CHAPTER IX

# (Non)Functionality of the Dublin System

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**Abstract**

The chapter focuses on a key element of EU asylum and migration policy and legislation, the Dublin system. The Dublin system is the mechanism whereby a single state among the EU Member States, as well as Norway, Iceland, Liechtenstein, and Switzerland, is designated to examine and decide on a foreigner's application for international protection, wherever the application for international protection is lodged within the territory of these states. The chapter explains its nature and function, as well as the main principles of its application in practice, including its historical development and background. The main focus is on a critical analysis of its current functioning and the identification of its fundamental shortcomings. This describes the process of reform efforts in relation to the Dublin system, which appears to be successfully approaching its goal. The existing Dublin III Regulation should be replaced by the "Asylum and Migration Management Regulation". The text therefore also includes a comparison of these two key regulations. To balance the current system whereby a few Member States are responsible for most asylum applications, a *new solidarity mechanism* is being proposed that is simple, predictable, and workable. The new rules combine mandatory solidarity with flexibility for Member States as regards the choice of individual contributions. The chapter also includes statistical data related to the application of the Dublin system in practice in the EU Member States.

**Keywords:** Dublin system, international protection, asylum, migration, refugee, reform

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## 1. Introduction

The so-called Dublin system is an important element of the European asylum and migration policy, which has been, and still is, a very sensitive issue, because of the clash between important rights and freedoms (especially of persons seeking international protection) and the interests of both individual states and the European Union (EU) as a whole (i.e. economic, security, and other interests). In particular, this chapter aims to shed light on the main purpose of the Dublin system and the functions it should fulfil in the modern European asylum policy. However, understanding its essence, current form, and current shortcomings is not possible without highlighting on its origins and historical development, which has not been easy. Therefore, this chapter also focuses on an analysis of this aspect, including a critical assessment of the predecessors of today's Dublin III Regulation and how they have (not) fulfilled their functions.

However, the main part of the chapter is quite logically devoted to the analysis of the current regulation of the Dublin system, especially the Dublin III Regulation, and its application in the practice of EU Member States. Of course, it also includes a reflection on the relevant case law of both the Court of Justice of the EU (CJEU) and European Court of Human Rights (ECtHR). In this regard, the main research question is whether the Dublin system is functional and fulfils the purpose for which it was adopted. Following the critical analysis of legislation and practice, shortcomings and problematic aspects of the current system are further identified. The final part of the text is focused on reform efforts in relation to both the Dublin system and the entire Common European Asylum System (CEAS); however, it must be stated in advance that such efforts constitute a very slow, difficult, and still ongoing process.

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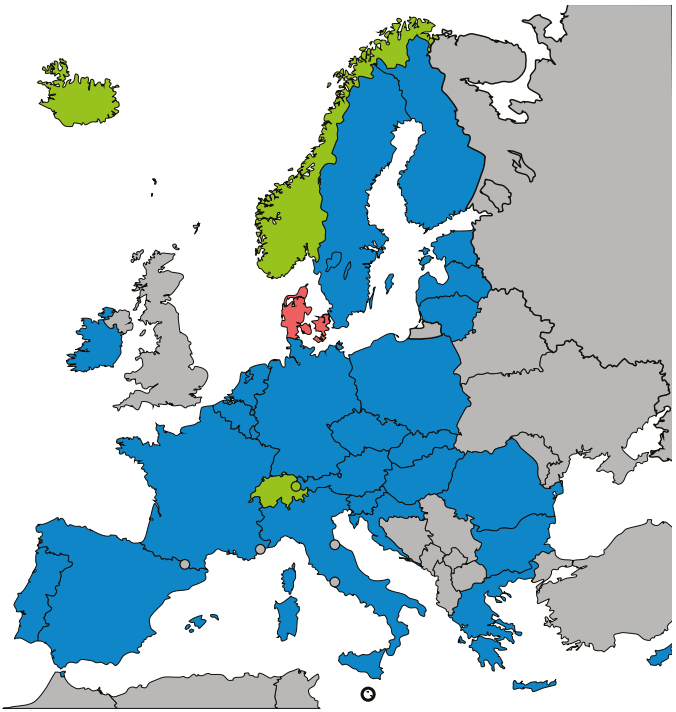
## 2. The Dublin system: General characteristics and functions

The Dublin system is the mechanism whereby a single state among the EU Member States, as well as Norway, Iceland, Liechtenstein, and Switzerland, is designated to examine and decide on a foreigner's application for international protection, wherever the application for international protection is lodged within the territory of these states. The Dublin system is intended to precisely mean that applicants for international protection have the right to have their application for international protection examined on merit in only one of the abovementioned states (the so-called "one-chance-only principle"). The Dublin system is an important part of the CEAS, whose main purpose is to harmonise EU Member States' policies, legislation, and practices in the field of asylum, migration, and refugee protection.

*Figure 1: States applying the Dublin system and its instruments*[1]



Dublin Regulation
EU-Denmark agreement
Non-EU Member States with an agreement to apply the provisions

The EU provides its citizens with an area of freedom, security, and justice without internal borders. Within this framework, free movement of persons is guaranteed, in conjunction with appropriate measures relating to external border protection, asylum, immigration, and the fight against crime. The CEAS plays a key role in these respects. There is no binding definition of the CEAS, but it is reflected in several acts of a political nature or in the form of regulations and directives.[2] However, its cornerstone is undoubtedly the 1951 Geneva Convention Relating to the Status of Refugees (Geneva Convention). The CEAS includes standards for fair and efficient asylum procedures in the Member States and, in the long term, rules leading to a common asylum procedure. It also includes standards governing the granting of refugee status and its content, including measures relating to subsidiary forms of

1 https://en.m.wikipedia.org/wiki/File:Dublin_Regulation.svg. Author: Danlaycock. It is under licence CC BY-SA 3.0.
2 Chmelíčková, 2008, p. 11.

protection. Finally, it includes rules defining a clear and workable method for determining the Member State responsible for examining an asylum application. An essential feature of the CEAS is therefore the establishment of basic and functional rules in both substantive and procedural law.[3] The legislation answers the basic questions relating to determining the state responsible for examining an application for international protection, as well as to whom protection may be granted and by what procedural procedure.

The adjective "common" should reflect the uniformity of the Member States' implementation of these rules. The uniform rules on asylum have two main goals; first, to ensure a uniform approach to providing protection to those who need it and, second, to reduce the so-called secondary movement of applicants, which is motivated by differences in national legislation and the abuse of unjustified advantages.

The Dublin system is an integral part of the CEAS,[4] as it sets out the rules to determine which Member State is responsible for examining applications for international protection.[5] The Dublin system, which currently has the Dublin III Regulation at its core, is the legal mechanism used to "determine the state responsible for examining an application for international protection lodged by a third-country national in an EU Member State". It is based on the principle that one Member State is responsible for examining the application, namely the Member State that played the largest role in the applicant's entry and stay in the territory of the Member States (with certain exceptions, of course). In the long term, creation of a CEAS is intended to lead to a common asylum procedure and uniform legal status throughout the EU for persons who are applicants for or have been granted international protection (see the preamble to the Dublin III Regulation).[6]

Existence of the Dublin system is, among other things, a manifestation of "the principle of mutual trust" between EU Member States.[7] It thus makes it possible to create and, particularly, maintain an area without internal borders. The purpose of the Dublin system is to "expeditiously" designate a Member State so as to guarantee applicants' effective access to the international protection procedure and ensure that examination of an application for international protection is properly, fairly and

3 Jurníková, 2016, pp. 12–13.

4 Judgment of the CJEU of 17 March 2016 in case C-695/15 PPU *Shiraz Baig Mirza*.

5 Judgment of the Constitutional Court of the Czech Republic, II. ÚS 3505/18 of 3 June 2019.

6 Resolution of the Supreme Administrative Court of the Czech Republic, Nad 179/2021 of 30 September 2021.

7 See judgment of the CJEU of 21 December 2011, N.S. (C-411/10) *Secretary of State for the Home Department and M.E. and others* (C-493/10):
The principle of mutual trust between member states is of fundamental importance in EU law, given that it enables the creation and preservation of an area without internal borders. At the same time, this principle, especially in connection with the area of freedom, security and law, imposes on each of these states to assume, except in exceptional circumstances, that all other member states observe EU law, and in particular the fundamental rights recognized by EU law.

expeditiously "completed".[8] Thus, the Dublin system also aims to 'accelerate the examination of applications in the interests of both asylum seekers and the States concerned'.[9]

However, the essence of the Dublin system is to not only rationalise the examination of applications for international protection and avoid overloading the system of national authorities with multiple applications from the same applicant, but also increase legal certainty as regards determination of the state responsible for examining an application for international protection.[10] The Dublin system thus seeks to reduce or even eliminate the phenomenon of "forum shopping" or "asylum shopping".[11] Asylum shopping involves a foreigner pursuing an application for international protection simultaneously or successively in several states to become successful in at least one of them.[12] The applicant thus seeks to take advantage of the differences in the asylum legislation of various Member States and obtain asylum in the country he considers to be the most benign.[13] It must be recognised that seeking the most favourable conditions is a natural human characteristic, and this is no different in the case of migration, whether legal or illegal.[14]

At the same time, the Dublin system is intended to avoid the situation known as "refugee in orbit", wherein no state is considered competent to examine an application for international protection on its merits. This system aims to prevent applicants from being left in uncertainty about the outcome of their application for a disproportionately long time period and from being transferred from one state to another without any state being willing to accept its competence to examine their

8 Judgment of the CJEU of 17 March 2016 in case C-695/15 PPU *Shiraz Baig Mirza*. The second option for an effective procedure is offered by Art. 17 of the Dublin III Regulation, which allows Member States to assess the application for international protection on merits even if they are not competent to assess it according to the Dublin III Regulation (this is a so-called discretionary provision, which is a reflection of the Member States' sovereignty and thus has a completely optional character; see the Judgement of the CJEU of 4 October 2018 in case C-56/17 Fathi). According to the jurisprudence of the CJEU, each Member State 'can therefore decide sovereignly, taking into account political, humanitarian and practical considerations, whether to accept an application for international protection for assessment, even if it is not competent on the basis of the criteria set out in this Regulation'; see the Judgement of the CJEU of 23 January 2019 in case C-661/17 M.A. and others.

9 See the Opinion of Advocate General Sharpston of 17 March 2016 in Case C-155/15 *Karim*:
The objective of the Dublin system … is, as follows from the 4th and 5th recitals of this regulation, in particular to enable the rapid determination of the relevant Member State in such a way as to guarantee effective access to the procedure for granting international protection and not to jeopardize the objective of speedy processing of requests for international protection.
Judgment of the CJEU of 16 February 2017, *C.K. and others v Republika Slovenija,* C-578/16 PPU.

10 Judgment of the Supreme Administrative Court of the Czech Republic, 8 Azs 123/2016 of 5 October 2016.

11 See Judgment of the CJEU of 21 December 2011, N.S. (C-411/10) Secretary of State for the Home Department and M.E. and others (C-493/10).

12 Davis, 2021, p. 266.

13 Kosař et al., 2010, p. 58.

14 Boccardi, 2002, p. 43.

application.[15] In such situations, the Dublin system guarantees the applicant for international protection that his or her application will be duly examined by one (only one) of the Member States at any time. The Dublin system therefore presupposes that the applicant has made at least one application that a Member State is obliged to examine, is examining, or has already decided on.[16]

## 3. Reasons for the Dublin system and its historical development

To understand the nature of the Dublin system and its functions, it is necessary to shed light on, at least briefly, the circumstances and reasons for its creation and to outline the gradual evolution of this institution. Both its legal form and content have changed over time, in response to the new needs of the European Community as well as the problems, threats, and events relating to international migration and asylum law. Therefore, the Dublin system has been and is a continuously evolving set of legal instruments and measures. Understanding the historical context and different phases of its development is also essential for a comprehensive view of the current form of the Dublin system and its shortcomings, as well as a critical assessment of its proposed reforms.

Since the beginning of European integration, the asylum policy has been the exclusive competence of individual Member States.[17] The issue of migration was dealt with by the individual states themselves within the framework of their national law, with restrictive approaches prevailing. The gradual liberalisation of the movement of persons in the European area, which began in the 1980s, had several positive consequences but also problematic aspects, including in the area of asylum policy and the fight against illegal migration. In the 1980s, EU Member States began to face a significant increase in the number of refugees and asylum applications.[18] At the same time, phenomena such as asylum shopping and refugees in orbit began to emerge (see above).[19] All this was reflected in the increased burden on decision-making bodies, delays in proceedings, overloaded asylum centres, etc. This situation also impacted the economic and security stability of individual states. To improve this situation, Member States started adopting individual restrictive measures. These measures were influenced by the economic and political requirements of each country and focused on management procedures rather than the substance of the matter. The whole

15 Pazderová, 2012, p. 322.
16 Judgment of the CJEU of 3 May 2012, Kastrati, C-620/10.
17 Judgment of the ECtHR in the case *Moustaquim v. Belgium*, of 8 February 1991, no. 12313/86.
18 Moses, 2016, p. 7.
19 Pazderová, 2012, p. 322.

situation led to a kind of race to see which country would have the most restrictive policy, which required a Europe-wide response.

The intended transformation was primarily aimed at the convergence of national asylum policies. The issue of determining national competence to examine asylum claims has not escaped attention. In view of the gradual elimination of internal borders between Member States and the associated facilitation of secondary movements of refugees within this area, it was necessary to focus on the rules that would determine which Member State would be responsible for examining an application for international protection and what obligations the concerned state would incur in such a case.

The idea underlying the current Dublin system—that only one state is responsible for examining an application for international protection lodged in another state—became firmly established in the European area in the early 1990s. Although the idea itself has always been closely linked to the process of progressive integration of states within European Communities, or later the EU, the initial positive legal expression of the idea came about through two international treaties whose status was different from the Community law of the time.[20]

Historically, the first key document in this respect was the Convention Implementing the Schengen Agreement,[21] which laid down the rules for determining the Contracting State responsible for examining an asylum application lodged in the territory of these states. However, this solution was not sufficient because of the small number of signatories,[22] with the majority of the Member States of the European Community not even being contracting parties; however, the number of asylum applications in the European Community Member States was growing disproportionately and with it the need for a common European regulation.[23]

The provisions of the Convention Implementing the Schengen Agreement were therefore replaced by the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities – Dublin Convention of 1990, which entered into force in 1997. Its signatories were the EU Member States together with Norway and Iceland. The Dublin Convention laid the foundation for the redistribution of responsibility for assessing asylum claims in Europe, with the main idea being that the first European country an applicant entered would be the only country in which his or her claim would be processed.[24] The Dublin Convention was intended to ensure that the jurisdiction of a Member State to examine an asylum application was determined as quickly as possible, and to eliminate multiple asylum applications in different EU states or, conversely, in cases where none of these states seemed competent.[25] Thanks to the

20 Větrovský, 2012, p. 307.
21 Entry into force on 1 September 1993.
22 These included only France, Germany, Belgium, Luxembourg, and the Netherlands.
23 Jurman, 2005, pp. 42–45.
24 Pikna, 2012, p. 132.
25 Battjes and Brouwer, 2015, pp. 183–214.

abolition of internal borders of the Schengen area states, applicants were able to move more easily between Member States and choose the country whose asylum policy was most welcoming to them. Furthermore, the criteria and procedures for determining the jurisdiction of the state for examining an asylum application were specified, rules for receiving asylum seekers were minimised, the asylum status was recognised, procedures for recognising or withdrawing this status were harmonised, and equality between asylum seekers was guaranteed, together with the principle of non-refoulement.[26]

A comparison between the Dublin Convention and Convention Implementing the Schengen Agreement shows that the Dublin Convention contained essentially the same obligations as those in the latter convention. In both agreements, the intention to move towards the creation of a European area without internal borders is evident, and the Dublin Convention already provides for close cooperation and harmonisation of the asylum policies.

The Dublin Convention consists of a preamble and 22 articles. The objectives of the convention were to (1) ensure that every single asylum application would be processed in one of the Member States, and thus refugees in orbit could be avoided; (2) ensure that asylum seekers could not lodge multiple applications in more than one Member State (so-called "asylum shopping"); and (3) prevent secondary refugee movements within the EU territory.[27]

Assessment of the application was carried out based on the national law while respecting international obligations. Member States could use the institution of transferring the applicant to a third safe country while respecting their international obligations, particularly the Geneva Convention. The actual process of determining the responsible state began with the first application to a Member State, which was obliged to examine the application and take back the applicant, even if the applicant had since left the state, withdrawn his or her first application, or made a new application in another Member State.

It was essential in practice to establish the criteria and their order to determine the state that would decide on the application. The order of the criteria listed below was binding. The Dublin Convention established the following criteria: The primary decision was to be made by the state in which the applicant's family member has a legal residence and where he was granted refugee status according to the Geneva Convention; secondarily, the decision would be made by the state that granted the residence permit. If this was not possible, the decision was to be made by the state that granted the visa (with certain exceptions). The fourth in order was the state through whose borders the applicant illegally entered the state; fifth in order was the state to which the applicant lawfully entered under a visa waiver. If it was not possible to determine the state according to the above criteria, the decision would be made by the state to which the applicant submitted the asylum application.

26 Svobodová, 2017, p. 1.
27 Kloth, 2000, p. 8.

For humanitarian reasons and with the consent of the applicant, another Member State could also examine the application; the Dublin Convention envisaged particular family or cultural motives in such cases. The responsibility for assessing the application was then transferred to that state.

In 1992, the Treaty on EU was adopted in Maastricht, which included justice and home affairs in the area of shared responsibility. These policies formed the so-called third pillar, which envisaged intergovernmental cooperation in these areas and the creation of instruments and procedures for international harmonisation. Initially, this form of cooperation seemed a good step, but over time, it proved to be insufficient and unsuccessful, as each Member State had a different view on such sensitive issues, and no common compromise could be found to adopt legally binding standards for all Member States. Therefore, non-binding documents, such as recommendations, were mainly accepted in the third pillar. While the intended objectives were not achieved in practice, the link between the EU and Schengen system was deepened.

The real Europeanisation and communitarisation of the rule of a single state responsible for examining an application for international protection did not take place until 1999, when the so-called Treaty of Amsterdam entered into force. The treaty brought about two important changes from the point of view under examination. First, Protocol No 2 incorporated the entire Schengen acquis, including the Convention Implementing the Schengen Agreement, into the framework of the EU. Second, the area of asylum and immigration policy was communitarised, that is, incorporated into the so-called first pillar of the three-pillar structure of the then EU. The status of the Dublin Convention as such was not formally affected.[28]

In the same year (1999, in Tampere), the European Council decided to work towards a CEAS based on the full and inclusive application of the Geneva Convention, as supplemented by the New York Protocol of 31 January 1967.[29] With reference to this convention, the principle of non-refoulement, which is a key principle of refugee law, was to be guaranteed. This principle constitutes a certain limitation on the freedom of states to take measures against refugees on their territory and provides protection to the concerned persons against return to their country of origin where they are in danger. This principle, which has its roots in the French term *refouler*, meaning "to return", includes, according to the wording of the Geneva Convention, the obligation of the state not to expel or return a refugee in any way to the borders of countries where his life or personal freedom would be threatened on account of his race, religion, nationality, membership of a particular social class, or political opinion. This principle is also enshrined in other international or European documents, including Art. 19 of the Charter of Fundamental Rights of the European Union.

28 Větrovský, 2012, p. 308.
29 Pikna, 2012. pp. 131–155.

Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention was adopted for effective application of the Dublin Convention. This document and the material covered by it significantly complement and support the effective implementation of the Dublin system. The fingerprint database was intended to help address the challenge Member States face in applying the Dublin Convention, that is, to establish the identity of the asylum seeker and, where appropriate, the "travel route"—the route of movement and the place where the individual entered the EU territory.[30] Eurodac was created to strengthen the Dublin procedure, and its use was therefore strictly limited to the information and data needed to identify the state responsible for examining the asylum application.

From the very beginning, the Dublin Convention was widely criticised, especially by nongovernmental organisations, as being inequitable, unworkable, and expensive. One major point of criticism was that the convention did not consider the legitimate interest of asylum seekers in choosing the state to examine their asylum claim. Moreover, the criteria of the first point of entry into the Member States' territory was said to be unfair in putting the burden on particular Member States due to asylum seekers' travel routes and the country's geographical location, instead of establishing a mechanism of burden sharing. Furthermore, the European Council on Refugees and Exile (ECRE) particularly criticised the application of the safe third country concept, allowing Member States to expel asylum seekers to states outside the EU. The concept did not serve the objective of every asylum request to be considered by one of the Member States and led to a risk of "refugees in orbit" and chain refoulement.[31]

The usefulness and effectiveness of the Dublin Convention was also subsequently questioned, as it applied to less than 6% of the total asylum applications in the EU, and less than 2% of all applicants for asylum were actually transferred from one Member State to another.[32] Furthermore, only slightly less than 40% of the accepted requests to take back or take charge resulted in actual transfers.[33] This low transfer rate constituted one of the core problems of the operation of the convention. Ultimately, even Member States acknowledged that the Dublin Convention did not work based on several factors, as revealed by a study by the Danish Refugee Council[34] and reiterated by the European Commission in its Staff Working Paper 'Revisiting the Dublin Convention', whereby it was acknowledged that 'few if any Member States

30 Hailbronner, 2000, p. 401.

31 ECRE, 2006, pp. 7–11.

32 Commission Staff Working Paper: Evaluation of the Dublin Convention, Brussels, 13 June 2001, SEC (2001) 756, p. 2. See also Heinonen and Matti, 2000, pp. 281–297. On statistics by country see also Danish Refugee Council: The Dublin Convention. Study on its Implementation in the 15 Member States of the European Union, January 2001, pp. 129–162.

33 Ibid.

34 Danish Refugee Council: The Dublin Convention. Study on its Implementation in the 15 Member States of the European Union, January 2001, pp. 129–162.

appear to regard the Dublin Convention as an unqualified success'.[35] The European Commission's evaluation concluded with the observation that the convention did not have a noticeable effect on the demand for asylum within the EU.

Following an assessment of the application of the Dublin Convention in practice, the European Commission submitted a proposal in June 2001 for the adoption of the Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application. The European Council adopted this Regulation No 343/2003, referred to as "Dublin II", on 18 February 2003, replacing the Dublin Convention just one month later.[36] Commission Regulation No 1560 laid down rules for application of the Dublin II Regulation, such as on processing, receipt, and withdrawal of asylum applications; requests for information; transfers of applicants; and settlement of contractual disputes between Member States.[37]

The main objectives of the Dublin II Regulation, as outlined in the Preamble and the Commission Proposal for the regulation, were to (1) ensure that asylum seekers have effective access to procedures for determining refugee status, (2) prevent abuse of asylum procedures in the form of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States, and (3) determine as quickly as possible the Member State responsible for examining an asylum claim.

The Dublin II Regulation established a hierarchy of criteria for identifying the Member State responsible for examining an asylum application lodged in one of the states by a third-country national, as laid down in Chapter III of the regulation. The criteria set out how the responsibility for examining the application is attributed to the following Member States in order of priority: (1) a state in which the applicant has a family member who has refugee status or whose application for asylum is being examined; (2) a state that has provided the applicant a residence permit or visa or whose border the applicant has crossed illegally; and (3) in case the above circumstances are not applicable, a Member State whose territory the applicant has entered and in which he or she needs to have the visa waived.

If none of the above criteria are applicable, the first Member State with which the asylum application was lodged should be responsible for examining it. Basically, each Member State, when examining an application, establishes responsibility based on these criteria—either at the admissibility stage or when the claim is examined on its merits. If State A arrives at the conclusion that State B is responsible for the claim, it will send a request to the latter to take charge or take back the asylum seeker. When, after considering the request, State B agrees to take over the responsibility, the asylum seeker will be transferred from State A to State B. Time limits are set for all these proceedings.

35 Commission Staff Working Paper: Revisiting the Dublin Convention, SEC(2000)522, p. 5.
36 Huybreghts, 2015, pp. 379–426.
37 Peers, 2014, pp. 485–494.

However, a Member State may decide to examine an application for asylum even if it is not its responsibility under the criteria laid down in the Regulation according to Art. 3(2), commonly referred to as the "sovereignty" clause. In addition, under Art. 15, the "humanitarian" clause, any Member State may bring together extended family members on humanitarian grounds.[38]

Regarding the relationship between humanism and asylum issues (including the Dublin system), the gradual promotion of humanity and human rights considerations in decisions on the transfer of applicants for international protection between EU Member States occurred mainly through the case law of the ECtHR and CJEU. In its judgement in Case C-245/11,[39] the CJEU concluded that in accordance with the literal wording of Art. 15(2) of the Dublin Regulation, it is the duty, and not merely the possibility, of states not to separate or to reunite an asylum seeker with another relative in cases where one of the persons concerned is dependent on the assistance of the other, and family ties between the two persons already existed in the country of origin. Thus, according to the CJEU, the possibility to derogate from the imperatives not to separate or to reunite is not available at any time, but only 'when justified by the exceptional nature of the situation'.[40] Otherwise, the refugee may seek protection through the national courts.

However, Větrovský[41] pointed out that the CJEU was not the first to make a dent in the state-centric understanding of the Dublin system. As early as 2000, the ECtHR held that participation in the Dublin Convention does not relieve the states of their responsibility, under Art. 3 of the European Convention, to ensure that, as a result of a decision to transfer an alien to another Contracting State responsible for examining his or her asylum application, the person concerned is not exposed to the risk of treatment prohibited by Art. 3.[42] Applying that rule 11 years later to the case of the transfer of an applicant for international protection from Belgium to Greece, the ECtHR concluded that, in view of the systemic deficiencies relating to the reception conditions and asylum procedure in Greece, Belgium had violated the applicant's right protected by Art. 3 of the European Convention when the transfer to Greece took place despite the facts set out above.[43] The CJEU reached an analogous conclusion on a date exactly 11 months later. Following a preliminary question referred to by the British and Irish courts, the CJEU held that

> Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that Member States, including national courts, cannot transfer an asylum seeker to a "Member State of competence" within the meaning of Regulation

38 ECRE, 2006, pp. 7-11.
39 Judgement of the CJEU (Grand Chamber) of 6 November 2012 in case C-245/11 *K v. Bundesasylamt*.
40 Ibid.
41 Větrovský, 2012, pp. 309–310.
42 Judgment of the ECtHR of 7 March 2000, in the case of *T.I. v. Great Britain*, no. 43844/98.
43 Judgment of the ECtHR of 21 January 2011, in the case of *M.S.S. v. Belgium and Greece*, no. 30696/09. For more details, see Moreno-Lax, 2012, pp. 1–31.

> No 343/2003 if the systemic deficiencies in the asylum procedure and reception conditions for asylum seekers in that Member State constitute serious and demonstrable grounds for believing that the applicant will be exposed to a real risk of inhuman or degrading treatment within the meaning of that provision.[44]

A substantial part of this CJEU opinion was subsequently incorporated into the text of the Dublin Regulation No 604/2013 (Dublin III Regulation). The imperative of protecting human dignity and human rights has thus definitively gained a firm place in the Dublin system.[45]

The national courts of the Member States have also ruled in the same way. For example, the Czech Supreme Administrative Court stated that

> Under the Dublin system, it is not possible to transfer applicants for international protection to countries where the asylum procedures are so seriously, i.e. systemically, deficient in terms of the binding standards of the Common European Asylum System that the risk of inhuman or degrading treatment contrary to the requirements of Article 4 of the Charter of Fundamental Rights of the EU or Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms would arise in the event of the applicant's transfer.[46]

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## 4. Current regulation and practice regarding the Dublin system

### *4.1. Dublin III Regulation*

In 2013, the ECRE presented a report that aimed to evaluate the (non)functioning of the Dublin system, that is, Dublin II. The result indicated an insufficiently fair or efficient review of applications and disproportionately long asylum procedures. An equally criticized shortcoming was the division of families, because individual

44 Judgment of the CJEU of 21 December 2011, N.S. (C-411/10) *Secretary of State for the Home Department and M.E. and others* (C-493/10).

45 Judgment of the CJEU of 21 December 2011, N.S. (C-411/10) Secretary of State for the Home Department and M.E. and others (C-493/10), of 14 November 2013, *Puid*, C-4/11, and of 10 December 2013, *Abdullahi*, C-394/12; Judgment of the ECtHR of 21 January 2011, in the case of *M.S.S. v. Belgium and Greece*, no. 30696/09, or of 4 November 2014, in the case of *Tarakhel v. Switzerland*, no. 29217/12 and others.

46 Judgment of the Supreme Administrative Court of the Czech Republic 5 Azs 195/2016 of 12 September 2016 or the Judgment of the Supreme Administrative Court of the Czech Republic 1 Azs 248/2014 of 25 February 2015.

applications of family members were assessed by officials in different Member States, regardless of the existence of the relationship between the applicants. In addition to the obvious and systematic violations of human rights during the transfer of applicants and non-compliance with family ties, the possibility of detention, lack of information for applicants, and absence of a suspensive effect of appeal or requests for judicial review of the decision on takeover or readmission, became major shortcomings of the regulation.[47] Simultaneously, case law has called for changes to Dublin II.[48] Therefore, based on a proposal from the European Commission, "Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and procedures 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"—that is, "Dublin III"—was adopted.

Thus, the CEAS currently consists mainly of the following fundamental documents: the Dublin Regulation (Dublin III), Qualification Directive,[49] Procedural Directive,[50] Reception Directive,[51] and Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 concerning the establishment of "Eurodac" for the comparison of fingerprints.

The new Dublin Regulation, referred to as Dublin III, sought to address the shortcomings of the previous legislation and thus improve the efficiency of the system. However, the basic principles remain the same as those for the previous Dublin Regulation, particularly the position that the Member State playing the greatest role in the applicant's entry into the territory of the Member States is competent to examine the application for international protection. Great emphasis was placed on the protection of unaccompanied minors and the preservation of family unity.

A change from the previous regulation was made in the case of applicants for subsidiary protection and persons enjoying such protection. While Regulation No 343/2003 covered only asylum seekers, the current system also covers applicants for international protection and allows them to better defend their rights. A completely new instrument is the early warning, preparedness, and crisis response mechanism, which addresses the root causes of dysfunctional national asylum systems or problems arising from specific pressures. In the area of detention of applicants, the only permissible ground for detention for the purpose of relocation is established,

47 Horková, 2016, pp. 105–106.

48 E.g. Judgment of the CJEU of 21 December 2011, N.S. (C-411/10) Secretary of State for the Home Department and M.E. and others (C-493/10) or Judgement of the ECtHR of 21 January 2011, in the case of *M.S.S. v. Belgium and Greece*, no. 30696/09.

49 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

50 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

51 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

namely serious risk of escape. A case-by-case assessment is required, and detention can only be used in cases where the use of less coercive measures is not effective. Detention shall be of the shortest possible duration and shall be decided based on the application of the principles of necessity and proportionality. There has also been a shift in the area of appeals against decisions to transfer an applicant. Member States are obliged to guarantee an appeal against a relocation decision, and any such decision should be subject to a suspensive remedy within a reasonable time period. Explicit mention is made of the applicant's right to remain in the territory of the state, pending the court's decision on the appeal.

In the application of the previous Dublin Regulation, the level and form of information provided to applicants were also frequently criticised. The institution of a personal interview is intended to improve the information provided to the applicant.[52] The emphasis is on communication in a language that the applicant understands and can communicate in. Member States are obliged to provide free legal aid on request to applicants who cannot afford to pay for it. Legal aid and representation shall not be arbitrarily restricted by Member States, and the applicant shall not be prevented from having effective access to justice. In the area of enhanced protection of applicants, safeguards for minors have been extended, considering the best interests of the child. In assessing those best interests, particular consideration is given to family reunification and ensuring of the development and safety of the minor, accounting for the views of the child.[53]

The preamble of the Dublin III Regulation already mentions the basic principles, which are specifically reflected in the individual articles of the regulation. These include, in particular, the principle of non-refoulement, explicit reference to the application of the general sources of international refugee law, and emphasis on the importance of the principle of family unity. The principle of solidarity and mutual trust has not been overlooked. The core principle remains the examination of an asylum application by one Member State and one Member State only to avoid a multi-country examination; however, the sovereignty clause allows Member States to assume jurisdiction even if another Member State is competent under the Dublin criteria. The right to return an applicant for international protection to a safe third country remains in accordance with the Geneva Convention.[54]

In determining the relevant criteria, Art. 7 of the Regulation is decisive, as it expressly provides that the individual criteria are applied in the order in which they are listed in the regulation. The Member State responsible in accordance with the criteria set out in the regulation shall be determined based on the situation wherein the applicant first lodged his or her application for international protection with a Member State.[55]

52 Judgement of the ECtHR of 5 April 2011, in the case of *Rahimi v. Greece*, No. 8687/08.

53 The principle of acting in the best interest of the child is based on Art. 3 para. 1 of the International Convention on the Rights of the Child.

54 For more details, see Gil-Bazo, 2015, pp. 42–77.

55 Kotzeva et al., 2008, p. 329.

As mentioned above, the priority criteria are family ties and respect for the principle of family unity, which significantly improve the protection of unaccompanied minors and whose position has been strengthened by the adoption of the Dublin III Regulation.[56]

There are two sets of criteria that are (1) designed to protect the integrity of the family (Arts. 8–11 and 16–17) and (2) relate to the Member State that played the greatest role in the applicant's entry to or stay in the territory of the Member States (Arts. 12–15). The "order of the criteria" for determining the Member State responsible, as set out in Chapter III of the Dublin III Regulation, means that the criteria are applied in that order: For family unity, the order is "unaccompanied minor" (Art. 8), "family members enjoying international protection" (Art. 9), "family members who are applicants for international protection" (Art. 10), and finally "family procedure" (Art. 11). Then, the criteria of "major share of entry or stay" are applied in this order: "issuance of residence permits or visas" (Art. 12), "illegal entry or stay" (Art. 13), "entry with visa exemption" (Art. 14), and "application for international protection in the international transit area of an airport" (Art. 15).

When applying the Dublin III Regulation, Member States must also, of course, comply with their obligations under European and international human rights law, including the Geneva Convention, and particularly the Charter of Fundamental Rights of the European Union, European Convention on Human Rights, and relevant case law of the CJEU and ECtHR. Emphasis is also placed on effective cooperation between Member States within the framework of the regulation and on the application of the principle of mutual trust in the field of asylum policy.

The Dublin system aims to ensure that only one Member State is responsible for each asylum application lodged in any Member State. If none of the above criteria apply, the first Member State in which the application was lodged is responsible for examining the application for international protection. If it is not possible to transfer the applicant to the Member State that was primarily designated as competent—because there are serious grounds for believing that systematic deficiencies exist in the asylum procedure and reception conditions in that Member State entail a risk of inhuman or degrading treatment within the meaning of Art. 4 of the Charter of Fundamental Rights of the EU—the Member State conducting the procedure to determine the Member State responsible shall continue to examine the criteria to see whether another Member State can be designated as competent. Here, the Dublin III Regulation reflects the requirements of the ECtHR case law and the subsequent CJEU case law—that is, the need to examine at all times the risk of violation of fundamental rights in the treatment of applicants for international protection, including a possible violation of the principle of non-refoulement.[57]

56 Battjes and Brouwer, 2015, p. 2.

57 Judgement of the ECtHR of 21 January 2011, in the case of *M.S.S. v. Belgium and Greece*, no. 30696/09, or judgement of the CJEU of 21 December 2011, N.S. (C-411/10) Secretary of State for the Home Department and M.E. and others (C-493/10).

Moreover, when assessing obstacles to transferring to another Member State under the Dublin system, the individual situation of the foreigner and the resulting risk of violation of Art. 4 of the Charter of Fundamental Rights of the EU or Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be disregarded. The case law[58] states that

> …the transfer of an asylum seeker under the Dublin III Regulation may be carried out only under conditions which exclude the possibility that the transfer will entail a real risk of the person concerned being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.[59]

The transfer of an applicant for international protection within the meaning of the Dublin III Regulation can only be carried out in a situation where the Member State concerned will not have a problem—at a systemic level in general or, where appropriate, at an individual level (e.g. on account of a particularly serious medical condition)—in ensuring at least minimum decent conditions as regards the procedure and reception conditions for the applicant concerned.

If the transfer cannot be made to any Member State designated based on the above criteria set out in Chapter III (of the Dublin III Regulation) or to the first Member State in which the application was lodged, the Member State conducting the procedure for designating the Member State responsible shall become the Member State responsible.

Dublin III also contains discretionary provisions in relation to Member States. The "sovereignty clause" in Art. 17(1) allows Member States to take responsibility for an application lodged on their territory even if they are not the Member State responsible according to the Dublin criteria. The "humanitarian provision" in Art. 17(2) provides that the Member State in which international protection is applied for and that is conducting the procedure for determining the Member State responsible, or the Member State that is responsible, may, at any time before the first decision on merits is taken, require another Member State to take charge of the applicant on humanitarian grounds, arising particularly from family or cultural reasons, with a view to reuniting other family members, even if that Member State is not responsible according to the criteria set out above.

58 Judgement of the CJEU of 16 February 2017, C.K. and others, C-578/16; similarly, judgement of the ECtHR of 4 November 2014, in the case of *Tarakhel v. Switzerland*, no. 29217/12.

59 National courts also rule in the same way; see, e.g. judgement of the Supreme Administrative Court of the Czech Republic of 9 November 2020, no. 5 Azs 65/2020-31, Supreme Administrative Court, 1 Azs 248/2014-27, Supreme Administrative Court, 9 Azs 27/2016-37.

*Figure 2. Reasons for incoming take charge and take back requests in the EU for 2022*[60]

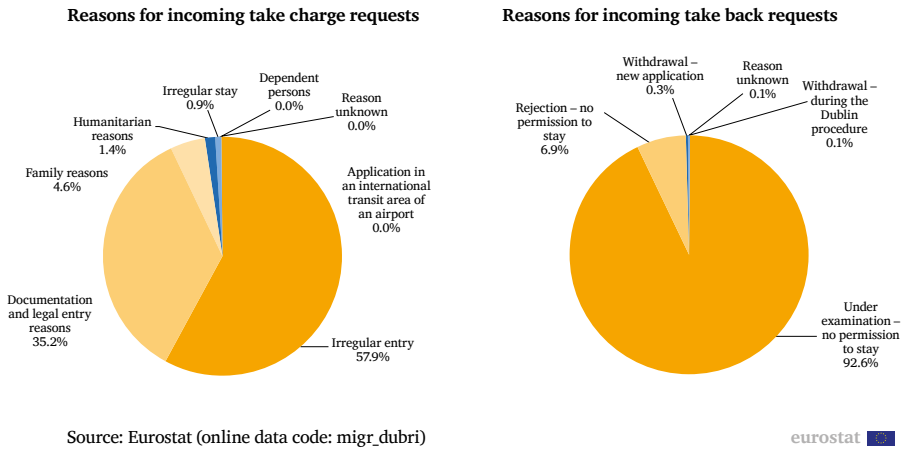
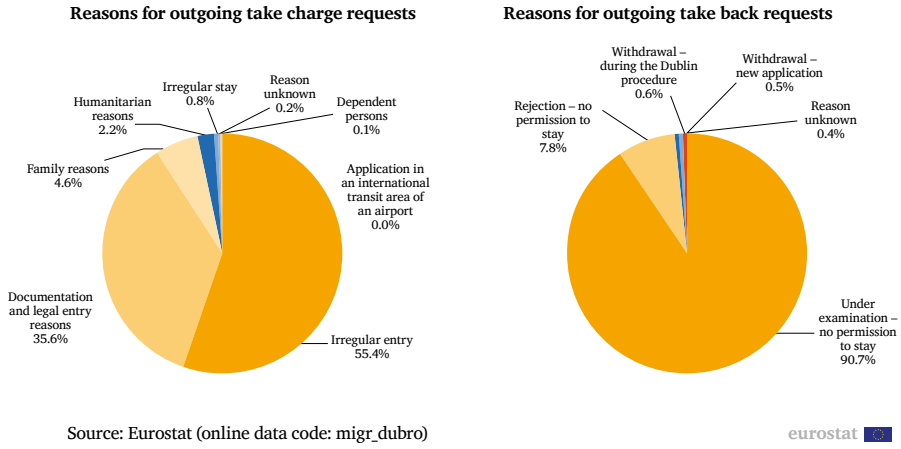



*Figure 3. Reasons for outgoing take charge and take back requests in the EU for 2022*[61]




60 Source: Eurostat. All figures and statistical data presented in this chapter are available from Eurostat: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_countries_responsible_for_asylum_applications_(Dublin_Regulation)#Decisions_on_Dublin_requests (Accessed: 30 October 2023). For this figure: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig4_Reasons_for_incoming_take_charge_and_take_back_requests,_EU,_2022_(%25).png.

61 Source: Eurostat: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig7_Reasons_for_outgoing_take_charge_and_take_back_requests,_EU,_2022_(%25).png.

In 2022, most incoming take charge requests received in EU Member States were related to irregular entry (57.9%), documentation and legal entry (35.2%) and family reasons (4.6%); together, these three categories accounted for over 97% of all take charge requests. For incoming take back requests, the lack of permission to stay for an asylum applicant (no residence permit) accounted for 92.6% of cases still under examination, while 6.9% had been rejected. The withdrawal of applications—either during the Dublin procedure or with new applications—made up only 0.4% of the reasons for incoming take back requests in the EU Member States.

In 2022, most outgoing take charge requests sent in EU Member States were related to irregular entry (55.4%) and documentation and legal entry (35.6%); together, these two categories accounted for 9 out of 10 (91%) take charge requests. Nearly all outgoing take back requests sent in EU Member States were related to no permission to stay, either concerning applications under examination (90.7%) or rejected ones (7.8%).

A very fundamental prerequisite for ensuring procedural fairness is the applicant's right to information. According to Art. 4(1) of the Dublin III Regulation, after the applicant has lodged an application for international protection in a Member State, the competent authorities shall inform him of, in particular, the objectives of the Dublin III Regulation, consequences of making another application in a different Member State, and consequences of moving from one Member State to another during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined. In addition, they must be given the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, and the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible even if such responsibility is not based on those criteria. The applicant must also be informed of the personal interview and the possibility of submitting information regarding the presence of family members, relatives, or any other family relations in the Member States. It is also necessary to provide information on the possibility to challenge a transfer decision and, where applicable, apply for a suspension of the transfer. Finally, the applicant is advised that the competent authorities of Member States can exchange data on him or her for the sole purpose of implementing their obligations arising under this Regulation; that he or she has the right to access data relating to him or her and the right to request that such data be corrected, if inaccurate, or deleted, if unlawfully processed; and the procedures for exercising those rights.

In accordance with Art. 4(2) of Dublin III Regulation, information shall be provided in writing and in a language the applicant understands or may reasonably be supposed to understand. Where necessary for proper understanding (for persons with special needs), information must also be given orally. Such information shall be provided through the common information leaflets contained in Annexes X and XI of the implementing Regulation, as provided for in Art. 4(3) of the Dublin III Regulation; this shall be supplemented by information relating to the specific Member State.

The Dublin III Regulation also contains an obligation for the Member State to conduct a personal interview with the applicant. This is also a significant innovation compared to the previous Dublin legislation. The main purpose of the interview is to gather all the facts relevant for determining the Member State responsible. Therefore, the personal interview in the Dublin procedure has a different scope and meaning than the personal interview on the substance of the application for international protection under Art. 14 of the Asylum Procedures Directive.

The personal interview in the Dublin procedure has two objectives:

The purpose of the interview is to facilitate the determination of the Member State responsible, as the information obtained should help establish the relevant facts for the determination of jurisdiction.

The interview must also enable the applicant to understand correctly the information provided to him in accordance with Article 4 (of the Dublin III Regulation).

In this context, the personal interview in the Dublin procedure has the potential to serve several purposes. It allows the authorities to provide the applicant orally with information on the Dublin III Regulation and allows applicants to ask for clarification on any aspects of the Dublin III Regulation that they do not understand. It also allows applicants to provide information necessary for a correct determination of jurisdiction and express their views effectively. Finally, it allows the authorities to clarify directly and effectively aspects of the information provided by the applicant.

In addition to the substantive provisions, the Dublin III Regulation contains procedural provisions. The procedure for determining the Member State responsible is initiated by lodging an application for international protection in a Member State. The asylum seeker is duly informed (see above) and is issued with a certificate confirming his or her status as an asylum seeker, together with information about whether he or she is entitled to free movement within the territory of that state or part of it.

In the procedure, it is necessary to establish the reasons for which the foreigner left the country and whether those reasons meet the conditions for asylum or subsidiary protection. Pending the decision, the applicant is usually placed in a detention centre. An important and, with a few exceptions, mandatory element of the process is the personal interview. A Member State is not obliged to conduct such an interview unless the applicant is unavailable or has already provided the necessary information by other means.

The Dublin III Regulation also contains new provisions on custodial measures. This is only possible if the person is the subject of Dublin proceedings and there is a substantial risk of absconding. The general rule that detention must be as short as possible and must not exceed a period that is reasonably long and necessary for the administrative procedures must also be observed.[62] However, detention should only be used as a last resort, and, in all cases, the situation of families, persons with health problems, women, and unaccompanied minors must be considered.Dublin III

62 Peers, 2015, pp. 7–9.

regulation distinguishes between procedures for take charge and take back requests. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may—as quickly as possible and in any event within three months of the date on which the application was lodged—request that another Member State take charge of the applicant. In the case of a Eurodac hit with data recorded pursuant to Art. 14 of Regulation (EU) No 603/2013, the request shall be sent within two months of receiving that hit. Where the request to take charge of an applicant is not made within the periods laid down, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged. The requested Member State shall make the necessary checks and give a decision on the request to take charge of an applicant within two months of receipt of the request. Failure to act within the period shall be tantamount to accepting the request and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

Where a Member State with which a person, as referred to in Art. 18(1)(b), (c), or (d), who has lodged a new application for international protection considers that another Member State is responsible in accordance with Art. 20(5) and Art. 18(1)(b), (c), or (d), it may request that another Member State take back that person (see Art. 23 Dublin III Regulation). A take back request shall be made as quickly as possible and, in any event, within two months of receiving the Eurodac hit. If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged. Where the take back request is not made within the periods laid down, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged. The requested Member State shall make the necessary checks and give a decision on the request to take back the person concerned as quickly as possible and, in any event, no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks. Failure to act within these time limits shall be tantamount to accepting the request and entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.

### *4.2. Eurodac*

The immediate identification of applicants for international protection and detainees is essential for the functioning of the Dublin system. Fingerprinting is an important element in establishing the exact identity of persons, especially due to the use of false travel documents or refugees' travel to Europe without documents. Fingerprints are not easily interchangeable and are not affected by, e.g. ageing or

illness;[63] they are often used in biometric systems because of the simplicity and speed of their acquisition.[64]

Eurodac is currently governed by Regulation (EU) No 603/2013 of the European Parliament and of the Council, which has brought many changes, especially regarding security and data protection.[65] It is a central database of fingerprint data linked to Member States through electronic means. This system collects, stores, exchanges, and compares fingerprints of asylum seekers. The purpose of establishing this system is facilitating the implementation of the Dublin system to avoid multiple asylum applications in several Member States under different names.[66]

Member States take the fingerprints of all third-country nationals over the age of 14 years who applied for asylum in their territory and were apprehended when illegally crossing the external borders of the EU or, in the case of third-country nationals, when illegally staying in the EU. In addition to fingerprints, other information is transmitted, such as origin of the applicant, gender, place and date of the application for international protection, and Member State reference number. These data must be sent without delay by the national authorities, together with the digitised form of the fingerprints in a quality that allows comparison, to the Eurodac Central Unit, which stores all data, to compare them with the data already stored. This comparison shall take place within 24 hours of transmission, although in exceptional cases, the process may be accelerated.

Access to the data is very limited; a Member State can neither search the data transmitted by another Member State nor can it receive the data, except in the case of a comparison. Only the Member State of origin has the right to access the data, namely the pre-designated authority of each Member State, which is listed in the comprehensive list of responsible authorities in the Official Journal of the EU.

### *4.3. Statistical data*

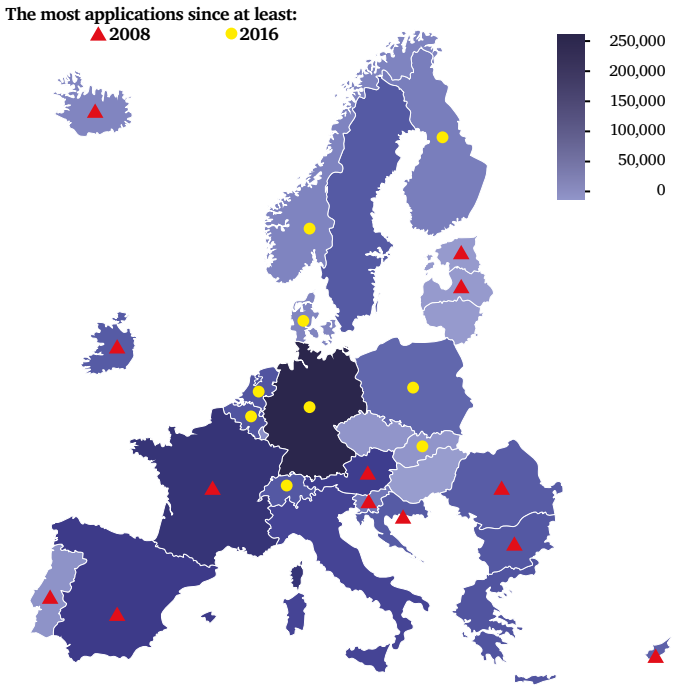
About 996,000 applications for international protection were lodged in EU+ countries in 2022, up by about one-half from 2021 and two-fifths higher than the pre-COVID level of 2019. More applications were lodged in nearly all EU+ countries, except in Malta, Lithuania, and Liechtenstein (where they decreased) as well as Latvia (where they remained stable).

While the EU+ total remained well below the high of 2015, the number of applications exceeded the 2015 values in several countries. France, Spain, and Austria and, at lower levels, Cyprus, Bulgaria, Ireland, Croatia, Romania, Slovenia, Iceland, Estonia, Portugal, and Latvia received (in descending order) the most applications on record. Many other countries, notably the Netherlands, Belgium, and Switzerland

63 Kindt, 2013, p. 53.
64 Thomas, 2005, p. 299.
65 Roots, 2015, p. 3.
66 Heinonen and Marinho, 1998, p. 8.

and, at lower levels, Poland, Finland, Norway, Denmark, and Slovakia received (in descending order) the most applications since at least 2016. The rise in applications came in addition to about 3.9 million beneficiaries of temporary protection, as reported by Eurostat.[67]

*Figure 4. Applications for international protection by EU+ countries in 2022*[68]




Across EU+ countries, 7 out of every 10 applications were lodged in the top-five receiving countries: Germany, France, Spain, Austria, and Italy (in descending order). Germany (244,000) continued to be the main receiving country; applications increased by more than one-quarter from 2021 and reached the highest level since 2016. Germany was followed at a distance by France (156,000), where applications rose by 30% from 2021 and reached the highest since at least 2008. Applications lodged in Spain (118,000) increased by about four-fifths, following a decline in the two previous years. Applications in Austria (109,000) rose the most in absolute terms, nearly tripling from 2021. This was partially driven by stronger secondary movements, increased flows along the Balkan route, and visa-free policies of some

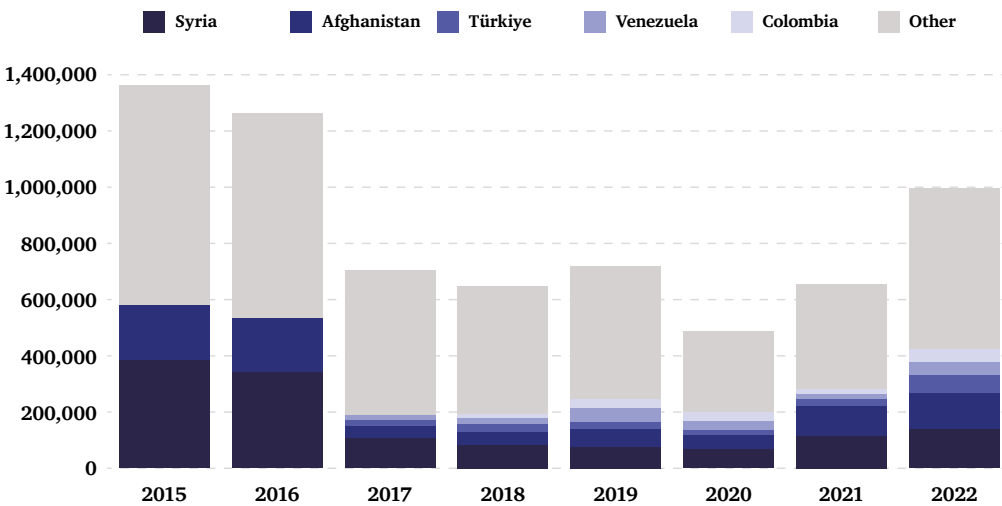
67 EU Asylum Agency, 2023, p. 82.

68 Source: Eurostat, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_countries_responsible_for_asylum_applications_(Dublin_Regulation)#Decisions_on_Dublin_requests (Accessed: 30 October 2023).

Western Balkan countries. Linked to this, applications in Bulgaria (20,000) returned to the peak of 2015, and those in Romania were the highest on record (12,000).[69]

Nationals of Syria, Afghanistan, Türkiye, Venezuela, and Colombia lodged the most applications in 2022. While the record levels of 2015 and 2016 were primarily driven by applications for international protection by persons coming from Syria, Afghanistan, and Iraq, the current increase stems from a much wider range of nationalities. At lower levels, the number of applicants from India increased by more than six times to the highest level since at least 2008, with three-quarters of them applying in Austria. At the same time, citizens of Bangladesh, Georgia, Ukraine, Morocco, Tunisia, Egypt, the Democratic Republic of the Congo, Peru, Moldova, Burundi, Palestine, Belarus, Yemen, and Cuba (in descending order) also applied in unprecedented numbers.[70]

*Figure 5: Applications for international protection by top countries of origin in 2022*[71]

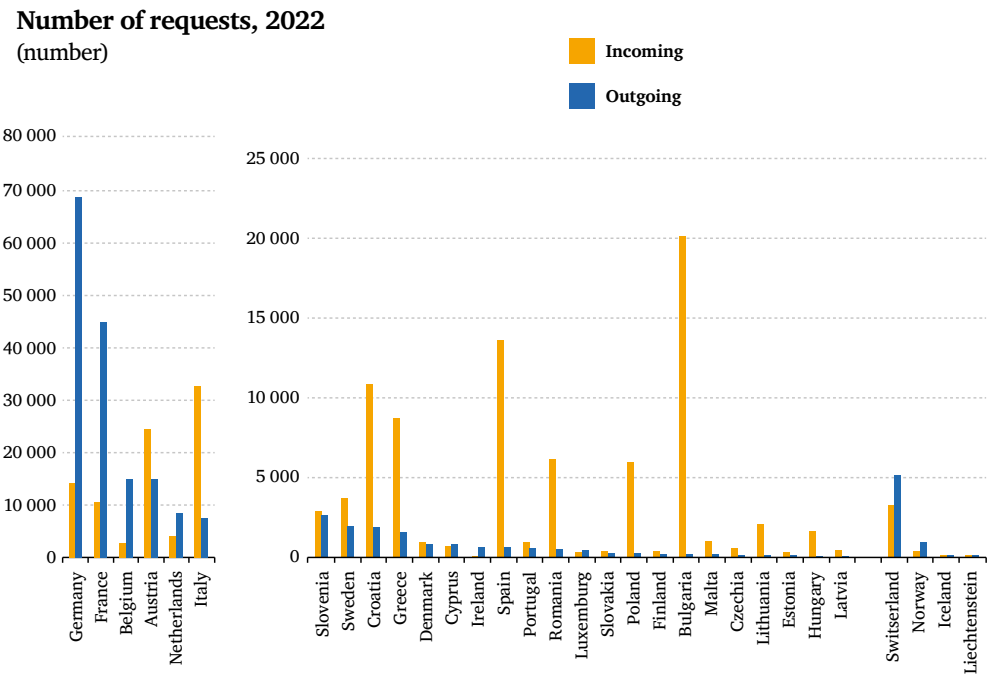



In 2022, the overall rate of positive first-instance decisions on asylum applications in the EU+ was 39%. This means that of the 646,000 decisions issued, 252,000 were positive and granted either refugee status or subsidiary protection. The rate of accepted applications was the highest since 2017. Most positive first-instance decisions granted refugee status (149,000, 59% of all positive decisions), and subsidiary

69 Ibid.
70 EUAA, 2023, p. 85.
71 Source: Eurostat. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_countries_responsible_for_asylum_applications_(Dublin_Regulation)#Decisions_on_Dublin_requests (Accessed: 30 October 2023).

protection was granted in the remaining 103,000 cases (41%). Among the 20 nationalities with the highest number of first-instance decisions in 2022, Syrians had the highest rate of accepted applications (93%), followed by Ukrainians (86%) and Eritreans (84%). Other groups with relatively high rates of positive decisions were nationals of Mali (65%), Somalia (57%), and Afghanistan (51%).[72]

*Figure 6: Number of incoming and outgoing requests in 2022*[73]

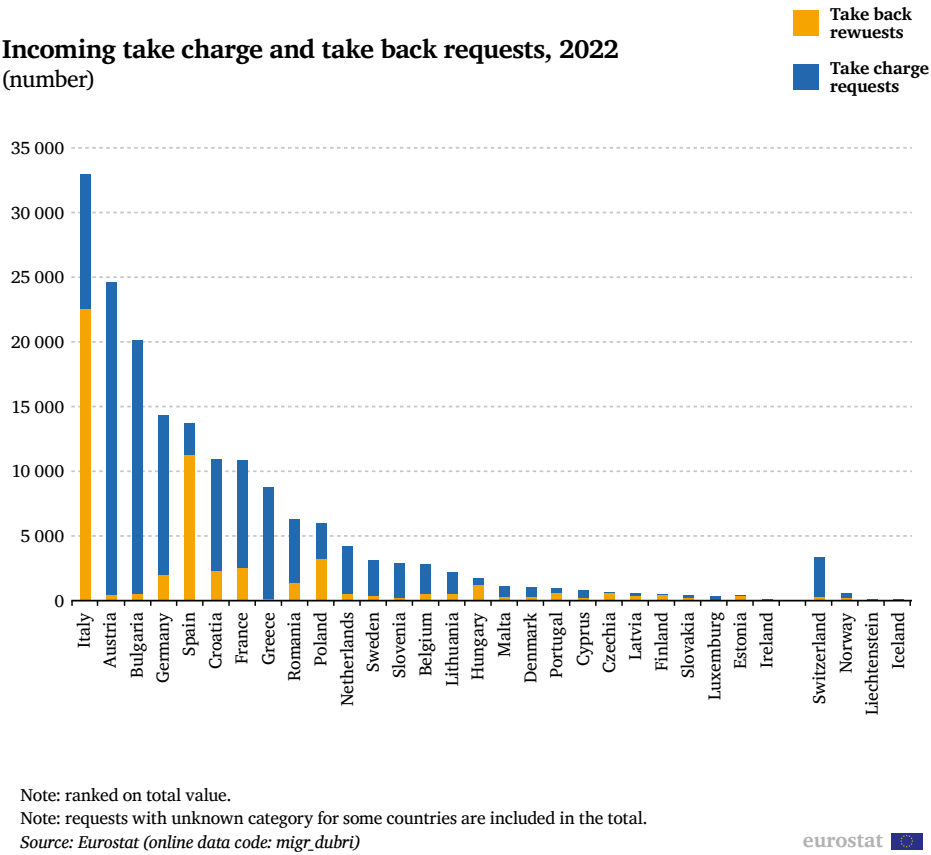



Note: the y-axis scale in the left part of the figure is around three times greater than that in the right part.
Note: ranked on outgoing.
*Source: Eurostat (online data codes: migr_dubri and migr_dubro)*

As Figure 6 shows, seven EU Member States sent out fewer than 200 (outgoing) requests: the three Baltic Member States (Estonia, Latvia, and Lithuania), Bulgaria, Malta, Czechia, and Hungary. Ten Member States sent 200–1,000 outgoing requests, while six Member States sent 1,000–10,000 requests. Germany (68,706) and France (44,881) sent the highest number of outgoing requests by far.

72 Ibid.
73 Source: Eurostat. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Statistics_on_countries_responsible_for_asylum_applications_(Dublin_Regulation)#Decisions_on_Dublin_requests (Accessed: 30 October 2023).

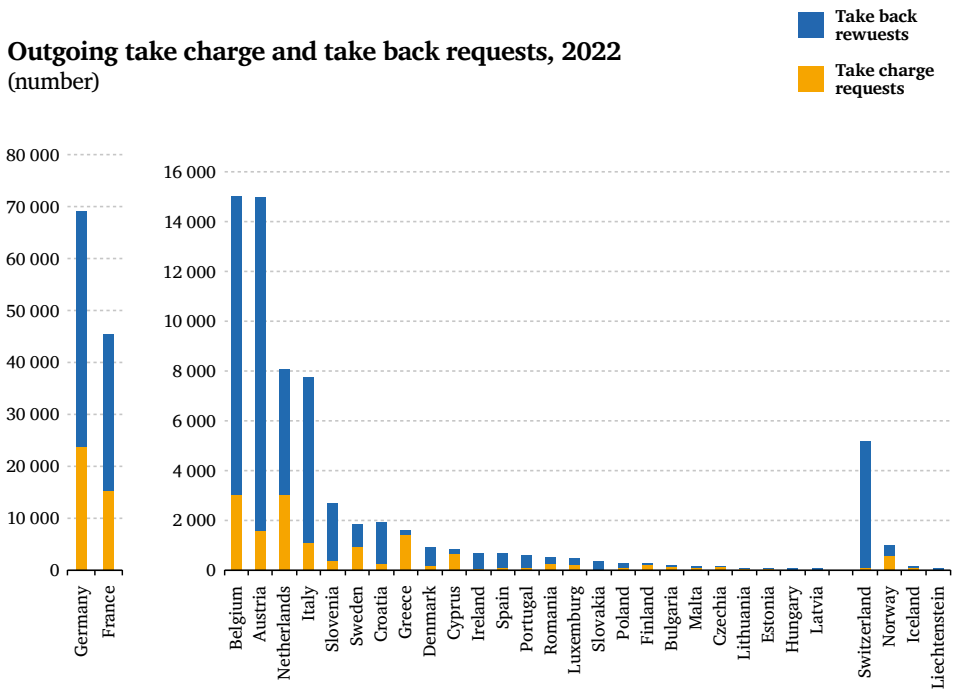
*Figure 7: Incoming take charge and take back requests in 2022*[74]




In 2022, 17 Member States saw more take back than take charge requests, while the reverse situation was observed in the remaining 10 Member States. The ratio of take back to take charge requests was particularly high in Greece, Austria, and Bulgaria (127, 66, and 45 take back requests for each take charge request, respectively) and to a lesser extent in Slovenia (16:1) and Luxembourg (13:1). By contrast, more than 70% of requests received in Finland (96.8%), Czechia (93.8%), Estonia (92.1%), Spain (81.8%), and Hungary (71%) were take charge requests.

74 Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig3_Incoming_take_charge_and_take_back_requests,_2022_(number).png.

*Figure 8: Outgoing take charge and take back requests in 2022*[75]



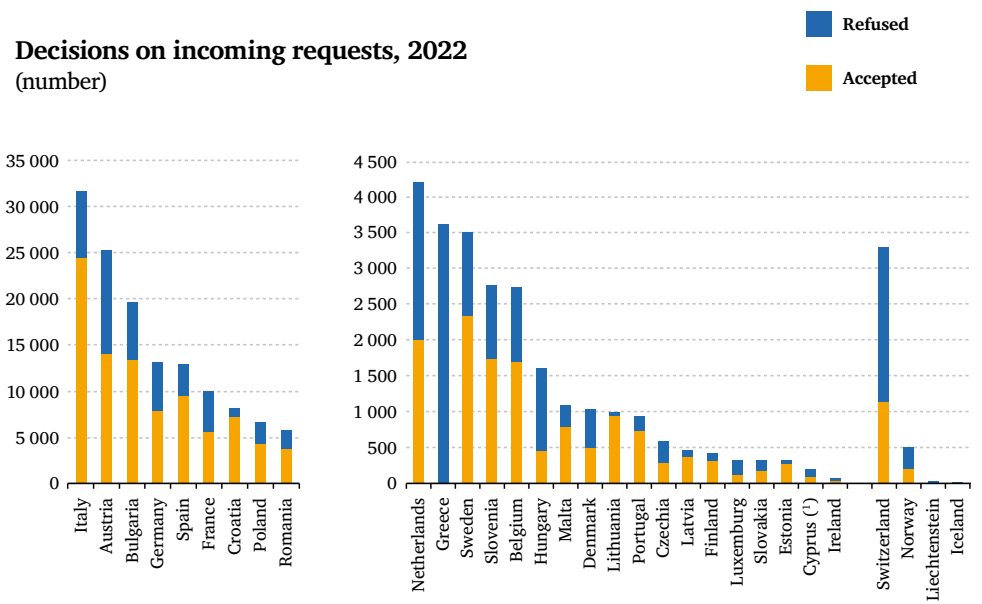

Note: ranked on total value. The y-axis scale in the left part of the figure is four and half times greater than that in the right part
Note: requests with unknown category are included in the total.
*Source: Eurostat (online data code: migr_dubro)*

eurostat

In 2022, the pattern of more take back than take charge requests was observed in 17 EU Member States, while the reverse situation was seen in the remaining countries. The ratio of take back to take charge requests was particularly high in Slovakia, Ireland, and Hungary. By contrast, 90.8% of requests sent from Czechia were take charge requests, with this share reaching 91.1% in Finland, 94.4% in Latvia, and 97.1% in Lithuania.

75 Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig6_Outgoing_take_charge_and_take_back_requests,_2022_(number).png.

*Figure 9: Decisions on incoming requests in 2022*[76]



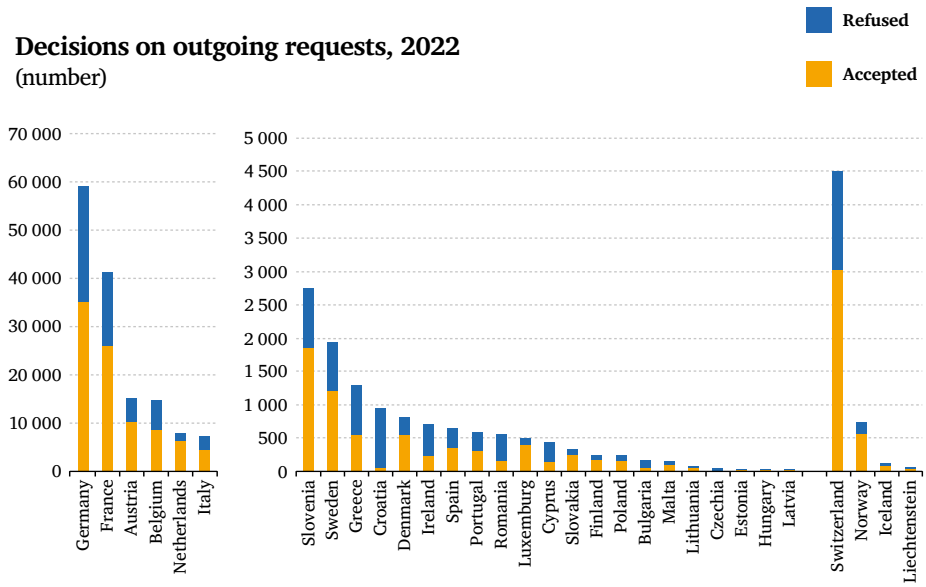

Note: the y-axis scale in the left part of the figure is eight times greater than that in the right part.
Note: ranked in total value
(1) 2021 data.
*Source: Eurostat (online data code: migr_dubdi)*

eurostat

The number of decisions on incoming or outgoing requests is related to the number of requests (excluding re-examination requests), although the decision on a particular request may be made in a different calendar year, especially if decisions are delayed. In 2022, Italy (31,749) and Austria (25,210) made the highest number of decisions on incoming requests, with Italy accepting 77% of the requests it received and Austria 55.4%. Another 15 EU Member States made more than 1,000 decisions on Dublin requests in 2022. Among the remaining nine Member States for which data are available, Ireland made the fewest decisions.

76 Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig10_Decisions_on_incoming_requests,_2022_(number).png.

*Figure 10: Decisions on outgoing requests in 2022*[77]



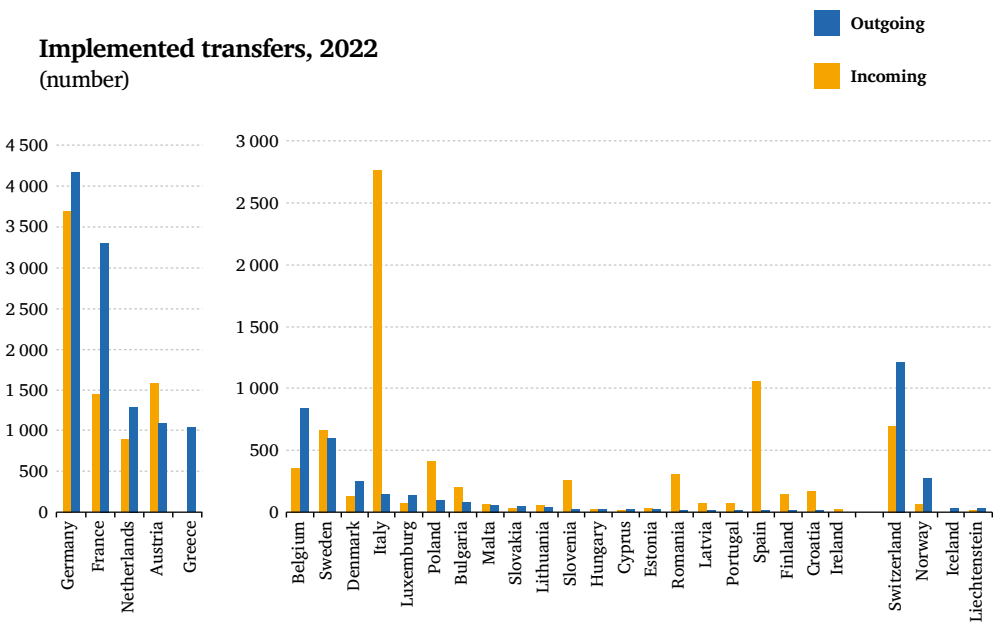

Note: the y-axis scale in the left part of the figure is around ten times greater than that in the right part.
Note: ranked in total value.
*Source: Eurostat (online data code: migr_dubdo)*

eurostat

Looking at decisions on outgoing requests in 2022, Germany (59,059) and France (41,399) received the highest number of decisions. Another seven EU Member States received at least 1,000 decisions on their outgoing Dublin requests in 2022. Among the 18 remaining Member States that received fewer than 1,000 decisions on their requests and for which data are available, Czechia, Hungary, and the Baltic Member States received less than 100 decisions on their outgoing requests.

77 Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig11_Decisions_on_outgoing_requests,_2022_(number).png.

*Figure 11: Transfers implemented in 2022*[78]

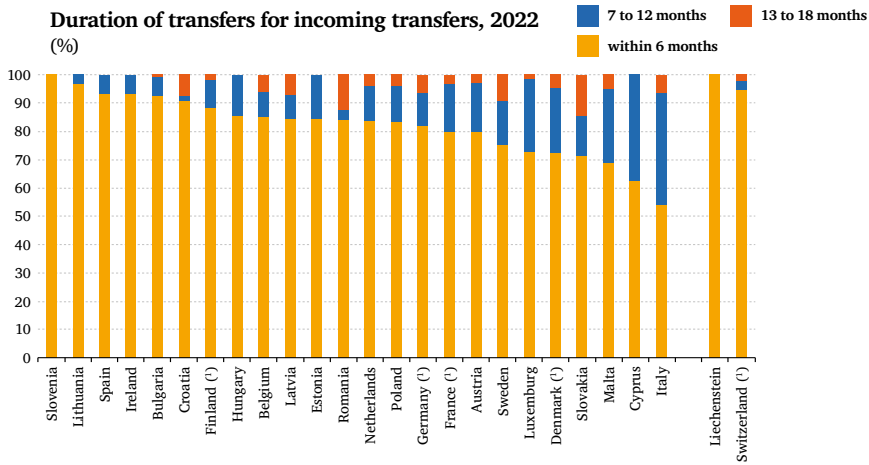



Note: no incoming and outgoing transfers for Czechia reported in 2022.
Note: the y-axis scale in the left part of the figure is greater than that in the right part.
Ranked on outgoing
*Source: Eurostat (online data codes: migr_dubti and migr_dubto)*

The final stage of the Dublin procedure, in case of acceptance of the request, is the actual transfer of responsibility for an asylum applicant from the requesting EU Member State to the Member State responsible. This implies the physical transfer of the concerned person from the requesting Member State to a partner country that has accepted the responsibility to take back or take charge of that person. In 2022, Germany (4,158) and France (3,311) recorded the highest numbers of outgoing transfers, followed by the Netherlands (1,285) and Austria (1,084). Germany (3,699) also recorded the highest number of incoming transfers by far, followed by Italy (2,763), Austria (1,574), and France (1,453), while Sweden, the Netherlands, and Spain also recorded more than 500 incoming transfers each. Czechia had no incoming or outgoing transfers recorded for 2022. The largest absolute differences between the numbers of incoming and outgoing transfers were recorded in France (1,858) and Greece (1,037) among Member States with more outgoing transfers, and in Italy (2,623) and Spain (1,057) among those with more incoming transfers.

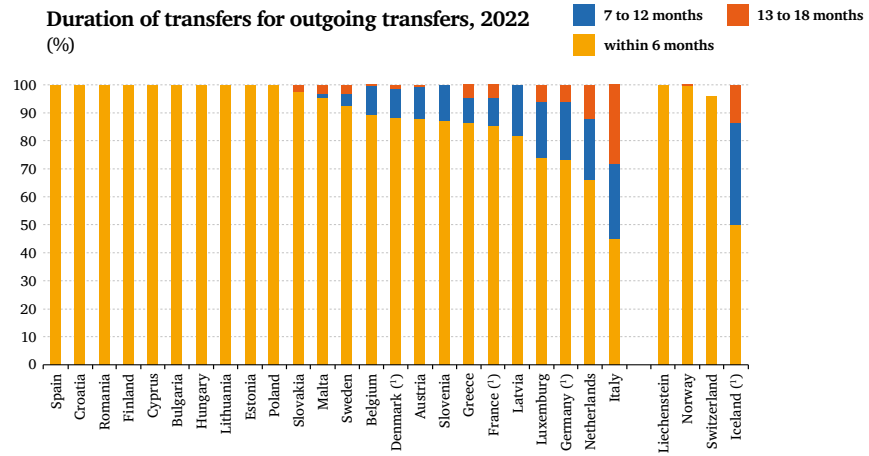
78 Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig12_Implemented_transfers,_2022_(number).png.

*Figure 12: Duration of incoming transfers in 2022*[79]




Note: no incoming and outgoing transfers for Czechia reported in 2022.Portugal had no incoming transfers for wich the duration was known. Greece, Czechia and Iceland had no incoming transfers.
(1) Excluding number of transfers for which the duration is not known
Ranked on outgoing
*Source: Eurostat (online data codes: migr_dubti)*

*Figure 13: Duration of outgoing transfers in 2022*[80]




Note: Portugal had no incoming transfers for which the duration was known. Ireland and Czechia had no outgoing transfers.
(1) Excluding number of transfers for which the duration is not known.
*Source: Eurostat (online data code: migr_dubto)*

79 Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig13_Duration_of_transfers_for_incoming_transfers,_2022_(%25).png.
80 Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fig14_Duration_of_transfers_for_outgoing_transfers,_2022_(%25).png.

Figures 12 and 13 provide an analysis of the speed with which applicants were transferred, based on the time lag between a decision being made and the person actually being transferred. Data are compiled for three durations, corresponding to the various possibilities for the timing of transfers, as laid down in the Dublin III Regulation. According to the regulation, the applicant's transfer from the requesting EU Member State shall be carried out in accordance with the national law of the requesting Member State and at the latest within six months of acceptance of the request; this time limit may be extended up to a maximum of one year if the transfer could not be carried out due to the imprisonment of the concerned person, or up to a maximum of 18 months if the concerned person absconds.

In 2022, all incoming transfers were completed in Slovenia within six months. Moreover, in all Member States, at least half of all incoming transfers were completed within six months. Italy had the greatest share of transfers, completed within 7–12 months (39.7%), while Slovakia and Romania had the largest shares of transfers—14.3% and 12.4%, respectively—completed within 13–18 months. For outgoing transfers, Italy reported the least share of outgoing transfers completed within six months: 45% of its 140 outgoing transfers. In fact, in 10 Member States, all (100%) outgoing transfers were implemented within six months.

## 5. Identification of major shortcomings, reform efforts, and proposals for *de lege ferenda* solutions

Although the Dublin system has evolved over a long period of time and has undergone many changes, it became apparent soon after Dublin III's adoption that it was not without problems. The need for a fundamental reform of the Dublin system has been discussed for many years, and the various refugee crises have only highlighted the fact that the system is dysfunctional. The practice whereby the state of first arrival is most often responsible for the asylum application has placed a burden on coastal states in particular (i.e. states at the EU's borders, notably Greece and Italy). As a result, these states not only lack sufficient facilities for the increased number of asylum seekers[81] but also prolong decision-making procedures, leading to migrants trying to travel illegally within the EU.

Since 2009, the European Parliament has consistently called for a binding mechanism for the fair distribution of asylum-seekers among all EU Member States.[82] In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a

81 Lack of accommodation capacity as well as lack of professional staff, officials, and others.

82 See European Parliament resolutions of 25 November 2009, 11 September 2012, 9 October 2013, 23 October 2013, 17 December 2014, 29 April 2015, and 10 September 2015.

holistic EU approach to migration, the European Parliament clarified its position on the reform of the Dublin system:

> The criterion that it is the Member State of first entry that is responsible for the examination of a claim for international protection should be revised.
> One option for a fundamental overhaul of the Dublin system would be to establish a central collection of applications at Union level – viewing each asylum-seeker as someone seeking asylum in the Union as a whole and not in an individual Member State – and to establish a central system for the allocation of responsibility for anyone seeking asylum in the Union.
> Such a system could provide for certain thresholds per Member State relative to the number of arrivals, which could conceivably help in deterring secondary movements, as all Member States would be fully involved in the centralised system and no longer have individual responsibility for allocation of applicants to other Member States. Such a system could function on the basis of a number of Union "hotspots" from where Union distribution should take place.
> Any new system for allocation of responsibility must incorporate the key concepts of family unity and the best interests of the child.[83]

The *Evaluation of the Implementation of the Dublin III Regulation – Final Report* (2016), which was prepared for the European Commission, also revealed fundamental shortcomings.[84] First, the capacity of Member States is not considered; the Dublin III Regulation does not address situations wherein disproportionate pressure is put on Member States. Furthermore, it was found that many Member States inform applicants only in general terms or the information is outdated. Regarding the criterion of family ties, it was found that different Member States use substantially different evidence for these criteria. The main evidence is usually written proof of family ties (e.g. marriage or birth certificate), which is usually not in the applicant's possession and is very difficult to obtain. Different practices have also been observed in the case of detention, which often leads to legal uncertainty. Indeed, some states use detention from the start of the Dublin procedure, while others use it only when the concerned Member State has accepted the transfer request. Although all Member States have collectively introduced judicial remedies and set a reasonable time limit for lodging an appeal, the "reasonable time limit" varies considerably from one Member State to another. The total number of take charge and take back requests was found to have almost quadrupled from 2008 to 2014. Finally, the research showed that, e.g. almost one in four applicants had previously submitted an application in other Member States in 2014, implying that the Dublin system is failing to fulfil its main role.[85]

83 European Parliament, 2019, p. 3.
84 European Commission DG Migration and Home Affairs, 2016, pp. 1–84.
85 Ibid.

Therefore, the first attempt at reform was in 2016 with a draft regulation of the European Parliament and Council establishing criteria and mechanisms for determining the Member State responsible for assessing an application for international protection submitted by a third-country national or stateless person in one of the Member States—the so-called *Dublin IV*.[86] This regulation was intended to be part of a broader reform of the entire CEAS, which aims to reduce irregular migration flows into the EU and become the main protection model for the future.

The most significant changes proposed compared to Dublin III were as follows: Dublin IV should have established a collective redistribution mechanism. If a country faced a disproportionate number of asylum applications above a set benchmark, all new applicants in that country (regardless of nationality) would be redistributed across the EU until the number of applications falls below the benchmark again. Regarding creation of a special pre-procedure, when examining an application, a Member State had the obligation (not only the possibility) to check whether the applicant comes from a so-called "safe third country" or has already applied for asylum in another country. If so, the applicant was returned to that country. Dublin IV introduced a new obligation for applicants for international protection to remain in the Member State responsible for their application (together with appropriate consequences for non-compliance). Shorter time limits were set for sending relocation requests, sending replies, and carrying out relocations of asylum seekers between Member States. Finally, greater safeguards were set for unaccompanied minors, broadening the definition of family members.

The three key changes proposed by Dublin IV were as follows:

### *5.1. Automated registration and monitoring system*

The development of a new automated registration and monitoring system was proposed. It would consist of a central system, a national interface in each Member State, and communication infrastructure between the central system and national interface. The automated system would record each asylum application made in the EU as well as the number of people each Member State effectively resettles. The central system would be run by a newly proposed EU Agency for Asylum.

86 Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency 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). Brussels 4. 5. 2016 COM(2016) 270 final 2016/0133 (COD).

### *5.2. Determination of a Member State being under disproportionate asylum pressure*

A reference key was proposed to show the indicative share of the total number of asylum applications made in the EU that each Member State would receive if they were allocated according to a country's size and wealth. This reference key would be based on two criteria with equal weighting: size of the population and total gross domestic product of a Member State. Comparing the reference share to the actual distribution of asylum claims would help determine when one Member State is responsible for a disproportionate amount of asylum applications compared with the other Member States. Resettlements would be included under the number of asylum applications, to acknowledge the importance of efforts to implement legal and safe pathways to Europe.

### *5.3. Fairness mechanism*

It was proposed that a fairness mechanism[87] should be applied when Member States are confronted with a disproportionate number of asylum applications. If the number of asylum applications made in a Member State is above 150% of the reference share, the fairness mechanism will be triggered automatically. All new asylum applications made after the mechanism's triggering will be relocated across the EU. If a Member State decides not to accept the allocation of asylum applicants from a Member State under pressure, a "solidarity contribution" of €250,000 per applicant would have to be made. New arrivals to Member States benefiting from the fairness mechanism would be relocated across the EU until the number of applications falls back below 150% of the country's reference share.[88]

In November 2017, the European Parliament decided to launch inter-institutional negotiations. In June 2018, the European Council stated that there is still no consensus on the reform of the Dublin Regulation. Finally, the Dublin IV Regulation was not adopted.

In September 2020, the European Commission presented a new *Pact on Migration and Asylum,* based on in-depth consultations with multiple state and non-state stakeholders. This pact is a set of several legislative and non-legislative measures related to EU asylum and migration policies,[89] primarily targeting irregular migration.[90] The main objective of this reform is to create a common framework for a comprehensive approach to migration and asylum management, increase the efficiency of the system, and achieve greater resilience to migration pressures through a set of proposals. It also aims to remove, or at least minimise, the factors encouraging

87 Potužák, 2021, pp. 201–206. For more details, see Jankuv, 2019, pp. 263–264.
88 Votočková and Chmelíčková, 2016, pp. 34–47.
89 Brouwer et al., 2021, p. 21.
90 Komínková, 2020, pp. 1-5.

migration and consequently secondary movements. Finally, it aims to combat abuses of the current system and better support the most affected EU Member States. The first successful step in the implementation of the pact was the creation of the EU Asylum Agency (EUAA), which became operational in January 2022, replacing the European Asylum Support Office. The remaining proposals are still under negotiation.[91]

The key to the Dublin system is the "Asylum and Migration Management Regulation" (AMMR), which was proposed in 2020 to replace the Dublin III Regulation, which had proved to be unworkable. However, the changes in relation to the Dublin III Regulation are minimal, as the AMMR only adds a few new criteria for the relocation of asylum seekers.[92] The main novelty is the solidarity mechanism. While this mechanism is intended to be mandatory, as it requires all Member States to share responsibility, it is also flexible, as states can choose from several solidarity options, such as relocation, sponsorship of returns, or other forms of contributions. In practice, this may look like the state of first entry still initiating the Dublin procedure on arrival to determine the state responsible for the person's application. While most often the state of first entry will remain responsible throughout, if that state is under pressure, other Member States are expected to support it by relocating asylum seekers and refugees to their territory, sponsoring returns, or providing financial and operational resources. This mechanism is quite controversial across states, and its final form is still heavily debated.[93]

In June 2022, the EU Council adopted its general approach on the proposal for the revision of the Schengen Border Code.[94] The discussion at the EU Council was informed by the European Commission's report on the state of Schengen. The report set a list of priority actions for 2022–2023 at the national and European levels, including, e.g. implementing the new information technology architecture and interoperability for border management; making full use of cross-border cooperation tools; ensuring systematic checks of all travellers at the external borders; and adopting the revised Schengen Border Code.[95]

Together with the *State of Schengen Report*, the European Commission presented a policy document to launch a multiannual strategy for integrated border management, that is, coordinated efforts at the national and international levels among authorities and agencies responsible for border management at the EU's external borders.[96]

91 EUAA, 2023, p. 31–33.
92 Guibert, Milova and Movileanu, 2021, pp. 1–6.
93 Ibid.
94 European Commission's Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, Strasbourg, 14 December 2021, COM(2021) 891 final 2022.
95 European Parliament, 2022, pp. 1–3.
96 European Commission's Policy document developing a multiannual strategic policy for European integrated border management in accordance with Art. 8(4) of Regulation (EU) 2019/1896. Brussels, 24 May 2022, COM(2022), 303 final.

With the active work of the French and Czech Presidencies of the Council of the EU and under the coordination of the European Commission, considerable progress was made in 2022 towards advancing the reform package. In the first semester of 2022, the French Presidency advocated for a gradual approach to adopt the reform package, with cumulative increments of commitment by Member States in both areas of solidarity and responsibility. As a result, in June 2022, the EU Council adopted negotiating mandates on the Screening and Eurodac Regulations.[97] Agreement was also reached by 21 countries on the implementation of the Voluntary Solidarity Mechanism, paving the way for further progress on the AMMR. The mechanism, which is voluntary and spans one year, provides for expressions of solidarity to Member States experiencing particular pressure in their asylum and reception systems through relocations, financial contributions, and other measures of support.

At the level of the European Parliament, in 2022, the rapporteurs presented draft reports on all legislative proposals included in the Pact on Migration and Asylum and on the recast Return Directive. With the pact being one of the top priorities, in September 2022, the European Parliament and the rotating Presidencies of the Council of the EU reached political agreement on a joint roadmap for negotiations between co-legislators to adopt the legislative proposals before the end of the 2019–2024 legislative period.

The roadmap[98] provides the framework for negotiations on the Eurodac, Screening, Asylum and Migration Management, Crisis and Force Majeure, and the Asylum Procedure Regulations, and for finalising the Union Resettlement Framework, recast Reception Conditions Directive, and recast Qualification Directive, for which provisional agreements were previously reached between the European Parliament and EU Council. The roadmap also provides new impetus for reaching an agreement on the proposal for a recast Return Directive. Following agreement on the roadmap, in December 2022, the European Parliament and EU Council reached an agreement on the reception conditions for applicants for international protection, thus endorsing the outcome of the negotiations reached in 2018.

In June 2023, the Council of the EU reached an agreement on key asylum and migration laws. The EU Council took a decisive step towards modernisation of the EU's rulebook for asylum and migration. It agreed on a negotiating position on the Asylum Procedure Regulation and AMMR. This position will form the basis of negotiations by the EU Council Presidency with the European Parliament. What are the main points of this agreement?

The Asylum Procedure Regulation establishes a common procedure across the EU that Member States need to follow when people seek international protection.[99] It streamlines the procedural arrangements (e.g. duration of the procedure) and sets standards for the rights of the asylum seeker (e.g. provision of the interpreter

97 EUAA, 2023, p. 31–33.
98 European Parliament, 2022, pp. 1–3.
99 Council of the EU, 2023a, pp. 1–3.

service and the right to legal assistance and representation). The regulation also aims to prevent abuse of the system by setting out clear obligations for applicants to cooperate with the authorities throughout the procedure. The Asylum Procedure Regulation also introduces mandatory border procedures to quickly assess at the EU's external borders whether applications are unfounded or inadmissible. The total duration of the Asylum and Return Border Procedure should be not more than six months. To carry out border procedures, Member States need to establish the adequate capacity, in terms of reception and human resources, required to examine an identified number of applications at any given moment and enforce return decisions. The adequate capacity of each Member State will be established based on a formula that considers the number of irregular border crossings and refusals of entry over a three-year period.[100]

The modifications proposed in relation to the Dublin rules are also very important: *The AMMR* should replace, once agreed, the current Dublin III Regulation.[101] The Dublin Regulation sets out rules determining which Member State is responsible for examining an asylum application. The AMMR will streamline these rules and shorten time limits. For example, the current complex takes back procedure aimed at transferring an applicant back to the Member State responsible for his or her application will be replaced by a simple take back notification.

To balance the current system whereby a few Member States are responsible for most asylum applications, a new solidarity mechanism is being proposed that is simple, predictable, and workable. The new rules combine mandatory solidarity with flexibility for Member States as regards the choice of individual contributions. These contributions include relocation, financial contributions, and alternative solidarity measures such as deployment of personnel or measures focusing on capacity building. Member States have full discretion as to the type of solidarity they contribute. No Member State will ever be obliged to carry out relocations.[102]

There will be a minimum annual number of relocations from Member States where most persons enter the EU to Member States less exposed to such arrivals. This number is set at 30,000, while the minimum annual number for financial contributions will be fixed at €20,000 per relocation. These figures can be increased where necessary, and situations where no need for solidarity is foreseen in a given year will also be considered. To compensate for a possibly insufficient number of pledged relocations, *responsibility offsets* will be available as a second-level solidarity measure, in favour of Member States benefitting from solidarity. This means that the contributing Member State will take responsibility for examining an asylum claim by persons who would, under normal circumstances, be subject to a transfer to the Member State responsible (benefitting Member State). This scheme will become mandatory if relocation pledges fall short of 60% of the total needs identified by

100 Ibid.
101 Council of the EU, 2023b, pp. 1–149. p
102 Council of the EU, 2023a, pp. 1–3.

the EU Council for the given year or do not reach the number set in the regulation (30,000).[103]

The AMMR also contains measures aimed at preventing abuse by the asylum seeker and avoiding secondary movements (when migrants move from the country in which they first arrived to seek protection or permanent resettlement elsewhere). The regulation, for instance, sets obligations for asylum seekers to apply in the Member States of first entry or legal stay. It discourages secondary movements by limiting the possibilities for a cessation or shift in the responsibility between Member States, thus reducing the possibility for the applicants to choose the Member State where they submit their claim.[104]

While the new regulation should preserve the main rules on determination of responsibility, the agreed measures include modified time limits for its duration: The Member State of first entry will be responsible for the asylum application for a duration of two years. When a country wants to transfer a person to the Member State that is actually responsible for the migrant and this person absconds (e.g. when the migrant goes into hiding to evade a transfer), responsibility will shift to the transferring Member State after three years. If a Member State rejects an applicant in the border procedure, its responsibility for that person will end after 15 months (in case of a renewed application).[105]

## 6. Conclusion

It can be concluded that both the Common Asylum Policy and the Dublin system itself have been undergoing a relatively complicated evolution for several decades. This is quite logical, as the issue of asylum and migration affects many sensitive areas of national policies, and individual states often try to defend their own interests (economy, security, etc.). Nevertheless, we can observe a sustained effort to address the migration situation, moving from national, repressive solutions to a common EU-wide asylum policy based on respect for fundamental principles and values, as well as cooperation and mutual solidarity. The legal form of the instruments dealing with this area (from conventions to regulations and directives) can also be seen to be evolving in a positive direction. In the context of the historical excursus, regular evaluation of the effectiveness of the Common Asylum Policy and the Dublin system itself, and the EU's efforts to reflect on and remedy the shortcomings identified so

103 Ibid.

104 Council of the EU: Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management, 2023b, pp. 1–149. Available at: https://data.consilium.europa.eu/doc/document/ST-10443-2023-INIT/en/pdf. (Accessed: 30 October 2023).

105 Council of the EU, 2023a, pp. 1–3.

as to make the system operational and meet its objectives, can also be positively highlighted.

Despite these efforts, however, the current Dublin system is subject to legitimate criticism, as analysed in more detail above. The key shortcomings, summarised simply and concisely, are as follows: (1) The Dublin system places an uneven burden on individual Member States in terms of processing applications for international protection. This has several negative consequences (for both the applicants themselves and those Member States, e.g. Italy and others). (2) Individual Member States do not apply the existing rules uniformly, or there are significant differences in application practices (e.g. detention, remedies, informing of applicants, and time limits). This often leads applicants to try to circumvent the Dublin rules and seek the "most appropriate" state to process their own application.

What is the solution to this current situation, which we can basically be described as a "dysfunction" of the Dublin system? As highlighted above, reform efforts in relation to the current Dublin III started in 2015–2016 and are still not over. I consider it important that the protection of family unity and minors is further strengthened, that the principle of non-refoulement is strongly considered, and that the fundamental rights of applicants for international protection are respected. Furthermore, greater emphasis should be placed on the same level of application of the Dublin system in all Member States so that there are no unjustified differences. In this respect, supervision in this area should also be strengthened. Finally, in relation to the Member States, I consider it crucial that agreement be reached on a mutual solidarity mechanism. The idea is that the burden of deciding on applications for international protection and the other aspects involved should be evenly distributed between the individual states. In this respect, I am very positive about the current progress in the reform package, and I believe that it will eventually be adopted and will thus help improve the situation regarding asylum and migration in Europe, or indeed the whole world.

At the very end it is necessary to add the latest news: In 2024, all negotiations and reform efforts resulted in the adoption of The Pact on Migration and Asylum. On 10 April 2024, the European Parliament voted in favor of the new rules on migration, followed by their formal adoption by the Council of the EU, on 14 May 2024. The Pact is expected to enter into force in June 2026.

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