dublin's low effective transfer rate are concerns of Member State governments and asylum advocates alike. Better understanding of where and why delays occur could reveal simple solutions that improve the efficiency of the system as a whole—a desirable outcome for both asylum authorities and applicants.

¹¹⁹ Interview with the UNHCR Liaison Office, Greek Asylum Service, 19 June 2014.

- **Dublin's costs.** Data on the cost of Dublin mechanisms are inherently difficult to gather due to the administrative structure of most Member States' asylum-processing and Dublin units. But information on the costs of Dublin in practice is crucial to an informed evaluation of the system's impact. Dublin supporters indicate that transfers are less costly than processing applicants at home, but this claim cannot be backed by data. Understanding the costs of existing and potential policy responses is also critical, especially to generate political will for change where needed.
- **Impact of transfers on successful applicants' integration prospects.** Interviews with asylum seekers suggest they choose their destinations based not only on the likelihood they will receive protection, but also on the odds of economic and social success after arrival. Economic conditions, language skills, and social and family networks also play a role. Further research is needed into what, if any, impact redistributing asylum seekers according to the Dublin criteria may have on integration outcomes.
- **Member States' views on Dublin.** While humanitarian concerns surrounding the application of Dublin procedures are well researched, little information is publically available on the perceived benefits that lie behind the support of many Member States for the Dublin system. Understanding why many Member States perceive Dublin to be crucial to the operation of their asylum systems is imperative to designing any adjustments to the mechanism.

In addition to thoroughly exploring how the Dublin Regulation is applied, the Commission might consider using its review to evaluate and propose possible avenues for change:

- **Improve communication between asylum authorities.** Delays in Dublin procedures and low transfer rates have been attributed, among other reasons, to poor communication and a lack of trust among Member States' authorities. Expanding cooperation mechanisms such as liaison officers (already used by a few Member States) or introducing procedures for the joint screening of applicants who have been flagged as Dublin cases (e.g., through video conferencing) could speed up processing by ensuring all involved authorities have timely access to the same evidence and information. Communication mechanisms such as these could benefit from EU-level assistance in financing and implementation.
- **Explore ways to reduce unnecessary transfers and requests.** Dublin's low transfer rate has put into question not only the effectiveness of transfer mechanisms, but also the necessity of transfer requests. Furthermore, what little data exist on Dublin's costs suggest that transfers (when carried out) are among the most expensive aspects of the system. Transfers can also disrupt family unity or place vulnerable individuals at risk, and may be redundant where Member States exchange approximately equal numbers of asylum seekers. In terms of costs and efficiency, it may be worth exploring ways to 'cancel out' Dublin transfers, as proposed by the Commission in its 2007 review, or encourage Member States to 'fast track' certain cases (e.g., those that are manifestly unfounded) rather than putting them through Dublin procedures.
- **Consider arrangements for greater capacity sharing.** While the mechanism to detect systemic problems, introduced by Dublin III, may help fill some gaps in processing capacity, a key question remains: would the goals of the CEAS be better served by a processing mechanism that is truly a joint operation? Any mechanism for capacity sharing must take into account the strain that transfers place on a state's reception and integration capacity by supporting Member States' ability to accommodate asylum seekers, not just process applications. Pooling reception facilities across Member States is one possible way to increase the scope for sharing integration and reception capacity.

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APPENDIX. DUBLIN REQUESTS AND TRANSFERS, 2012

Table A-1. Outgoing requests to take charge or take back, top five sending states, 2012

STATE	TOTAL OUTGOING REQUESTS	SHARE OF TOTAL BASED ON EUODAC (%)	TOTAL TAKE BACK	TAKE CHARGE			
				TOTAL	OF WHICH		
					FAMILY REASONS (ART. 6-8, 14)	DOCUMENTATION/ ENTRY (ART. 9-12)	HUMANITARIAN (ART. 15)
GERMANY	11,574	72.4	10,534	1,040	44	986	10
SWITZERLAND	11,029	70.1	7,355	3,674	74	3,564	36
SWEDEN	7,805	55.8	5,412	2,393	28	2,358	7
FRANCE	5,389	47.4	4,636	753	101	651	1
BELGIUM	4,119	56.6	2,065	2,054	36	2,016	2
TOTAL (ALL DUBLIN STATES)	53,439	65.4	38,984	12,912	1,100	11,637	175

Notes: Because of discrepancies in how participating states report outgoing and incoming requests, the numbers here are based on outgoing Dublin request data only. Data from 2012 do not include request numbers from the Netherlands. Totals include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Source: Eurostat, 'Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubro]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubro&lang=en.

Table A-2. Outgoing requests to take charge or take back, top five receiving states, 2012

STATE	TOTAL REQUESTS	TOTAL TAKE BACK*	TAKE CHARGE*			
			TOTAL	OF WHICH		
				FAMILY REASONS (ART. 6-8, 14)	DOCUMENTATION/ ENTRY (ART. 9-12)	HUMANITARIAN (ART. 15)
ITALY	15,618	9,666	5,434	67	5,363	4
POLAND	5,533	4,876	513	57	453	3
SWEDEN	3,149	2,657	247	141	81	25
GERMANY	3,094	2,152	831	462	336	33
BELGIUM	2,836	2,612	188	66	115	7
TOTAL (ALL DUBLIN STATES)	53,439	38,984	12,912	1,100	11,637	175

Notes: Because of discrepancies in how participating states report outgoing and incoming requests, the numbers here are based on outgoing Dublin request data only. Data do not include request numbers from the Netherlands. Denmark does not provide breakdowns of requests by take back versus take charge. Therefore take back and take charge data are presented without requests from Denmark. Totals include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Source: Eurostat, 'Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubro]', 22 September 2014.

Table A-3. Transfers, top five sending states, 2012

STATE	TOTAL OUTGOING REQUESTS ACCEPTED	TOTAL OUTGOING TRANSFERS	SHARE OF ACCEPTANCES TRANSFERRED %	OF WHICH	
				TAKE BACK	TAKE CHARGE
SWITZERLAND	9,328	4,637	49.7	3,377	1,260
GERMANY	7,916	3,062	38.7	2,900	162
SWEDEN	5,477	1,741	31.8	1,224	517
AUSTRIA	3,084	1,009	32.7	798	211
BELGIUM	2,660	969	36.4	657	312
TOTAL (ALL DUBLIN STATES)	36,749	14,405	39.2	11,078	3,327

Notes: Because of discrepancies in how participating states report outgoing and incoming transfers, the numbers here are based on outgoing Dublin transfer data only. Data do not include request numbers from the Netherlands. Transfer rates are calculated here on an annual basis, though it should be noted that transfers may occur in the calendar year after a request's submission. Totals include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Sources: Eurostat, 'Outgoing Transfers by Receiving Country and Type of "Dublin" Request [migr_dubto]', updated 22 September 2014; Eurostat, 'Decisions on Outgoing "Dublin" Requests by Receiving Country and Type of Request [migr_dubdo]', updated 22 September 2014, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubdo&lang=en.

Table A-4. Transfers, top five receiving states, 2012

STATE	TOTAL TRANSFERS	OF WHICH		AS A SHARE OF TOTAL ASYLUM APPLICANTS
		TAKE BACK	TAKE CHARGE	
ITALY	4,894	3,611	1,283	28.2
GERMANY	1,096	763	333	1.4
POLAND	1,012	885	127	9.4
BELGIUM	895	827	68	3.2
SPAIN	879	384	495	34.3
TOTAL (ALL DUBLIN STATES)	14,405	11,078	3,327	3.8

Notes: Because of discrepancies in how participating states report outgoing and incoming transfers, the numbers here are based on outgoing Dublin transfer data only. Data do not include request numbers from the Netherlands or Denmark. Totals include non-EU Dublin states: Norway, Iceland, Switzerland, and Liechtenstein.

Sources: Eurostat, 'Outgoing Transfers by Receiving Country and Type of "Dublin" Request [migr_dubto]' updated 22 September 2014; Eurostat, 'Asylum and New Asylum Applicants by Citizenship, Age and Sex Annual Aggregated Data (rounded) [migr_asyappctza]', updated 29 October 2014.

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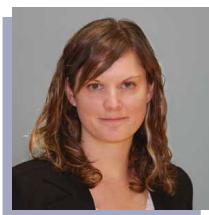
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