



# The implementation of the Dublin III Regulation in 2019 and during COVID-19

August 2020



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## Introduction\*

The Dublin III Regulation, which sets out the criteria and procedure for determining which Member State is responsible for an asylum application, continues to be the most contentious and debated legal instrument in European asylum policy.<sup>1</sup> The persisting divisions among Member States put on hold the European Commission's 2016 proposal for reforming the Dublin III Regulation,<sup>2</sup> thus also blocking the negotiations on the overall reform of the Common European Asylum System (CEAS).<sup>3</sup> Against this backdrop, the new European Commission (EC) led by Commission President Ursula von der Leyen, in office since 2019, announced a “fresh start” on migration. The new “Pact” on asylum and migration is likely to incorporate some of the concepts under discussion e.g. mandatory border procedures and “pre-screening processes”, but the timeline and precise content of the Pact remain unclear. The future of Dublin is also uncertain, but there is likely to be at least some reform of the rules on allocation of responsibility, probably through “corrective” solidarity mechanisms rather than a fundamental reform of the principles in Dublin.

In September 2019, the European Parliament commissioned an assessment of the implementation of the Dublin III regulation. The European Council on Refugees and Exiles (ECRE) was contracted to work on the study with the European Parliament Research Service (EPRS). The study demonstrates that the Regulation is not meeting its objectives of ensuring that the Member State responsible is rapidly determined in order to guarantee effective access to procedures and swift processing of applications.<sup>4</sup> The human and financial costs of the system are considerable – both for national authorities and for applicants, who are often left in a prolonged state of limbo; forcibly transferred if and when transfers are implemented; and subject to pre-removal detention.

In the first half of 2020 the Dublin system was further challenged following the outbreak of COVID-19. Emergency measures were enacted to contain the spread of the virus, including some taken within asylum systems, which thus affected access to the asylum procedure and the functioning of Dublin procedures.

This report, which draws upon ECRE's previous report on the implementation of the Dublin III Regulation in 2018,<sup>5</sup> aims to provide an update of developments in legislation, policy and practice relating to the application of the Dublin III Regulation in 2019 and the first half of 2020 based on up-to-date statistics, practice developments, and case law. It draws on information collected through the Asylum Information Database (AIDA) managed by ECRE, case law compiled by the European Database of Asylum Law (EDAL) managed by ECRE, and other sources where relevant.

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\* This report was written by Jean-David Ott and Petra Baeyens at ECRE. We would like to thank the AIDA experts, the Danish Refugee Council (DRC) and the Norwegian Organisation for Asylum Seekers (NOAS), as well as Member State authorities for the provision of Dublin statistics and relevant information. All errors remain our own.

<sup>1</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, available at: <https://bit.ly/2CWxz51>.

<sup>2</sup> European Commission, Proposal for a regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (recast), COM(2016) 270 final, 4 May 2016.

<sup>3</sup> A first package of three proposals for reform was submitted to the co-legislators in May 2016, related to the Dublin Regulation, EURODAC and EASO. A second package of three additional proposals for reform was submitted in July 2016, related to the Asylum Procedures Directive, the Qualification Directive and the Reception Conditions Directive. For further details, see EPRS, *CEAS – Legislative train*, available at: <https://bit.ly/3gSr8N6>.

<sup>4</sup> EPRS/ECRE, *Dublin Regulation on international protection applications - European Implementation Assessment*, February 2020, available at: <https://bit.ly/2CylhwJ>.

<sup>5</sup> ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/2ZUVRnf>.

Finding up-to-date statistics on the operation of the Dublin system continues to be a challenge in the CEAS.<sup>6</sup> Figures for the year 2018 were only made available by Eurostat towards the end of 2019, and figures on the year 2019 are likely to be shared towards the end of 2020. The obligation to provide annual EU-wide figures on the Dublin system is provided for by the Migration Statistics Regulation, amended in 2020. While the reform of this Regulation was an opportunity to increase the frequency of provision of Dublin statistics,<sup>7</sup> the co-legislators instead maintained provision on an annual basis.<sup>8</sup> Data for the year 2019 and the first half of 2020 in this update are based on information made available by national authorities, civil society organisations, and Eurostat in 29 European countries. The observations made thus indicate trends in practice rather than providing an exhaustive account.

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<sup>6</sup> For a discussion, see ECRE, *Asylum Statistics in Europe*, June 2020, available at: <https://bit.ly/30zw2IH>; ECRE, *Making asylum numbers count*, January 2018, available at: <http://bit.ly/2CYMB6R>.

<sup>7</sup> See also: ECRE, *Comments on the Commission proposal amending the Migration Statistics Regulation*, June 2018, available at: <https://bit.ly/2DM9ZX2>.

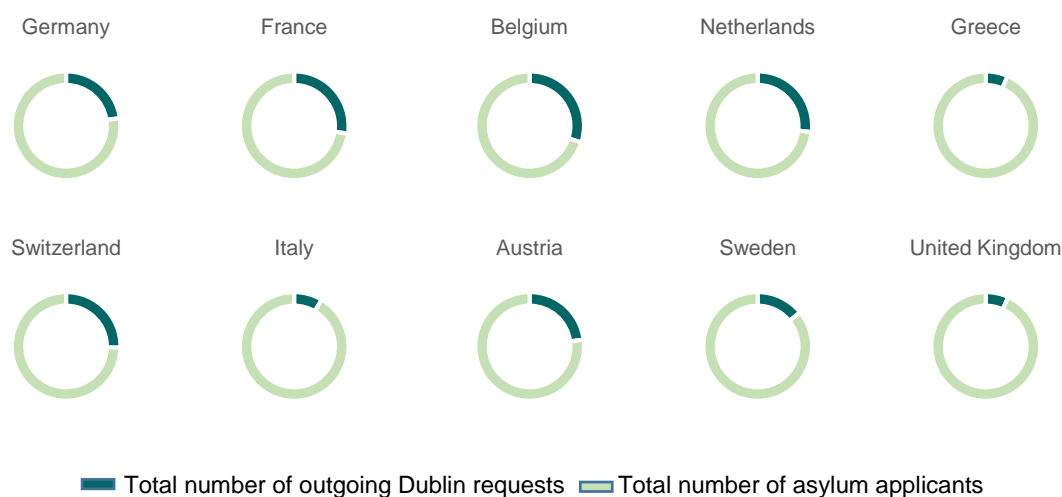
<sup>8</sup> In its first reading proposal, the European Parliament had suggested to introduce a rule of monthly supply of Dublin statistics. See: European Parliament, Proposal for a Regulation [amending the Migration Statistics Regulation]: First reading, 2019, T8- 0359/2019, Article 1(1)(1)(e).

## Key Dublin statistics for 2019

### Asylum applications and Dublin procedures

In 2019, 761,080 asylum seekers applied for international protection in the 28 Member States of the European Union and Iceland, Lichtenstein, Norway and Switzerland, which also apply the Dublin III regulation. This constituted a 11.3 % increase compared with 2018 (683,600 asylum applicants). Of these applicants, many continue to be subject to a Dublin procedure.

### Share of Dublin procedures in the top 10 operators of the Dublin system: 2019



Source: AIDA. Figures on outgoing requests in Belgium and the Netherlands are based on Eurostat.

The chart above refers to the ten countries (ordered left to right) which sent the majority of outgoing Dublin requests in 2019, thus presuming that another Member State was responsible for examining the asylum application. With the exception of **Austria**, they were also the top ten recipients of asylum applicants in 2019.<sup>9</sup> In the majority of these countries, the percentage of cases where a Dublin procedure was used remains significant.

**Germany** and **France** continue to be the main destination countries of asylum seekers and the main users of the Dublin system. In 2019, these two Member States received 165,938 and 138,420 asylum applicants respectively and issued 48,847 and 46,460 outgoing Dublin requests.<sup>10</sup> These figures indicate that nearly one in three asylum seekers in Germany and France was subject to a Dublin procedure. This is also the rate for other countries, including **Belgium**, the **Netherlands**, **Switzerland**, and **Austria**.

### Evolution of the number of Dublin procedures: 2016-2019

According to the European Asylum Support Office (EASO), countries such as **France**, **Spain**, **Greece**, **Malta** and **Cyprus** received more asylum applicants in 2019 than during the migration crisis of 2015.<sup>11</sup> However, they use the Dublin system in different ways. While all five have seen a consistent rise in the

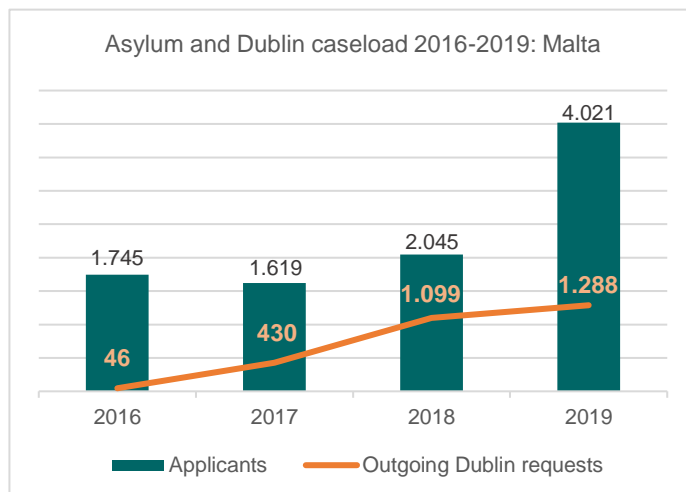
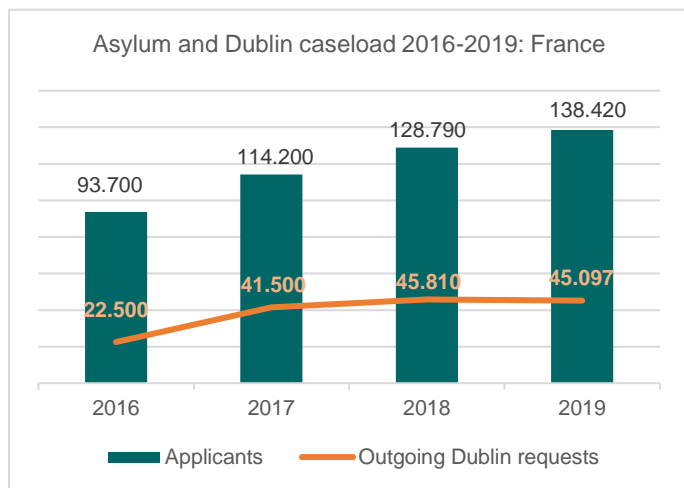
<sup>9</sup> In 2019, the top ten countries, ordered highest to lowest, receiving the majority of applications for international protection were: Germany, France, Spain, Greece, the United Kingdom, Italy, Belgium, Sweden, the Netherlands, Switzerland.

<sup>10</sup> The number of asylum applicants in France refers to first-time applicants as it is not possible to obtain the exact figures of applicants without double counting certain categories of applicants.

<sup>11</sup> EASO, *Asylum Report 2019*, June 2020, available at: <https://bit.ly/3dBCB11>, 13.

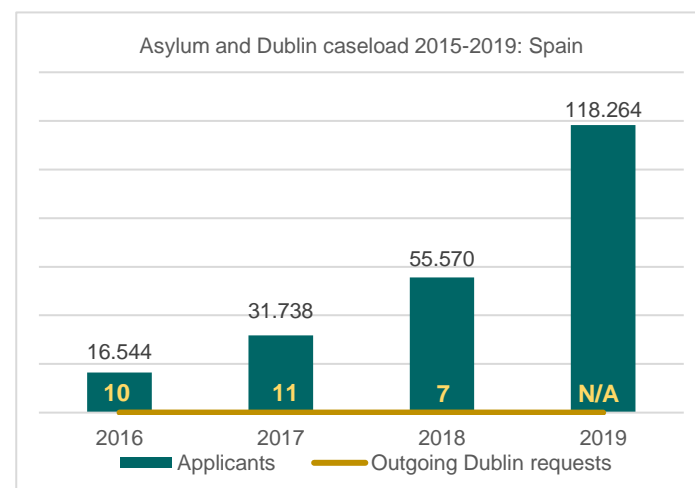
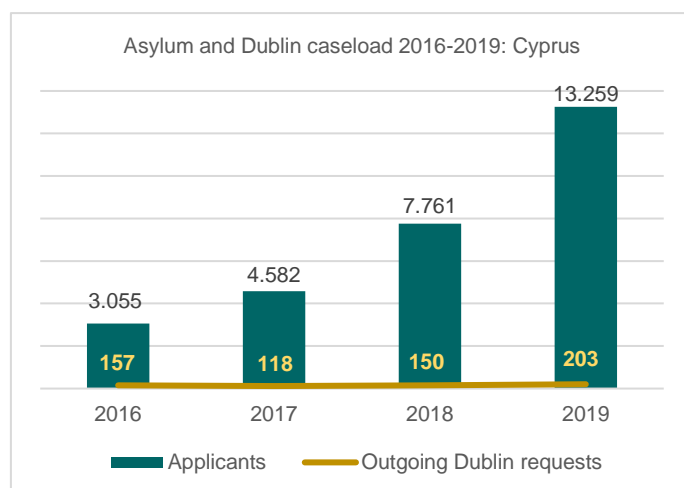
number of applications for international protection since 2015, the use of the Dublin III Regulation has not increased similarly in all.

Along with the rise of asylum applicants, **France** and **Malta** have consistently increased the use of the Dublin Regulation in recent years.<sup>12</sup>



In **France**, the number of outgoing Dublin requests more than doubled between 2016 and 2019, while in **Malta** it significantly increased from less than 50 outgoing requests in 2016 to more than 1,200 outgoing requests in 2019.

In **Cyprus** and **Spain**, on the other hand, the number of outgoing Dublin requests remained very low in contrast to the rise in applications for international protection:

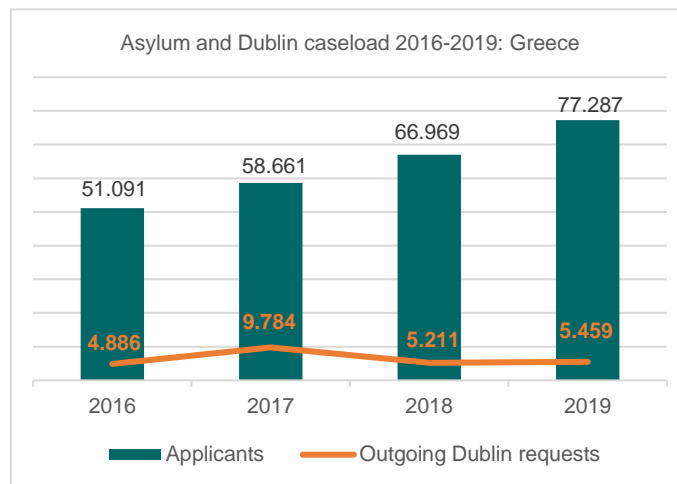


In **Cyprus**, the number of outgoing Dublin requests remained stable despite the fact that the number of applicants has more than quadrupled since 2016. Similarly, in **Spain**, the number of requests has remained negligible despite the increase in applicants, which more than doubled from 2018 to 2019. This might be explained by the fact that applicants arrive from outside the EU and therefore some

<sup>12</sup> France has various sources of statistics which provide different figures on the number of persons seeking asylum in France. The number of applicants in France presented in the graph refer to first-time applications lodged at French Prefectures. As regards the number of outgoing Dublin requests, the Ministry of Interior had reported in January 2020 that there were 46,460 outgoing Dublin requests in 2019 – thus indicating an increase compared to 2018 - but this figure was updated in June 2020. Accordingly, a total of 45,907 outgoing Dublin requests in 2019. See: <https://bit.ly/2Ci7Ba1>.

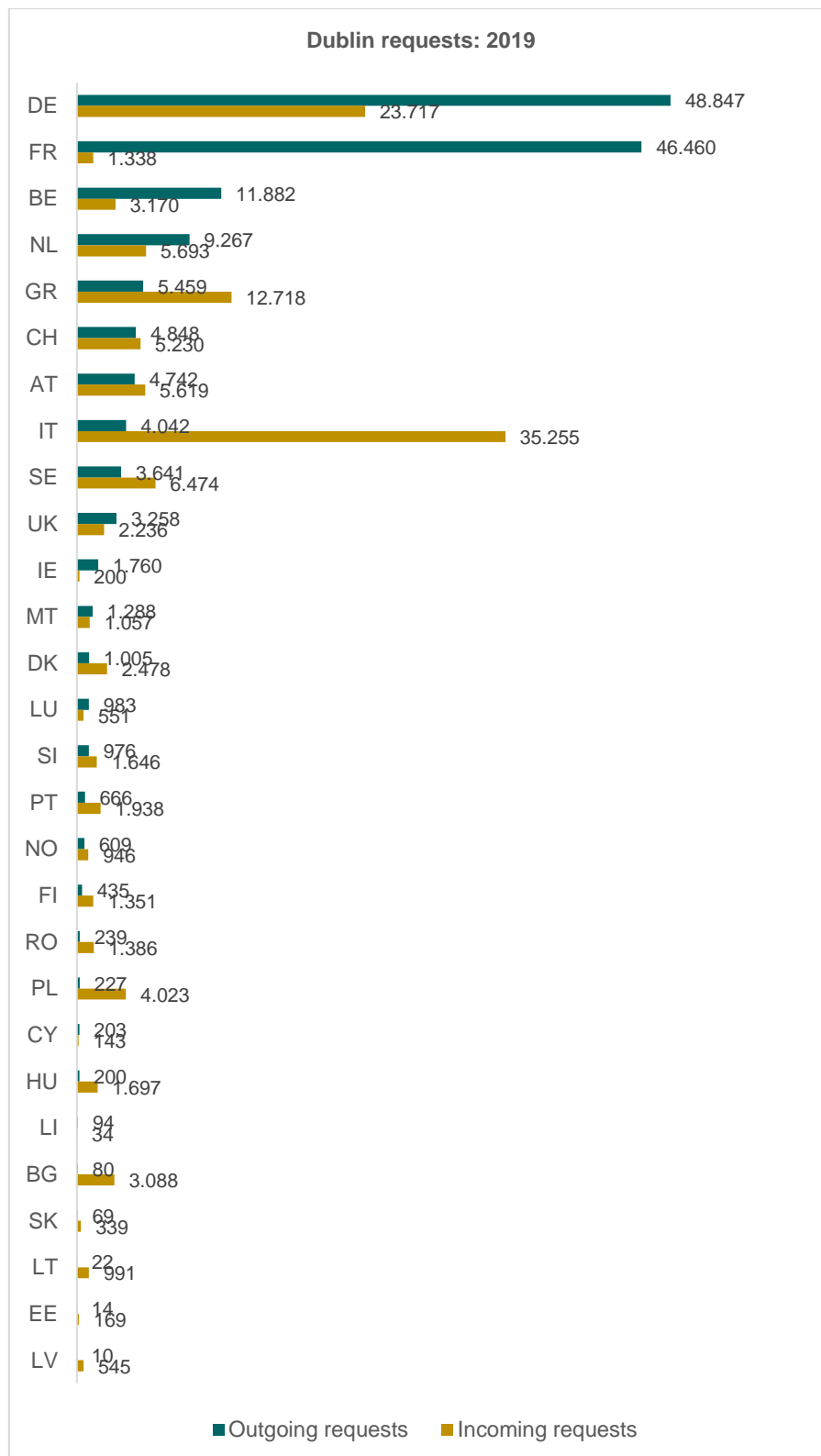
criteria cannot be applied (such as irregular stay in another Member State), as well the failure to apply other criteria such as family unity. The number of outgoing Dublin requests in Spain in 2019 was not made available, however.

**Greece** continues to use the Dublin Regulation, mainly for family reunification cases, but the number of outgoing Dublin requests remained stable despite the increase in applications for international protection.



The fluctuation in the number of Dublin procedures is thus not correlated to the number of asylum applicants, as in some countries the use of Dublin procedures decreased or remained stable despite an increase in applications, while in other countries the opposite trend can be noted. This is to be expected as some criteria are not applicable when entering from outside of the EU (for example irregular stay in another member state as foreseen in Article 12 of the Regulation).

## Outgoing and incoming procedures



Source: AIDA. Figures on BE, NL, FI, LI, SK, LT, EE and LV are based on Eurostat.

Similar to 2018, the majority of countries ended up as “net recipients” of Dublin requests in 2019, since two thirds received more incoming requests than the number of outgoing requests sent. Exceptions



include **Germany, France, Belgium, the Netherlands, the United Kingdom, Ireland, Malta, Luxembourg and Cyprus** which issue more outgoing requests than they receive incoming requests.

**Italy** is by far the country which received most incoming requests in 2019. During that year, Italy submitted 4,042 outgoing requests and received 35,255 requests from other countries, mainly from Germany and France.<sup>13</sup> Italy further remained the main partner country in terms of decisions on Dublin requests, as it issued one-quarter of all decisions taken.<sup>14</sup>

Other countries which received a significant number of requests include **Germany, Greece and Spain**. All three also account for the largest number of decisions on Dublin requests in 2019, along with France. Germany accounted for 15% of all decisions on requests in Europe, while Greece and Spain took more than one half of decisions, a large increase compared to 2018.<sup>15</sup> However, for the first time since the entry into force of the Dublin III Regulation, Greece received more decisions rejecting than accepting its outgoing requests. Out of the 5,459 outgoing requests addressed by Greece to other Member States in 2019, 2,936 requests were rejected, 2,416 were expressly accepted, and 107 were implicitly accepted.<sup>16</sup>

It is also important to note that **Hungary** continued to receive requests from other countries, despite extensive evidence of the deficiencies in the Hungarian asylum system.

Interestingly, **Germany and France**, the two main users of Dublin procedures in 2019, continued to exchange a substantial number of requests. France received 5,021 requests from Germany and Germany received 11,194 requests from France. Moreover, the two Member States received the most decisions in response to their Dublin requests compared to all other countries, each representing close to one-third of the total decisions received.<sup>17</sup>

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<sup>13</sup> AIDA, *Country Report Italy, 2019 Update*, June 2020, available at: <https://bit.ly/2NDzMmf>, 53.

<sup>14</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 91.

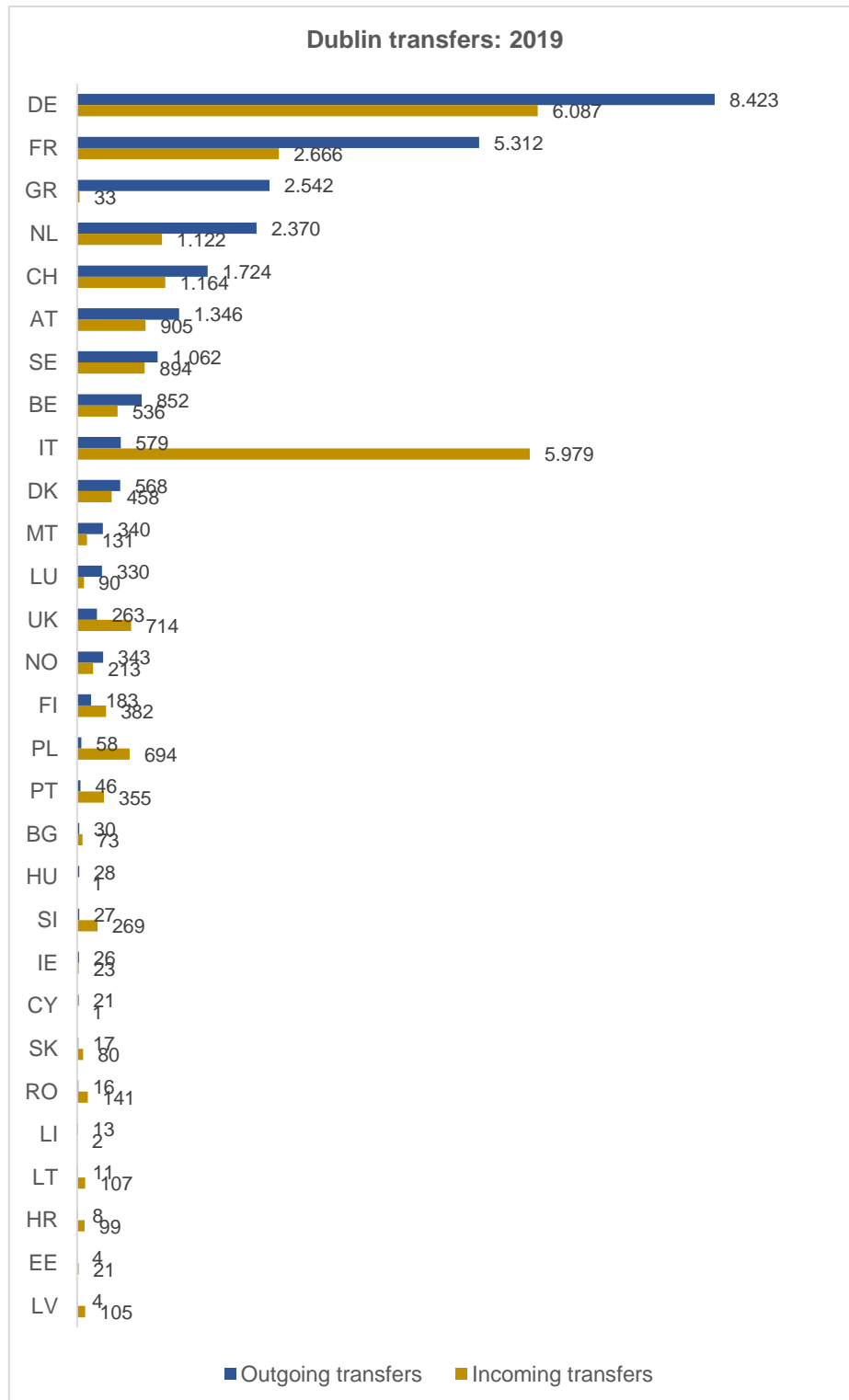
<sup>15</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 91.

<sup>16</sup> AIDA, *Country Report Greece – 2019 Update*, June 2020, available at: <https://bit.ly/3ghKUI6>, 71.

<sup>17</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 91.

## Transfers

As regards actual transfers carried out under the Dublin Regulation, available figures for 2019 point to the following outgoing and incoming transfers:

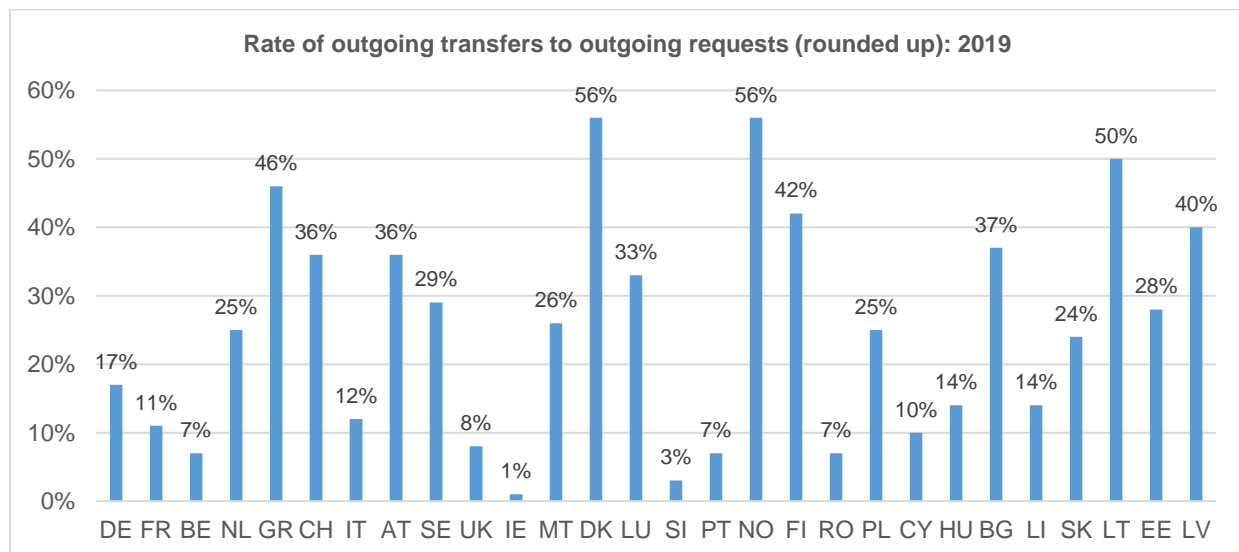


Source: AIDA. Figures on FR, BE, NL, FI, SK, LI, LT, EE, LV, SE as well as the number of incoming transfers in NO are based on Eurostat.

The figures above indicate that in 2019 **Germany** and **France** have carried out more transfers than all 26 other countries combined. **Germany** remains the top sender *and* top recipient of transfers.<sup>18</sup> The large majority of outgoing transfers from Germany were carried out to Italy (2,575), France (1,212) and Spain (591). Detailed statistics on transfers from France were not available at the time of writing, although a significant increase of transfers from France to Germany was reported in 2019.<sup>19</sup> Another country which received an important number of Dublin transferees in 2019 is **Italy** (5,979), while **Greece** only received 33 transfers. It is important to note that, for the first time in recent years, one person was transferred from Austria to **Hungary**.<sup>20</sup> No information was made available by the Hungarian and Austrian authorities on the case involved, however.

The low number of transfers effected (i.e. that end with the person actually being transferred) continues to call into question the efficiency and operability of the Dublin system. ECRE has consistently emphasised that Dublin transfers are not mandatory as the Dublin Regulation provides choices and discretion to Member States, which can examine asylum claims themselves to avoid unnecessary human, administrative and financial costs.<sup>21</sup>

The detailed number of transfer decisions issued by Member States in 2019 is not available in every country, although EASO stated that the number of decisions on Dublin requests increased slightly, with 3% more decisions taken in 2019 than in 2018. This represented almost 145,000 decisions in total in 2019.<sup>22</sup> Figures on outgoing transfers and the number of outgoing requests are available, however. The rate of effected Dublin transfers compared to outgoing requests for the different countries was as follows:



Source: AIDA. Figures on BE, NL, FI, LI, SK, LT, EE, SE and LV are based on Eurostat.

Of the 28 countries, only **Denmark** and **Norway** achieved Dublin transfers in more than half the procedures they initiated (although it should be noted that Eurostat statistics indicate a transfer rate of

<sup>18</sup> In 2017, Germany carried out 7,102 outgoing transfers and received 8,754 incoming transfers: ECRE, *The Dublin system in 2017*, March 2018, available at: <https://bit.ly/2uW0M9Q>.

<sup>19</sup> According to La Cimade, 1,662 transfers were carried out from France to Germany, thus representing an increase of +199% compared to 2018. See: La Cimade, 'Application du règlement Dublin en France en 2019', 10 June 2020, available in French at: <https://bit.ly/326H8ae>.

<sup>20</sup> AIDA, *Country Report Hungary, 2019 Update*, March 2020, available at: <https://bit.ly/38c5BvU>, 36.

<sup>21</sup> See e.g. ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/3eRgKUR>; ECRE, *To Dublin or not to Dublin?*, November 2018, available at: <https://bit.ly/2EbDosN>. See also CJEU, Case C-56/17 *Fathi*, Judgment of 4 October 2018, EDAL, available at: <https://bit.ly/2TUdfap>, para 53.

<sup>22</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 91.

only 36% in Norway).<sup>23</sup> More than half the countries have a transfer rate below 30%, varying from 25% in the **Netherlands**, 8% in the **United Kingdom**, 7% in **Portugal** and **Romania**, to as low as 3% in **Slovenia** and 1% in **Ireland**.

The very low transfer rate for the top three operators of the Dublin system, **Germany**, **France** and **Belgium**, deserves particular attention:

- **Germany** implemented 8,423 outgoing transfers in 2019 but the figure still represented less than one fifth of the Dublin procedures it initiated during the year. This is particularly striking when looking at the number of transfers from Germany to specific countries such as Greece. While Greece received the second most outgoing Dublin requests from Germany (after Italy), the transfer rate to Greece was only 0.2% in 2019.<sup>24</sup>
- Similar observations apply to **France**, although detailed statistics are not yet available. The Ministry of the Interior stated that transfers had increased by 51%, which means that about 5,335 transfers were carried out in 2019, a 11.5% transfer rate.<sup>25</sup> Nevertheless, it should be noted that the transfer rate reaches 18% when compared with the number of Dublin decisions, which is an increase compared to 2018.<sup>26</sup>
- In **Belgium**, Eurostat statistics indicate a number of 852 outgoing Dublin transfers compared to 11,882 outgoing Dublin requests. This means that less than one in ten people channelled into the Dublin procedure is transferred to another European country in practice.

Given the documented deficiencies in the Hungarian system, the low transfer rate from **Hungary** to other countries should also be highlighted (14%). Dublin transfers from Hungary continued to be difficult in practice without the active involvement of competent lawyers. Lawyers and attorneys reported an increasingly strict and negligent attitude from the German authorities, who unnecessarily prolonged the examination of requests and issued very schematic rejections before finally taking responsibility.<sup>27</sup>

Overall, the comparison between outgoing requests and actual transfers demonstrates that only a small fraction of Dublin procedures led to a transfer in 2019. There are various reasons for the low rate of completed transfers, including administrative hurdles and delays (see [Time limits for transfers](#)); practical obstacles resulting from health and security risks (e.g. the medical situation of the applicant or the refusal of pilots to carry out coercive transfers); and also the incorrect application of the Dublin criteria. Many Member States continue to trigger requests on the ground of irregular entry and issue 'take back' requests to countries which have low reception capacity and pressure on their asylum systems; in these cases the transfer will be impossible (see [Irregular entry](#) and [Suspension of transfers](#)).

Inefficient Dublin procedures are not inevitable. ECRE has consistently argued that the majority of countries applying the Dublin Regulation make a conscious policy choice to subject both asylum seekers and their own administration to lengthy Dublin procedures even though they know in advance that these procedures will not end in a transfer (see [Time limits for transfers](#)). In many cases, the transfer does not happen because the time limit is reached – a situation that was predictable based on previous experience and the situation in the countries receiving the requests, i.e. the requesting country's

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<sup>23</sup> While national statistics indicate that Norway sent 609 outgoing Dublin requests and implemented 343 outgoing transfers, Eurostat indicates that Norway sent 670 outgoing Dublin requests and implemented 240 outgoing transfers in 2019.

<sup>24</sup> Germany sent 14,175 outgoing Dublin requests to Italy, which is followed by 9,870 outgoing Dublin requests to Greece.

<sup>25</sup> AIDA, *Country Report France – 2019 Update*, March 2020, available at: <https://bit.ly/3dQzgMc>, 43.

<sup>26</sup> Forum Réfugiés, *Règlement Dublin : une efficacité limitée malgré des transferts en hausse*, 17 July 2020, available in French at : <https://bit.ly/2WzDcLC>.

<sup>27</sup> AIDA, *Country Report Hungary – 2019 Update*, March 2020, available at: <https://bit.ly/3eWZmyK>, 37.

authorities knew that it was highly likely that the time limit would expire before the transfer was completed, thus rendering the transfer impossible, however they decided to persist with the doomed transfer in any case. The consequences are damaging for applicants. It may mean that access to the asylum procedure in the country where they are is severely delayed while the transfer is attempted. They will be left in limbo while the request is issued and until the time limit is eventually reached.<sup>28</sup>

### The responsibility criteria

Chapter III of the Dublin Regulation lays down a hierarchy of criteria for determining which country is responsible for examining the asylum application. The order of the criteria, in which they have to be applied, is as follows: family unity (Articles 8-11), residence documents and visas (Article 12), irregular entry or stay (Article 12), visa-waived entry (Article 14), application at airports or transit zones (Article 15), and the residual criterion of first country of application (Article 3(2)).

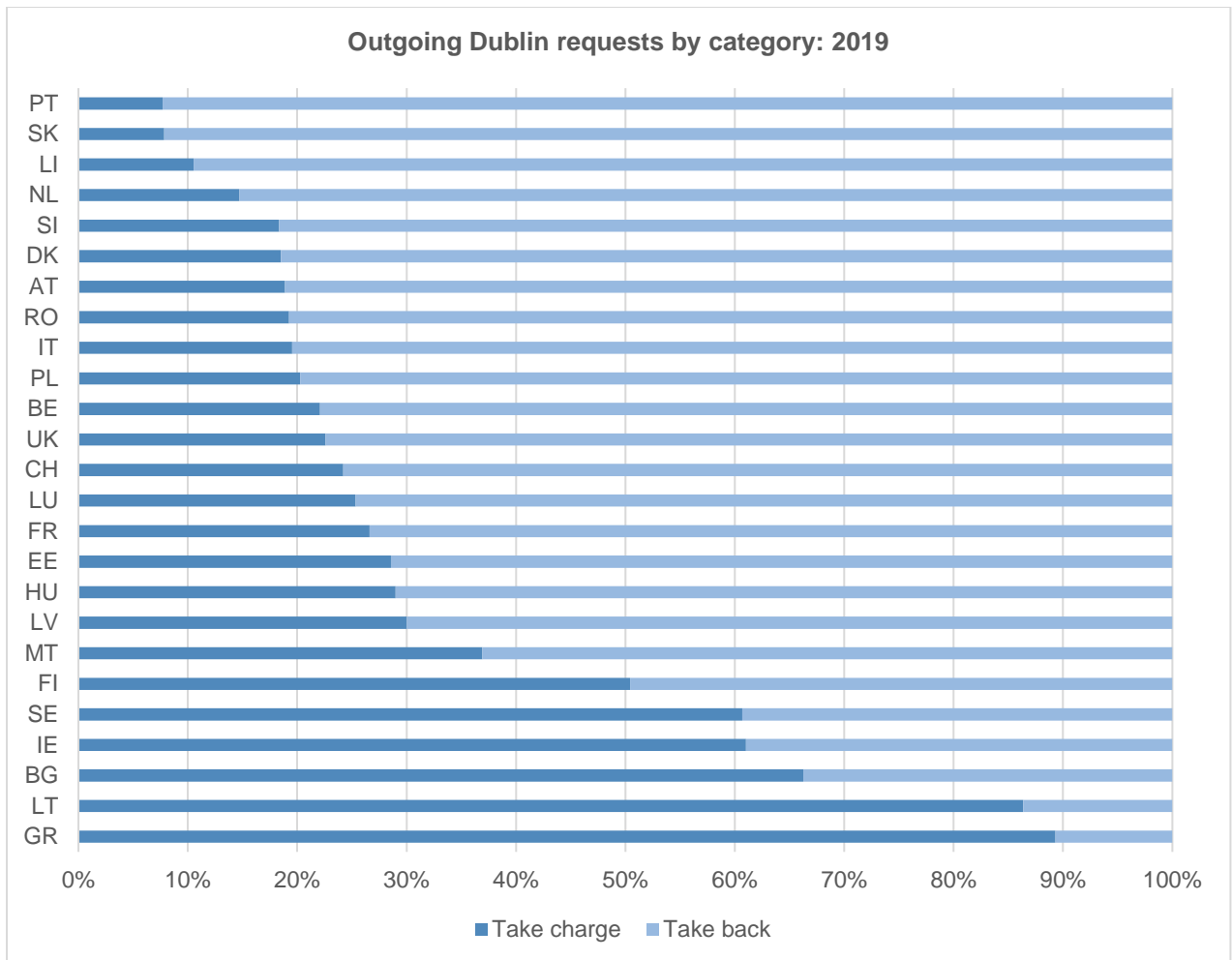
Where a person has an ongoing, abandoned or rejected asylum application in an EU+ Member state, that country is required to take back the applicant (Articles 18 and 20). Take charge requests, on the other hand, are cases where a first application is lodged and a Member State initiates the procedure to determine which Member State is responsible. Based on the criteria above, a Member State can request another Member State take charge of an applicant.

Disaggregated statistics on outgoing and incoming requests by ground are available for 25 countries. Available figures point to a prevalence of “take back” procedures in most countries:<sup>29</sup>

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<sup>28</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, p.62, available at: <https://bit.ly/2NJvdqp>

<sup>29</sup> Take back requests relate to cases where the applicant has already lodged one asylum application in a Member State and travels on to another Member State. The latter then initiates proceedings to see which Member State is responsible for 'taking back' the applicant.



Source: AIDA. Figures on LT, SE, FI, MT, LV, HU, EE, FR, LU, BE, PL, NL, LI, SK and PT are based on Eurostat.

“Take back” requests based on Articles 18 and 20(5) of the Regulation made up more than 70% of the total number of requests in 18 of the 25 countries above. Thus, nearly 70% of those subject to the Dublin procedure had an ongoing, abandoned or rejected asylum application in another EU+ Member state. Similarly, of the decisions taken in 2019, two-thirds were in response to take back requests.<sup>30</sup> Fewer countries, including **Greece, Lithuania, Bulgaria, Ireland** and **Sweden** mainly sent “take charge” requests.<sup>31</sup> Although it should be noted that the Greek Ministry for Migration and Asylum announced through a Circular in June 2020 that it would no longer issue “take charge” requests for families that had “wilfully separated” by moving to another European country, including in cases involving requests for family reunification with minor children who moved irregularly to another country.<sup>32</sup>

The high number of take back requests indicates that the majority of people placed in a Dublin procedure in the above countries had already lodged an asylum application in another country. EASO confirmed that many applicants continued with onward movement (often called “secondary movement”)

<sup>30</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 93.

<sup>31</sup> Take charge requests are cases where a first application is lodged and a Member State initiates the procedure to determine which Member State is responsible. A Member State can request another Member State take charge of an applicant, usually due to the presence of family members.

<sup>32</sup> Greek Ministry of Asylum and Migration, *Circular 1/2020 on the management of Dublin cases*, 6 June 2020.

in 2019 and that of the decisions taken in Dublin procedures, two-thirds were in response to take back requests.<sup>33</sup>

Onward movement occurs for many reasons related to the person and to the situation in the country where they find themselves. A person's legal and family status and health considerations are relevant, as are the socio-economic and asylum situation in the country where they are. State practices on surveillance and law enforcement, reception conditions, content of protection and recognition rates (specifically low recognition rates for particular groups and the "asylum lottery" denounced by ECRE)<sup>34</sup> are all reasons why a person decides or is forced to depart from a Member State.<sup>35</sup>

### *Family unity*

The Dublin III Regulation lists family unity as the first in the hierarchy of responsibility criteria.<sup>36</sup> Nonetheless, the practice of Member States demonstrates that they do not prioritise this criterion and are therefore not respecting the hierarchy; the family provisions are rarely used in most countries<sup>37</sup> and family-based Dublin requests are often rejected due to stringent evidentiary requirements.

It should be noted that the concept of family unity under the Dublin regulation only applies to a limited number of family members, in any case, being the spouse/partner and underage children. For unaccompanied minors it can be extended to other family members as listed in the Regulation, and when in best interests of the child.

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<sup>33</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 93. Nevertheless, the data should be interpreted with caution due to the high number of cases in which the legal basis could not be verified. Moreover, statistics provided by EASO are provisional and not validated.

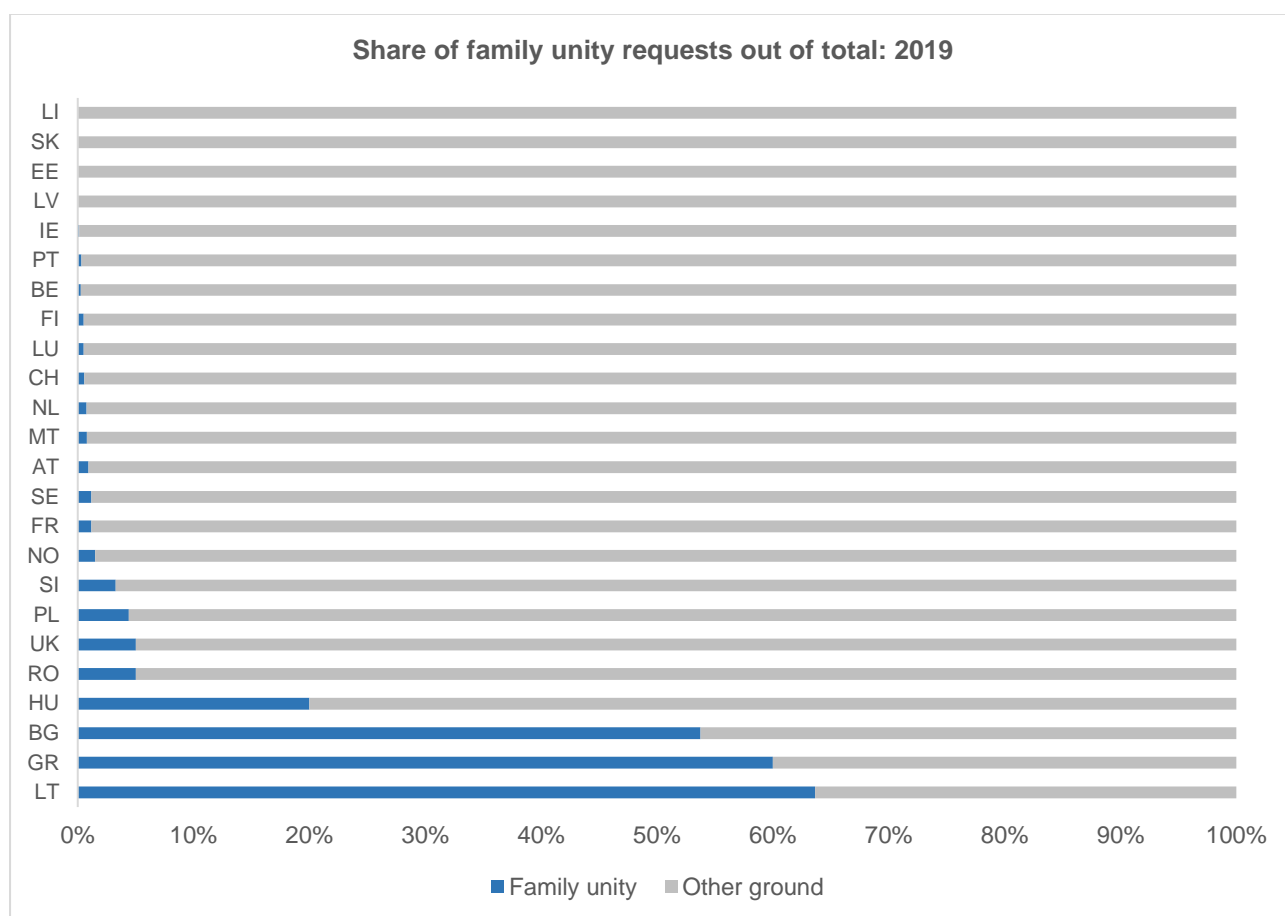
<sup>34</sup> For a discussion, see ECRE, *Asylum Statistics in Europe*, June 2020, available at: <https://bit.ly/30zw2IH>; ECRE, *Making asylum numbers count*, January 2018, available at: <http://bit.ly/2CYMB6R>.

<sup>35</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqp>.

<sup>36</sup> Articles 8-11 Dublin III Regulation.

<sup>37</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqp>; ECRE, *The Dublin system in 2018*, March 2019, available at: <https://bit.ly/3dM61KL>; UNHCR, *Left in Limbo: Study on the implementation of the Dublin III Regulation*, August 2017, available at: <http://bit.ly/2kPx9SX>, 86 et seq.;

The following chart illustrates the share of “take charge” requests for family reunification out of the total number of outgoing requests, based on available figures for 2019:



Source: Eurostat. Figures on IE, CH, AT, SI, RO, UK, BG and GR are based on AIDA.

Of the 24 countries represented above, only **Lithuania**, **Greece** and **Bulgaria** have applied the family unity criteria in the majority of their outgoing Dublin requests. In 13 countries, the share of family unity requests out of the total of outgoing Dublin requests represented less than 1%<sup>38</sup> and in 11 countries the number of outgoing Dublin requests based on family considerations can be counted on both hands.<sup>39</sup> The extremely low level of family unity requests in **Ireland** (2 out of 1,758 requests), **Belgium** (30 out of 11,852 requests) and **France** (562 out of 47,759) should be highlighted as these are countries frequently using the Dublin procedure. Similar observations can be made about the **Netherlands**, **Austria** or **Sweden**.

- **Greece** remains an exception, with almost 60% of its outgoing requests in 2019 relating to family reunification (compared to 70% in 2018). Of 3,275 outgoing requests based on family reunification provisions in 2019, 1,819 were accepted by other Member States. However, obstacles to the implementation of Dublin transfers on the basis of family unity persisted in 2019 due to practices adopted by receiving Member States. These include imposing excessive evidentiary requirements

<sup>38</sup> This includes the following countries: Lichtenstein, Slovakia, Estonia, Latvia, Ireland, Portugal, Belgium, Finland, Luxembourg, Switzerland, the Netherlands, Malta and Austria.

<sup>39</sup> The number of outgoing Dublin requests based on family considerations did not exceed ten requests in the following countries: Lichtenstein (0), Slovakia (0), Estonia (0), Latvia (0), Ireland (2), Portugal (2), Finland (3), Luxembourg (5), Malta (8), Norway and Poland (10).



such as translation and authentication of documents proving family ties, previously submitted by the sending state, or DNA tests for children.<sup>40</sup>

- **Germany** which received the vast majority of outgoing Dublin requests from Greece in 2019 regularly refuses take charge requests within a very short period of time. From 2018 to 2019, the total number of incoming transfers from Greece to Germany decreased by almost 80% (730 incoming transfers in 2019 compared to 3,495 in 2018).<sup>41</sup> The German Dublin Unit provided insufficient or no reason for these refusals. The cases included using information gathered through personal interviews to reject Dublin requests; systematically ordering DNA tests to be carried out within the three-month deadline; and focusing on procedural aspects rather than on the substantive elements of the case (which allows for a proper application of the criteria listed in Dublin III).<sup>42</sup> In June 2019, it was reported that the German Dublin Unit was rejecting 75% of the requests for family reunification.<sup>43</sup> A joint report from Refugee Support Aegean (RSA) and PRO ASYL confirmed the negative practices applied by the German Dublin Unit.<sup>44</sup> However, it should be noted that the German Administrative Courts adopted a different approach, in many cases overturning the rejection of the Dublin Unit and ruling that Germany must accept certain take-charge requests.<sup>45</sup>
- Similarly, the **United Kingdom**, which was the country receiving the second most outgoing Dublin requests from the Greek Dublin Unit in 2019, reportedly contacts British embassies in the country of origin of applicants to confirm the authenticity of submitted documents.<sup>46</sup>

As indicated above, another country regularly applying the family unity criteria is **Bulgaria**, with the majority of outgoing requests addressed to countries such as Germany which continue to require DNA tests in cases of unaccompanied children in order to prove their origin.<sup>47</sup> For **Lithuania**, the share of family unity requests of the total of outgoing requests is the highest, but this only covers 14 family unity requests of 22 outgoing requests.<sup>48</sup>

### Unaccompanied children

With regard to unaccompanied children specifically, **Greece** continues to apply the best interest assessment (BIA) tool it introduced in August 2018.<sup>49</sup> If the latter is not properly applied, the Dublin Units of the receiving countries automatically refuse the Dublin request. On the other hand, the submission of a fully completed BIA form does not necessarily lead to the acceptance of the outgoing take charge request by other Member States. Several controversial practices on the part of receiving countries were noted in 2019. This includes requiring proof that the relative residing in the receiving country is able to support the child; refusing to consider the child as “unaccompanied” in cases where

<sup>40</sup> See e.g. PRAKSIS and Safe Passage, *Caught in the middle: Unaccompanied children in Greece in the Dublin family reunification process*, March 2019, available at: <https://bit.ly/2uu4zbJ>.

<sup>41</sup> For a detailed overview of incoming transfers from Greece to Germany – including the use of the Dublin criteria – see AIDA, *Country Report Germany – 2019 Update*, July 2020, available at: <https://bit.ly/2CuJODU>.

<sup>42</sup> Information provided by the Greek Dublin Unit, 31 January 2020. See: AIDA, *Country Report Greece – 2019 Update*, June 2020, available at: <https://bit.ly/2BTrdkz>, 73.

<sup>43</sup> ECRE, ‘Germany Rejects 75% of Greek Requests for Family Reunification’, 7 June 2019, available at: <https://bit.ly/2KtvoVe>.

<sup>44</sup> Refugee Support Aegean/PRO ASYL, *Refugee Families Torn Apart*, September 2019, available at: <https://bit.ly/2x6DGzu>.

<sup>45</sup> See e.g.: See: Administrative Court Wiesbaden (Az. 4 L 478/19.WI.A), Decision of 25 April 2019, Administrative Court Frankfurt a. M. (Az. 10 L 34/19.F.A), Decision of 27 May 2019, Administrative Court Lüneburg (Az. 8 B 111/19), Decision of 8 June 2019.

<sup>46</sup> AIDA, *Country Report Greece – 2019 Update*, June 2020, available at: <https://bit.ly/2BTrdkz>, 72.

<sup>47</sup> AIDA, *Country Report Bulgaria – 2019 Update*, February 2020, available at: <https://bit.ly/38kVYen>, 28.

<sup>48</sup> Eurostat, migr\_dubto.

<sup>49</sup> According to the Greek Dublin Unit, the purpose of this tool is to gather all the necessary information required by Member States when assessing family reunification cases or unaccompanied children. The tool was developed following consultation with all international organisations and NGOs active in Greece.

a more distant family member or relative is already present in Greece; or considering the BIA form not valid in cases where it was completed by a professional who was not officially appointed by the unaccompanied minor or by the Public Prosecutor for Minors.<sup>50</sup> On the latter point, it should be noted that the Greek guardianship system faces severe challenges and the Register of Professional Guardians foreseen by the law that entered into force on 1 March 2020 had still not been established by May 2020.<sup>51</sup>

The transfer of unaccompanied children to the **United Kingdom** was also flagged as problematic in 2019. Campaigning organisations published research reports focusing on the delays for the reunification with family members or relatives in the UK of children elsewhere in Europe. A report published following research in Greece by Safe Passage and Praksis identified the UK as amongst the member states which needed to improve their systems to reunite unaccompanied children with family.<sup>52</sup> In autumn 2019 a group of organisations working in northern France calculated that there were 300 unaccompanied children in Calais, at least 40 of whom claimed to have a sibling or uncle in the UK whom they wished to join under the Dublin III Regulation.<sup>53</sup>

At national level, courts continued to interpret the family provisions of the Dublin III Regulation.<sup>54</sup> In the **Netherlands**, the Council of State ruled in 2019 that authentic papers are necessary for identification purposes and that supporting documents, such as birth certificates, are insufficient to prove minority.<sup>55</sup> It also considered that the principle of mutual trust does not imply an obligation on the Immigration Service to accept the data registered by the other Member State. In view of this principle, the national authorities may rely on the information that another (Member) State has registered about an asylum seeker. However, the principle of mutual trust does not go so far as to oblige the authorities to rely on the registered data in cases in which they deem it appropriate to conduct further investigation into the data, such as that concerning identity, origin and nationality of the foreign national.<sup>56</sup>

Moreover, the Dutch Council of State implemented the judgment of the Court of Justice of the European Union (CJEU) in the *case H. and R.* according to which an applicant cannot appeal against a decision not to transfer them under Article 9 of the Regulation in the case of a take back procedure, unless the applicant's case falls under Article 20 (5) and the applicant has provided information clearly establishing correct responsibility.<sup>57</sup>

In **Portugal**, the Administrative Circle Court of Lisbon issued two decisions in October 2019 relating to the transfer of unaccompanied children to Italy. While it upheld the transfer decision in one case as information provided by the Italian authorities confirmed the adulthood of the applicant,<sup>58</sup> the Court suspended another transfer in the absence of evidence regarding the age of the applicant who had thus to be treated in accordance with Article 8(4) of the Dublin III Regulation.<sup>59</sup>

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<sup>50</sup> AIDA, *Country Report Greece – 2019 Update*, June 2020, available at: <https://bit.ly/2BTrdkz>, 74.

<sup>51</sup> Article 73 of Law 4623/2019.

<sup>52</sup> Safe Passage and Praksis, *Caught in the middle*, July 2019, available at: <https://bit.ly/2VVbtFA>.

<sup>53</sup> Refugee Rights Europe et al, *Left out in the cold*, October 2019, available at: <https://bit.ly/2VDYmZg>.

<sup>54</sup> See also ECRE/ELENA, *Case Law Note on the application of the Dublin Regulation to family reunification cases*, February 2018, available at: <https://bit.ly/2HFcco7>.

<sup>55</sup> Dutch Council of State, ECLI:NL:RVS:2019:653, 27 February 2019; Dutch Council of State, ECLI:NL:RVS:2019:2984, 2 September 2019; Dutch Council of State, ECLI:NL:RVS:2019:2957, 28 August 2019.

<sup>56</sup> Dutch Council of State, Decision No 201807010/1, 30 April 2019.

<sup>57</sup> CJEU, *Joined Cases C-582/17 and C-583/17 H. and R.*, Judgment of 2 April 2019; Council of State, ECLI:NL:RVS:2019:3672, 31 October 2019.

<sup>58</sup> Administrative Circle Court of Lisbon, Decision 1216/19.1BELSB, 22 October 2019, unpublished. It is interesting to note that the same course of action was followed by the Family Court responsible for the application of the protective measure.

<sup>59</sup> Administrative Circle Court of Lisbon, Decision 1516/19.0BELSB, 16 October 2019, unpublished.

## *Irregular entry*

Where it is established that an applicant has irregularly crossed the EU's external border into a Member State by land, sea or air, having come from a third country, the Member State where the applicant entered the EU shall be responsible for examining the application for international protection. It thus often concerns Member States at the external borders of the European Union. According to Eurostat, out of 43,050 take charge requests issued in 2019, 9,342 requests were based on the criterion of irregular entry (Article 13(1) Dublin III Regulation), which was most often invoked by France, Belgium and Sweden. Data for 2019 for Germany have not yet been included in Eurostat and are likely to substantially increase numbers.<sup>60</sup>

When a person has an ongoing, abandoned or rejected asylum application in an EU+ Member state, Member States such as **France, Belgium, the Netherlands, Luxembourg, the United Kingdom and Sweden** often trigger requests on the grounds of irregular entry and issue "take back" requests but then often fail to transfer the asylum seeker to the countries concerned. As explained above, strictly applying the "irregular entry" criterion and making take back requests on this basis, often fails because the request is usually directed to countries with low reception capacity and dysfunctions in their asylum system, thus rendering the transfer impossible due to the potential violation of human rights (see [Suspension of transfers](#)).

## *Dependency clause*

Article 16 of the Dublin III regulation provides that:

"on account of pregnancy, a new born child, serious illness, severe disability or old age, an applicant is dependent of the assistance of his or her child, sibling or parent legally resident in one of the Member State or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent provided that":

1) the family ties existed in the country of origin; 2) the child, sibling or parent is able to take care of the dependent person; and 3) they expressed their consent in writing. However, Member States strictly apply the dependency clause of Article 16, often creating a very high threshold for establishing dependency. In 2019 only 98 incoming requests based on Article 16 were issued, and 102 outgoing requests were submitted. Not all countries have provided their data for 2019 yet. Nevertheless, the application of the dependency clause has remained very low, just as in previous years.

## *The discretionary clauses*

### *Article 17(1): sovereignty clause*

Article 17(1) of the Dublin Regulation, known as the "sovereignty clause", grants Member States discretion to undertake responsibility for an asylum application at any time on the basis of any criteria they deem relevant. According to the CJEU, "the aim of that option is to allow each Member State to decide, in the exercise of its sovereignty, for political, humanitarian or practical considerations, to agree to examine an application for asylum even if it is not responsible under those criteria".<sup>61</sup> The clause is particularly relevant in cases where countries can refrain from triggering a Dublin procedure on account of human rights risks in the recipient Member State, i.e. instead of triggering a Dublin procedure and attempting to transfer the person, the country can use the clause to assume responsibility.

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<sup>60</sup> At the time of writing of 3 August 2020.

<sup>61</sup> CJEU, Case C-56/17, *Fathi*, Judgment of 4 October 2018, See EDAL summary at: <https://bit.ly/3hG1eN9>.

In 2019, the discretionary clauses of Article 17 were again rarely applied. In addition, the CJEU reiterated the optional character of the provision and found that the Regulation does not require a remedy to be made available against the decision not to use the option set out in Article 17(1), without prejudice to the fact that that decision may be challenged at the time of an appeal against a transfer decision.<sup>62</sup> This is reflected in national case law, in which domestic Courts have underlined this possibility of triggering Article 17(1). In **Slovenia** for example, the Supreme Court ruled on the discretionary clause and stated that it is the right of a country based on its sovereignty to decide to examine an application, even if it is not its obligation under the provisions of the Dublin III Regulation.<sup>63</sup>

Information collected through the Asylum Information Database (AIDA) indicates that the sovereignty clause was not applied at all in some countries, including **Bulgaria, Poland, Portugal, Romania, Slovenia** and the **United Kingdom**. **Hungary** applied the sovereignty clause in 18 cases, while **Switzerland** applied it in 859 cases in 2019. In **Germany**, available information refers to 3,070 cases in which either the use of the sovereignty clause or “*de facto* impediments to transfers” resulted in the asylum procedure being carried out in Germany.<sup>64</sup> Additional statistics on the use of the sovereignty clause were not available at the time of writing. Nevertheless, EASO confirmed that the application of Article 17(1) decreased in 2019 compared to 2018. It was invoked around 6,900 times in 2019, compared to 12,300 in 2018.<sup>65</sup>

#### *Article 17(2): humanitarian reasons*

The discretionary clause of Article 17(2), known as the “humanitarian clause”, is less broad in its scope and allows Member States to undertake responsibility for an asylum application on the more specific bases of humanitarian and family considerations (which nonetheless cover a range of possible circumstances). The Member State in which an application is made, issues a take charge request on the basis of family or humanitarian considerations. Available figures on 2019 collected through Eurostat and AIDA indicate that this clause was not used as legal criterion in any outgoing requests from **Bulgaria, Estonia, Latvia, Lichtenstein, Slovenia** and the **United Kingdom**, i.e. they did not invoke Article 17(2) when asking another Member State to take charge of an applicant. The humanitarian clause was invoked as legal criterion in one outgoing request in **Romania, Hungary, Lithuania, Slovakia**, and **Finland**; in two cases in **Poland, Luxembourg** and **Norway**; in three cases in **Ireland**; four cases in **Portugal**; seven cases in **Austria**; eight cases in **Belgium** and **Sweden**; and in 15 cases in **France**.

Interestingly, the use of the humanitarian clause has significantly increased in **Malta** and **Greece**. While in 2018, it was not applied at all in **Malta**, in 2019 it was used in 322 cases, i.e. Malta invoked it when requesting that another Member State take charge of an applicant in these cases.<sup>66</sup> In **Greece**, the number of outgoing requests based on the humanitarian clause doubled from 825 cases in 2018 to 1,496 cases in 2019.<sup>67</sup> However, the acceptance rate for requests based on Article 17(2) of the Dublin III Regulation was lower than for those based on family unity under Article 8-11 of the Dublin III Regulation. Out of 1,496 outgoing requests based on Article 17(2) of the Dublin III Regulation, only 488 were accepted in 2019 (i.e. 32.7%).<sup>68</sup> This seems to result from the restrictive practices of receiving countries.

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<sup>62</sup> CJEU, Case C-661/17, *M.A & others*, Judgment of 3 January 2019, See EDAL summary at: <https://bit.ly/3e33BaJ>.

<sup>63</sup> (Slovenia) Supreme Court, *Applicant vs Administrative Court of the Republic of Slovenia [Decision IU 2707 /2017-7]*, 10 April 2019.

<sup>64</sup> AIDA, *Country Report Germany – 2019 Update*, July 2020, available at: <https://bit.ly/2CuJODU>; Federal Government, Response to parliamentary question by The Left, 19/17100, 20 February 2020, 12.

<sup>65</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 93.

<sup>66</sup> Eurostat, *migr\_dubro*

<sup>67</sup> AIDA, *Country Report Greece – 2019 Update*, June 2020, available at: <https://bit.ly/2BTrdkz>, 74.

<sup>68</sup> *Ibid.* Information provided by the Greek Asylum Service on 17 February 2020. *Ibid*

The figures above demonstrate that most countries ignore the potential for a greater use of the discretionary clauses – something which could significantly help to improve the situation of people seeking protection in Europe. Nevertheless, some national courts have underlined the importance of the discretionary clauses. In **Germany**, Administrative Courts have ruled in several cases that the discretionary clause of Article 17(2) might even oblige Germany to take charge of an applicant under certain circumstances, particularly if Member State responsible was not determined before the expiry of a deadline on which the applicant had no influence.<sup>69</sup>

It should be further noted that the discretionary clause in Article 17(2) was used as the legal basis for *ad hoc* relocation schemes in 2019. ECRE has argued that relocation can and should take place within the framework of the Dublin III Regulation; the discretionary clauses of the Regulation can be used to facilitate wider relocation and disembarkation arrangements.<sup>70</sup> In the standard operating procedures it developed in 2019 (known as the “Messina model”), EASO also highlighted the applicability of the Dublin system in the context of *ad hoc* relocation: “The Messina model requires and foresees that the legal basis of the intervention should be article 17 of the Dublin Regulation.”<sup>71</sup>

## Procedures and safeguards

While relatively few legislative and policy developments relevant to the Dublin procedure occurred in 2019, countries continued to reorganise the way their administration handle procedures under Dublin III. This mainly resulted in minor institutional and organisational changes within the authorities of certain countries including **Croatia, Denmark, Germany, Lithuania, Luxembourg** and the **United Kingdom**.<sup>72</sup> Only three countries, namely **Belgium, France** and **Italy**, continued to grant the responsibility for Dublin procedures to entities that are separate from the determining authority.<sup>73</sup>

The increasing role of EASO in Dublin procedures is also important to note. In **Malta**, EASO started providing support to the Refugee Commissioner in the Dublin procedure as of October 2019. This support is limited to the outgoing procedure, *inter alia* due to the relatively small number of incoming requests received by the country.<sup>74</sup> In **Greece**, EASO’s support is also restricted to the outgoing procedure, due to a decision not to assist in the handling of incoming requests to avoid dealing with cases where requests were refused due to deficiencies in the reception system.<sup>75</sup> In **Italy**, EASO has assisted in the Dublin procedure since 2015 and currently supports both outgoing and incoming procedures. The Agency has helped to transfer more than 8,000 applicants from Italy to other EU countries since 2015, under both the regular relocation programme and relocation after disembarkation.<sup>76</sup> It is also relevant to note that EASO’s Management Board adopted a new Guidance on the Dublin Procedure in November 2019, with the aim of helping Member States to operationalise the existing legal provisions and apply them in a harmonised way.<sup>77</sup>

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<sup>69</sup> (Germany) Administrative Court of Berlin, Decision 23 L 706.18 A, 15 March 2019. See a summary of the case on the EDAL database available at: <https://bit.ly/3ihRVE9>.

<sup>70</sup> ECRE, *Relying on relocation: ECRE’s proposal for a predictable and fair relocation arrangement following disembarkation*, 2019, available at: <https://bit.ly/2VTUJxS>; ECRE, *Editorial: A Contingency Plan for Disembarkation and Relocation*, 2019, available at: <https://bit.ly/3e6tG8E>.

<sup>71</sup> EASO, *Note on the ‘Messina Model’ applied in the context of ad hoc relocation arrangements following disembarkation*, 2019, available at: <https://bit.ly/2AFr4kA>, 1.

<sup>72</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 87.

<sup>73</sup> ECRE/AIDA, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2Zau7dK>, 19-20.

<sup>74</sup> ECRE, *The role of EASO operations in national asylum systems*, November 2019, available at: <https://bit.ly/2BGF3at>, 9-10.

<sup>75</sup> *Ibid.*

<sup>76</sup> EASO, *Asylum report 2019*, June 2020, available at: <https://bit.ly/2ZqldHb>, 47.

<sup>77</sup> EASO, *Guidance on the Dublin procedure: operational standards and indicators*, November 2019, available at: <https://bit.ly/2VX5Plv>.



The Regulation provides for a number of guarantees for applicants, *inter alia* the right to information;<sup>78</sup> personal interviews;<sup>79</sup> special guarantees for unaccompanied children;<sup>80</sup> the right to appeal against a transfer decision; and legal assistance free of charge upon request at the appeal stage.<sup>81</sup> Yet, practice in 2019 show a wide variety in practice when it comes to the procedural guarantees. Some differences would be expected, given the discretion provided by the Regulation. Nonetheless, there are also a number of cases where Member States are not respecting one or more of the applicants' procedural guarantees”

Procedural safeguards during the Dublin procedure in practice: 2019					
Country	Personal interview	Interpretation	Time limit for appeal	Suspensive effect of appeal	Legal assistance
AT	√	√	14 days	x	√
BE	√	√	30 days	x	√
CY	√	√	75 days	x	x
DE	√	√	7 days	x	x
FR	√	√	15 days	√	x
GR	√	√	15 days	√	x
HR	√	√	8 days	√	√
HU	x	-	3 days	x	x
IT	x	-	30 days	x	x
MT	√	x	14 days	√	√
NL	√	√	7 days	x	√
PL	√	√	14 days	√	x
PT	√	√	5 days	√	√
RO	√	√	5 days	x	√
SI	√	√	8 days	x	√
UK	x	-	-	x	x
CH	√	√	5 days	√	x

Source: AIDA.

The table above provides a rough overview of current practices in selected countries covered by the Asylum Information Database (AIDA). It provides an indication of practice rather than an exhaustive description of national systems because in some countries procedural safeguards are regulated in law but not implemented in practice and *vice versa* – thus rendering a comprehensive analysis difficult. In addition, in countries where procedural guarantees are not regulated in law but result from practice, the situation is prone to change.

Applicants undergoing a Dublin procedure have a personal interview and access to interpretation in most countries (although the personal interview is not necessarily conducted in the same conditions as during the regular procedure). However, divergences are particularly noticeable at appeal stage. The

<sup>78</sup> Article 4 Dublin III Regulation.

<sup>79</sup> Article 5 Dublin III Regulation.

<sup>80</sup> Article 6 Dublin III Regulation.

<sup>81</sup> Article 27 Dublin III Regulation.

CJEU has consistently affirmed asylum applicants' right to an effective remedy under the Dublin Regulation,<sup>82</sup> but its scope is interpreted in different ways in different states.

First, the time limit to appeal a Dublin decision varies significantly: three days in **Hungary**; five days in **Portugal** and **Romania**; 15 days in **France** and **Greece**; 30 days in **Belgium** and **Italy**; and up to 75 days in **Cyprus**.<sup>83</sup> Second, the suspensive effect of appeals is applied in practice in only a minority of countries, including **France**, **Greece**, **Croatia**, **Malta**, **Poland** and **Portugal**. Third, access to legal assistance is not ensured in a majority of countries.

National courts continued to provide guidance on the interpretation of the procedural guarantees foreseen by the Dublin III Regulation. In **Portugal**, the full extent and implications of the right to be heard in Dublin procedures continued to be discussed by Courts with divergent outcomes in national jurisprudence in 2019, and it is unclear whether all applicants were provided a personal interview during the year.<sup>84</sup> In **Slovenia**, the Administrative Court ruled that the applicant has the right to a hearing even if Slovenia decides to annul the transfer decision to the responsible state and takes responsibility for the case.<sup>85</sup> In **Romania**, the appeal procedure in Dublin procedures seems to be only a formality for the Regional Court of Giurgiu, as the decision of the second instance authority is often copy-pasted from the first instance authority and individual guarantees are not assessed.<sup>86</sup>

Other relevant developments in 2019 relate to the right to legal assistance. A positive practice has been observed in **Switzerland** where free legal assistance is ensured at first instance, including during Dublin procedures, since the entry into force of the new Swiss asylum procedure in March 2019.<sup>87</sup> In contrast, concerns have been raised in **Austria** regarding measures on provision of supposedly independent legal assistance by a Federal Agency during the regular procedure as of January 2021, which will thus equally affect Dublin procedures.<sup>88</sup> In **Bulgaria**, the provision of legal assistance was restricted to vulnerable applicants in 2019, specifically to 13 unaccompanied children.<sup>89</sup>

### *Time limits for requests*

The deadline for submitting a “take charge” request is three months from the lodging of an asylum application.<sup>90</sup> While countries, including **Germany**, **France**, **Italy**, **Belgium**, **Greece** and **Croatia**, have aligned their practice with the *Mengesteab* ruling and start the calculation of the three months from the

<sup>82</sup> See e.g. CJEU, Case C-155/15 *Karim*, Judgment of 7 June 2016; EDAL, CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017. Nevertheless, it should be noted that in 2019 the CJEU restricted the scope of permissible appeals that are allowed based on incorrect application of the responsibility criteria in the context of ‘take back’ cases. In *H. and C.*, the Court concluded that, where a decision has been taken following the acceptance of a ‘take back’ request, the applicant cannot plead that the country deemed responsible has not properly examined the responsibility criteria of the Regulation, unless the applicant falls under Article 20(5) of the Regulation, i.e. they left the first Member State before the process of determining the Member State responsible was completed, and has provided sufficient evidence establishing correct responsibility. See: CJEU, Joined Cases C-582/17 and C-583/17 *H. and R.*, Judgment of 2 April 2019, paras 57-58 and 74-75.

<sup>83</sup> It should be noted, however, that the Cypriot government has recently submitted amendments to the Constitution and other national laws before Parliament, which would *inter alia* shorten the appeals against Dublin decisions from 75 days to 15 days. Information provided by the Cyprus Refugee Council on 22 July 2020.

<sup>84</sup> For a discussion, see: AIDA, *Country Report Portugal – 2019 Update*, June 2020, available at: <https://bit.ly/2OfN3lr>, 42-44.

<sup>85</sup> Administrative Court Judgment, I U 1174/2019/11, 25 July 2019, available at: <https://bit.ly/2IDAg9i>; AIDA, *Country Report Slovenia – 2019 Update*, April 2020, available at: <https://bit.ly/2ZEemuE>, 32.

<sup>86</sup> AIDA, *Country Report Romania – 2019 Update*, April 2020, available at: <https://bit.ly/3e9q6L5>, 53.

<sup>87</sup> Article 102f Swiss Asylum Act.;

<sup>88</sup> ECRE, *Reforming legal assistance in Austria: An end to independent provision?*, July 2019, available at: <https://bit.ly/3g2ga7Q>; AIDA, *Country Report Austria – 2019 Update*, March 2020, available at: <https://bit.ly/3e91MJk>, 44-45.

<sup>89</sup> AIDA, *Country Report Bulgaria – 2019 Update*, February 2020, available at: <https://bit.ly/3f79chz>, 31.

<sup>90</sup> Article 21(1) Dublin III Regulation.

moment the asylum seeker's intention to seek international protection is registered,<sup>91</sup> meeting the set deadlines remains an issue in other countries.

In **Bulgaria** for example, the communication between local reception centres and the Dublin Unit of the State Agency for Refugees (SAR) was unduly lengthy when gathering the necessary documentation for a Dublin request in 2019. To address this, a new draft proposal for the Law on Asylum and Refugees (LAR) aims to accelerate the process by removing some of the administrative burdens.<sup>92</sup> In **Greece**, there have been reports of family reunification cases – especially concerning newcomers trapped on the Aegean islands and amongst which cases of detainees and unaccompanied minors – where there were long delays between the expression of an intention to apply for asylum and the registration of the application. This then reduced the prospects of sending a potential “take charge” request within the said three-month period.<sup>93</sup>

On the contrary in **Cyprus**, the Asylum Service has reportedly improved its practice of issuing Dublin requests within the set deadlines in 2019, as opposed to previous years.<sup>94</sup>

### *Time limits for transfers*

The Dublin Regulation provides that the time limit for carrying out a transfer is six months following the acceptance of the request or the final decision of an appeal or review.<sup>95</sup> This time limit may be extended up to a maximum of 1 year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of 18 months if the person concerned absconds.<sup>96</sup>

Figures on the average duration of the procedure from acceptance to transfer are not made available EU-wide and are only available in a handful of countries. Countries which were able to carry out transfers within the six-month deadline in 2019 include **Poland**, **Portugal** and **Slovenia** (less than 1 month); **Hungary** (less than 2 months), **Bulgaria** (3 months) **Cyprus** (3 to 6 months) and **Malta** (6 months). In other countries however, the process can exceed the six-month limit. This is the case for **Switzerland**, where the average duration of the process was 335 days in 2019, up from 265 days in 2018.<sup>97</sup> This is mainly due to the submission of suspensive appeals against transfer decisions, which subsequently suspend the time limit for transfers.

In many of these cases, responsibility shifts back to the sending country due to non-compliance with the deadline. According to Eurostat, at least 14,500 persons were affected in 2019, up 12% compared to 2018, and likely to be much higher as most Member States do not consistently report to Eurostat the on cases in which they have failed to observe the transfer time limits and become responsible by default.<sup>98</sup> In 2019, the figure included around 7,500 cases in **France**, 2,800 cases in the **United Kingdom** and 2,200 cases in **Belgium** – three countries regularly applying the Dublin III Regulation.

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<sup>91</sup> CJEU, Case C-670/19 *Mengesteab*, Judgment of 26 July 2017, EDAL, available at: <https://bit.ly/2XvMKq2>; ECRE, *The implementation of the Dublin III Regulation in 2018*, 2019, available at: <https://bit.ly/3efEpO8>, 12; EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqp>, 68.

<sup>92</sup> AIDA, *Country Report Bulgaria – 2019 Update*, February 2020, available at: <https://bit.ly/3f79chz>, 29.

<sup>93</sup> AIDA, *Country Report Greece – 2019 Update*, June 2020, available at: <https://bit.ly/3ghKUI6>, 71; RSA/PRO ASYL, *Refugee Families Torn Apart*, September 2019, available at: <https://bit.ly/2VxpAjX>.

<sup>94</sup> AIDA, *Country Report Cyprus – 2019 Update*, March 2020, available at: <https://bit.ly/32fMErp>, 41.

<sup>95</sup> Article 29(1) Dublin III Regulation.

<sup>96</sup> Article 29(2) Dublin III Regulation.

<sup>97</sup> AIDA, *Country Report Switzerland – 2019 Update*, March 2020, available at: <https://bit.ly/2W6XsnD>, 38.

<sup>98</sup> In Ireland for example, the International Protection Office stated in response to a request by the Irish Refugee Council on March 2020 that they could not answer this question as they “transferred only 26 cases in 2019, there would be no statistical value in such a small sample.”



The number of cases in which countries become responsible by default due to non-compliance with the transfer deadline has sharply increased in recent years (even when assessing the partial figures that are available). While this concerned only around 2,000 cases in 2015, the number tripled to around 6,000 cases in 2016, and doubled again from 2016 to 2017 by reaching around 11,400 cases in 2017.<sup>99</sup> In 2018, countries became responsible by default in around 13,000 cases. These figures underline the dysfunction of the Dublin system and confirm that some countries applying the Dublin Regulation make a conscious policy choice to subject both asylum seekers and their own administration to lengthy Dublin procedures which in all likelihood end up in no transfer due to non-compliance with the time limits for carrying out the transfer.<sup>100</sup>

## Suspension of transfers

Litigation related to Dublin procedures continues to account for a large share of asylum-related cases before domestic and European Courts.

### *The duty to investigate and obtain guarantees*

European and national jurisprudence underlines the duty of sending countries to obtain guarantees to ensure the legality of Dublin transfers in certain cases, however practice in 2019 indicates that these judgments are often not respected.

Similar to 2018, countries including **Austria, Bulgaria, Croatia, France, Malta, Portugal, Romania, Sweden** and **the United Kingdom** continue to have no formal policy in place which requires the provision of individual guarantees prior to a Dublin transfer, including for groups such as families with children or other groups with special needs. In **Bulgaria**, all transfers carried out were based on the family unity criteria with the consent of the concerned children and family members. Thus, in Bulgaria alone is it understandable that guarantees were not always requested from receiving countries, especially in light of the well-documented dysfunctions in the Bulgarian asylum system.<sup>101</sup>

Some countries request guarantees as a matter of general practice, including **Cyprus**<sup>102</sup> and **Greece**,<sup>103</sup> while others request such guarantees from specific destination countries, as below:

National policies on individual guarantees in Dublin cases	
Dublin Unit	Countries from which guarantees are requested
DE	GR, HU
CH	IT
NL	GR
PL	GR, HU, BG
HU	BG
SI	GR, IT

Source: AIDA.

<sup>99</sup> These numbers are based on Eurostat. As mentioned above, they are likely to be much higher as most Member States do not consistently report to Eurostat the number of cases in which they have failed to observe the transfer time limits and have become responsible by default.

<sup>100</sup> See also: ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/3j4QikI>, 8 and 20; EPRS/ECRE, *Dublin Regulation on international protection applications - European Implementation Assessment*, February 2020, available at: <https://bit.ly/3gYMnNk>, 62.

<sup>101</sup> AIDA, *Country Report Bulgaria – 2019 Update*, February 2020, available at: <https://bit.ly/32gHgUB>, 29.

<sup>102</sup> AIDA, *Country Report Cyprus – 2019 Update*, April 2020, available at: <https://bit.ly/2Zrh9sq>, 41.

<sup>103</sup> AIDA, *Country Report Greece – 2019 Update*, June 2020, available at: <https://bit.ly/3ghKUI6>, 76.

The most notable change in 2019 with regard to the duty to investigate and obtain guarantees relates to requests to **Italy**. Several countries have deemed the guarantees provided by the Italian Dublin Unit in its letter of 8 January 2019 on the access to accommodation as sufficient and have thus discontinued their previous policy of requesting guarantees for families with children.<sup>104</sup> This is a worrying change of practice taking into account that Italy is the country which received by far the most incoming requests in 2019 (35,255 incoming requests in 2019).

In **Sweden**, the Migration Agency confirmed in March 2019 that individual guarantees were no longer needed when transferring families with children to Italy.<sup>105</sup> This is also the case in **Denmark**, and **Belgium**.<sup>106</sup> Similarly in **Germany**, the authorities confirmed in March 2019 that individual guarantees were no longer requested from Italy. Nevertheless, the government stated that guarantees are still requested when it concerns families with children aged below three years old – but it remains unclear whether this is systematically applied in practice or not.<sup>107</sup> In **Portugal**, transfer decisions made no reference to possible risks of ill-treatment in Italy, with most of the decisions being issued on the basis of the absence of a timely response from the Italian authorities.<sup>108</sup> However in **Slovenia**, the authorities continue to request individual guarantees from Italy in relation to vulnerable persons and families.<sup>109</sup>

Domestic courts also have diverging interpretations of the need to seek individual guarantees in Dublin cases to Italy. In **Malta**, the Civil Court confirmed that there was no obligation for the Italian authorities to present individual guarantees before carrying out a transfer. It held that the socio-economic conditions of the applicant in Italy are irrelevant to the matter of the case and that further issues could be addressed to Italian Courts, thereby refusing to suspend the transfer.<sup>110</sup> In the **Netherlands**, the Council of State confirmed in June 2019 that the principle of mutual trust applies to transfers to Italy, even in cases involving particularly vulnerable asylum seekers.<sup>111</sup>

However in **Switzerland**, the Federal Administrative Court ruled in a reference judgment of December 2019 that the guarantees provided by the Italian authorities in January 2019 were not specific enough in the context of transfer of families and seriously ill persons.<sup>112</sup> As a result, the Italian authorities are required to submit even more specific guarantees concerning reception conditions in each individual case and the Swiss authorities must obtain individual assurances guaranteeing the requisite medical care and accommodation for seriously ill asylum seekers.<sup>113</sup> The sharp decrease in the number of transfers of families from Switzerland to Italy in 2019 confirms this trend: only three families were transferred to Italy in 2019, compared to 35 families in 2018 and 36 families in 2017.<sup>114</sup> In **Germany**,

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<sup>104</sup> Italian Dublin Unit, Circular 2019/1, 8 January 2019. The latter indicates that “all applicants under the Dublin procedure will be accommodated in other Centres referred to in Legislative Decree No. 142/2015... In consideration of the efforts made by the Italian Government in order to strongly reduce the migration flows, these Centres are adequate to host all possible beneficiaries, so as to guarantee the protection of the fundamental rights, particularly the family unity and the protection of minors.”

<sup>105</sup> Swedish Migration Agency, *Rättsligt ställningstagande angående överföring av barnfamiljer till Italien i enlighet med Dublinförordningen (EU) nr 604/2013*, SR 08/2019, 25 March 2019, available in Swedish at: <https://bit.ly/2Puxgjq>.

<sup>106</sup> AIDA, *Country Report Belgium – 2019 Update*, April 2020, available at: <https://bit.ly/3ftHYBD>, 40-41.

<sup>107</sup> Federal Government, Response to parliamentary question by The Left, 19/8340, 13 March 2019, 33-34 and 37.

<sup>108</sup> AIDA, *Country Report Portugal – 2019 Update*, April 2020, available at: <https://bit.ly/2WmqhN2>, 41.

<sup>109</sup> AIDA, *Country Report Slovenia – 2019 Update*, April 2020, available at: <https://bit.ly/2Wnzx3w>, 31.

<sup>110</sup> (Malta) Civil Court First Hall, *Enas Mhana vs Hon Prime Minister, Minister for Home Affairs and National Security, Attorney General and the Office of the Refugee Commissioner, 2019/118742*, 18 October 2019, available at: <https://bit.ly/2XE0t06>.

<sup>111</sup> Dutch Council of State, Decision No 201809552/1, 12 June 2019; See also: Council of State, Decision No 201901495/1/V3, 8 April 2019.

<sup>112</sup> (Switzerland) Federal Administrative Court, Decision E-962/2019, 17 December 2019.

<sup>113</sup> AIDA, *Country Report Switzerland – 2019 Update*, March 2020, available at: <https://bit.ly/3exjwOF>, 38.

<sup>114</sup> *Ibid.*, 37.

the German Federal Constitutional Court also found that the conditions in Italy cannot be assumed to be adequate for families with children following the legal changes in Italy.<sup>115</sup>

In **Portugal**, the scope of the duty to investigate and obtain guarantees continues to be subject to diverging interpretations in jurisprudence, especially in the context of transfers to Italy. In some decisions, the Central Administrative Court (TCA) South considered that guarantees must be requested in destination countries where systemic flaws and the risk of inhumane or degrading treatment are well documented,<sup>116</sup> while in other decisions it considered that such guarantees must only be investigated when concerns have been explicitly raised by the asylum seeker, thus shifting the responsibility for demonstrating such deficiencies to the latter.<sup>117</sup> In January 2020, the Supreme Administrative Court considered that the authorities are only bound to obtain up-to-date information on the risk of inhuman or degrading treatment where there are valid reasons to believe that there are systemic flaws in the asylum procedure and reception conditions of the receiving Member State, and where such flaws amount to a risk of inhuman or degrading treatment.<sup>118</sup>

Diverging practices on individual guarantees were also noted in 2019 regarding Dublin cases to **Bulgaria**. In the **Netherlands** the Council of State confirmed in August 2019 that the principle of mutual trust applies to Bulgaria,<sup>119</sup> while in **Poland** the authorities refused to carry out transfers in the absence of individual guarantees from the Bulgarian Dublin Unit.<sup>120</sup> In **Hungary** it was reported that the Dublin Unit asked the Bulgarian authorities in several cases to provide information on the general reception conditions for Dublin returnees, but these questions did not refer to individual characteristics of the persons concerned, i.e. they sought general information rather than individual guarantees. Moreover, all Dublin decisions seem to contain a standard generic reply from the Bulgarian Dublin Unit.<sup>121</sup>

As regards individual guarantees in Dublin transfers to **Greece**, no particular change was noted in 2019. The Greek Dublin Unit continues to provide individual guarantees on the availability of accommodation and on the resumption of the asylum procedure. In this context, Greece systematically rejected incoming requests *inter alia* due to the lack of individual guarantees concerning reception. Of 12,718 incoming requests received in 2019, the vast majority, 12,250 (96.3%), were rejected by the Greek Dublin Unit, compared to 96.5% in 2018.<sup>122</sup> Interestingly, the **Dutch** Dublin Unit asked in some of its requests whether Greece has an “accommodation model” that may be considered adequate in general, with the aim of obtaining sufficient guarantees for the future.<sup>123</sup>

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<sup>115</sup> (Germany) Federal Constitutional Court, Decision 2 BvR 721/19, 10 October 2019.

<sup>116</sup> (Portugal) See for example: TCA South, Decision 557/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2ZMhIkM>; TCA South, Decision 751/19.6BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2Ql0GS8>; TCA South, Decision 1059/19.2BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/2MS8Z5z>; TCA South, Decision 1157/19.2BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/2sl56tc>.

<sup>117</sup> (Portugal) See for example: TCA South 1013/19.4BELSB, 7 November 2019, available in Portuguese at: <https://bit.ly/2QhJfBI>; TCA South, Decision 817/19.2BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/2QkakEr>; TCA South, Decision 743/19.5BELSB, 26 September 2019, available in Portuguese at: <https://bit.ly/36nqna7>; TCA South, 1258/19.7BELSB, 21 November 2019, available in Portuguese at: <https://bit.ly/35kaccn>.

<sup>118</sup> (Portugal) Supreme Administrative Court, Decision 2240/18.7BELSB, 16 January 2020, available in Portuguese at: <https://bit.ly/3cq4BFd>.

<sup>119</sup> (Netherlands) Council of State, Decision No 201810397/1, 28 August 2019.

<sup>120</sup> The same approach was applied by the Polish authorities to Greece and Hungary. See: AIDA, *Country Report Poland – 2019 Update*, April 2020, available at: <https://bit.ly/2Ot8uzq>, 27.

<sup>121</sup> AIDA, *Country Report Hungary – 2019 Update*, March 2020, available at: <https://bit.ly/38VBut4>, 38.

<sup>122</sup> Greek Asylum Service, *Statistical Data of the Greek Dublin Unit (7.6.2013 - 31.12.2019)*, 3 January 2020, available at: <https://bit.ly/3eBxzE7>.

<sup>123</sup> AIDA, *Country Report Netherlands – 2019 Update*, March 2020, available at: <https://bit.ly/32ftwcW>, 36.

## The human rights threshold

European Courts have underlined that a Dublin transfer is unlawful if it exposes the individual to a real risk of a serious violation of the prohibition of inhuman or degrading treatment under Article 3 ECHR and Article 4 of the Charter in the destination country.<sup>124</sup> This requires assessing the situation in the destination country, *inter alia* regarding access to the asylum procedure and reception, as well as the risk of chain *refoulement*.<sup>125</sup> Official positions against transfers were adopted by some countries in respect of **Greece** and **Hungary**, but not **Italy** or **Bulgaria**:

- **Transfers to Greece:** In 2019, 33 persons were transferred to Greece,<sup>126</sup> compared to 18 transfers in 2018 and 1 transfer in 2017. This slight increase mainly results from the resumption of transfers (at least in principle) by some countries following the European Commission's Recommendation of December 2016. The countries transferring persons to Greece in 2019 were **Germany, Belgium, Poland, Switzerland, Sweden** and **Finland**. In others, transfers to Greece remain suspended as a matter of policy as is the case for the **United Kingdom**,<sup>127</sup> **Spain**,<sup>128</sup> and **Portugal**,<sup>129</sup> which have maintained a suspension policy since the *M.S.S. v. Belgium and Greece* judgment. **Hungary** also has a suspension in place again, following a period of resumed transfers in 2016.<sup>130</sup>

Some domestic Courts continued to provide important guidance on transfers to Greece. In the **Netherlands**, the Council of State ruled in October 2019 that transfer to Greece result in a violation of Article 3 ECHR if access to legal assistance is not guaranteed during the asylum procedure.<sup>131</sup> During the same month, an important judgment was delivered by the Federal Constitutional Court in **Germany**. It ruled that it is necessary to take into account the situation of asylum seekers in Greece not only during the asylum procedure, but also after the possible granting of international protection in Greece.<sup>132</sup> The Constitutional Court identified "concrete indications" that persons with a protection status might be at risk of treatment that may violate Article 4 of the European Charter of Fundamental Rights. In line with the CJEU's ruling in the case of *Jawo*, the Court held that authorities and Courts in Germany had to examine this point when deciding on a Dublin transfer. This decision is also likely to influence the question of whether individualised guarantees provided by the Greek authorities are sufficient to ensure protection from possible inhuman treatment.

- **Transfers to Hungary:** For the first time in recent years, one transfer was carried out from Austria to Hungary in 2019.<sup>133</sup> The Hungarian Helsinki Committee is aware of another transfer from Austria to Hungary which reportedly took place in March 2020.<sup>134</sup> The authorities in the respective countries have not shared further information on the cases, however. As for other countries, most have not

<sup>124</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011, EDAL, available at: <https://bit.ly/2ErG9VZ>; CJEU, Case C-578/16 PPU C.K., Judgment of 16 February 2017, EDAL, available at: <https://bit.ly/2Wvgjqr>; CJEU, Case C-163/17 *Jawo*, Judgement of 19 March 2019, EDAL, available at: <https://bit.ly/2WS5PUC>.

<sup>125</sup> See for example: EDAL, (Germany) Administrative Court of Munich, Decision M 11 S 19.50722 and M 11 S 19.50759, 17 July 2019, available at: <https://bit.ly/3h5FFVS>; EDAL, *Switzerland: Suspension of Dublin transfer to Croatia due to summary returns at border with Bosnia-Herzegovina*, 12 July 2019, available at: <https://bit.ly/2Ox4HRK>; ECRE, *The implementation of the Dublin III Regulation in 2018*, 2019, available at: <https://bit.ly/3efEpO8>, 19; ECRE/ELENA, *Case Law on return of asylum seekers to Afghanistan 2017-2018*, February 2019, available at: <https://bit.ly/2TYeyFg>.

<sup>126</sup> Greek Asylum Service, *Statistical Data of the Greek Dublin Unit (7.6.2013 - 31.12.2019)*, 3 January 2020, available at: <https://bit.ly/3eBxzE7>.

<sup>127</sup> AIDA, *Country Report United Kingdom – 2019 Update*, March 2020, available at: <https://bit.ly/3j80txM>, 37.

<sup>128</sup> AIDA, *Country Report Spain – 2019 Update*, April 2020, available at: <https://bit.ly/38ZXkeZ>, 46.

<sup>129</sup> AIDA, *Country Report Portugal – 2019 Update*, June 2020, available at: <https://bit.ly/2OfN3lr>, 46.

<sup>130</sup> AIDA, *Country Report Hungary – 2019 Update*, March 2020, available at: <https://bit.ly/2OvrhtO>, 41-42.

<sup>131</sup> (Netherlands) Council of State, Decision No 201904035/1/V3, 23 October 2019; Dutch Council of state, Decision No 201904044/1/V3, 23 October 2019. See EDAL summary at: <https://bit.ly/2CgU4zU>.

<sup>132</sup> (Germany) Federal Constitutional Court, Decision 2 BvR 721/19, 7 October 2019.

<sup>133</sup> AIDA, *Country Report Hungary, 2019 Update*, March 2020, available at: <https://bit.ly/38c5BvU>, 36.

<sup>134</sup> Information received by the Hungarian Helsinki Committee on 23 July 2020.



officially announced a suspension of transfers to Hungary, with the exception of the **United Kingdom**, which has consistently held this position in recent years<sup>135</sup> and was joined by **Sweden** in March 2019, when it also officially announced the suspension of transfers to Hungary.<sup>136</sup>

- **Transfers to Italy:** In 2019, a total of 5,979 persons were transferred to Italy<sup>137</sup>. Domestic courts have not taken a uniform approach to the assessment of human rights risks in Italy. Inconsistent court decisions have been noted *inter alia* in **Portugal**,<sup>138</sup> **Germany**,<sup>139</sup> **Belgium**,<sup>140</sup> and the **Netherlands**.<sup>141</sup>

Nevertheless, in **Germany**, the Federal Constitutional Court ruled in October 2019 that courts are obliged to consult objective, reliable and up-to-date sources of information when deciding on the legitimacy of Dublin transfers, in compliance with the CJEU decision in *Jawo*.<sup>142</sup> The Constitutional Court overruled two decisions by the Administrative Court of Würzburg in which transfers to Italy had been declared permissible, pointing out that the reception conditions and potential risks of homelessness as well as the possible systemic deficiencies in the asylum system had not been properly assessed by the lower Courts.

Moreover, in the **Netherlands**, under Rule 39, the ECtHR ordered the Dutch authorities on 6 September 2019 to suspend the transfer to Italy of a single mother and her children;<sup>143</sup> as a result of which several other interim measures were granted to families with minor children in Dublin cases to Italy in the following months.<sup>144</sup>

In **Switzerland**, in many cases the practice regarding Dublin transfers to Italy remains strict and judges still consider that there are no systemic deficiencies in the asylum system, unless special circumstances and/or extremely vulnerable persons are involved.<sup>145</sup> Nevertheless, in the second half of 2019, an increasing number of judgements sent cases back to the State Secretariat for Migration (SEM) to further clarify the situation in cases mainly concerning families of persons with special health issues.<sup>146</sup> Doubts were expressed in particular regarding adequate reception conditions and access to health care, as confirmed at the end of 2019 by Federal Administrative

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<sup>135</sup> AIDA, *Country Report United Kingdom – 2019 Update*, March 2020, available at: <https://bit.ly/3j80txM>, 37.  
<sup>136</sup> AIDA, *Country Report Sweden – 2019 Update*, May 2020, available at: <https://bit.ly/2OwNLuB>, 36-37.  
<sup>137</sup> AIDA, *Country Report Italy – 2019 Update*, June 2020, available at: <https://bit.ly/3fkCJV8>, 53.  
<sup>138</sup> See a comprehensive list of cases in: AIDA, *Country Report Portugal – 2019 Update*, June 2020, available at: <https://bit.ly/2OfN3lr>, 46-48.  
<sup>139</sup> (Germany) See decisions **suspending** transfers: Administrative Court of Düsseldorf, Decision 22 K 1273/18.A, 4 February 2020; Administrative Court of Minden, Decisions 10 K 7608/17.A, 13 November 2019; Administrative Court of Braunschweig, Decision 3 A 16/18, 17 October 2019; Administrative Court of Freiburg, Decision A 5 K 1977/19, 10 October 2019; Administrative Court of Trier, 7 K 4270/18.TR, 29 August 2019; See decisions **upholding** transfers: Administrative Court of Trier, Decision 1 K 12662/17.TR, 29 October 2019; VGH (High Administrative Court) of Baden-Württemberg, Decision A 4 S 749/19, 29 July 2019; Administrative Court of Aachen, Decision 9 K 4004/17.A, 27 May 2019; Administrative Court of Cottbus Decision 5 K 811/14.A, 7 May 2019.  
<sup>140</sup> (Belgium) See decisions **suspending** transfers: Council of Alien Law Litigation (CALL), Decision No 214701, 4 January 2019; No 224 129, 19 July 2019; No. 228 640, 7 November 2019; No 229 190, 25 November 2019; See decisions **upholding** transfers: CALL, Decision No 229 191, 25 November 2019; CALL, No 230 811, 30 December 2019.  
<sup>141</sup> (Netherlands) See decisions **suspending** transfers: Regional Court Gravenhage, NL19.1992, 26 February 2019; Regional Court Middelburg, NL19.3581, 29 March 2019; Regional Court Rotterdam, NL19.14991, 17 July 2019; Regional Court Utrecht, NL19.14447, 18 July 2019; See decisions **upholding** transfers: Regional Court Roermond, NL19.6219, 20 May 2019; Regional Court Middelburg, NL19.5015, 23 August 2019; Regional Court Rotterdam, NL18.20264, 3 October 2019.  
<sup>142</sup> Bundesverfassungsgericht (BverfG), Decision 2 BvR 1380/19, 10 October 2019, asyl.net: M27757.  
<sup>143</sup> ECtHR, *M.T. t. Netherlands*, No. 46595/19, 6 September 2019.  
<sup>144</sup> AIDA, *Country Report Netherlands – 2019 Update*, March 2020, available at: <https://bit.ly/32ftwcW>, 37-38.  
<sup>145</sup> AIDA, *Country Report Switzerland – 2019 Update*, March 2020, available at: <https://bit.ly/2Z8mfcl>, 41-42.  
<sup>146</sup> *Ibid.*

Court which ordered the authorities to obtain guarantees from the Italian authorities (see [The duty to investigate and obtain guarantees](#)).<sup>147</sup>

- **Transfers to Bulgaria:** In 2019, a total of 73 persons were transferred to Bulgaria from 23 different European countries,<sup>148</sup> thus indicating that many of them carry out transfers despite the well-documented deficiencies in the Bulgarian asylum system. Nevertheless, some domestic courts continued to suspend transfers with respect to certain categories of asylum seekers due *inter alia* to poor material conditions and lack of proper guarantees for the individuals concerned. This is the case for **Greece**,<sup>149</sup> **Belgium**,<sup>150</sup> and **Italy**,<sup>151</sup> while domestic case law remained inconsistent in **Germany**.<sup>152</sup>

In **Romania**, Courts upheld transfers,<sup>153</sup> and in the **Netherlands** the Council of state confirmed that the principle of mutual trust applies to Dublin cases to Bulgaria.<sup>154</sup> An important ruling was also issued by the **Swiss** Federal Administrative Court in February 2020: while acknowledging problems in the Bulgarian asylum system, the Court concluded that there are no systematic flaws which would justify a general policy of suspension of transfers to the country. Instead, a case by case examination should be carried out and individual guarantees can be requested from the Bulgarian authorities in individual cases.<sup>155</sup>

- **Transfers to Croatia:** In 2019, a total of 99 persons were transferred to Croatia and countries do not seem to have an official policy against transfers to the country.<sup>156</sup> Nevertheless, the situation in Croatia, especially at its borders and related to its accession to Schengen, was under particular scrutiny in 2019. The lack of vulnerability assessments, the increased level of violence, and the disproportionate use of force by the Croatian border police were widely documented throughout the year.<sup>157</sup> In this context, the **Swiss** Federal Administrative Court ruled in a reference judgement of July 2019 that the Swiss authorities are obliged to examine the existence of systemic deficiencies in the Croatian asylum system in the context of Dublin transfers.<sup>158</sup> This includes assessing the overall situation in the country as well as individual guarantees for the applicant. Other countries, however, did not suspend transfers to Croatia. **Austria**, for example, which implemented the

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<sup>147</sup> (Switzerland) Federal Administrative Court, Decision E-962/2019, 17 December 2019.

<sup>148</sup> AIDA, *Country Report Bulgaria – 2019 Update*, February 2020, available at: <https://bit.ly/32iy15g>, 26.

<sup>149</sup> (Greece) Administrative Court of Appeals of Piraeus, Decision N69/2019, 15 May 2019; Administrative Court of Appeals of Athens, Decision N412/2019, 16 December 2019.

<sup>150</sup> (Belgium) Call Decision No 230 287, 16 December 2019; 228 795, 14 November 2019; 217 304, 22 February 2019.

<sup>151</sup> (Italy) Civil Court of Rome, Decision 982/2019, 9 January 2019. 281 Civil Court of Rome, Decision 3289/2019, 7 February 2019.

<sup>152</sup> (Germany): See decisions **suspending** transfers: Administrative Court of Magdeburg, Decision 2 B 92/20 MD, 24 March 2020 – see EDAL summary at: <https://bit.ly/2DNLWY6>; Administrative Court of Lüneburg, Decision 8 B 23/19, 14 February 2019; Administrative Court of Lüneburg, Decision 8 A 123/18, 22 March 2019; Administrative Court of Kassel, Decision 7 L 1165/19.KS.A, 24 May 2019; Administrative Court of Karlsruhe, Decision A 13 K 6939/18, 25 June 2019. See decisions **upholding** transfers: Administrative Court of Lüneburg, Decisions 8 B 194/18, 25 Jan 2019 and 8 B 228/18, 30 January 2019; Administrative Court of Düsseldorf, Decision 22 L 340/19.A, 18 February 2019; Administrative Court of Freiburg, Decision A 5 K 1829/16, 12 March 2019; Administrative Court of Frankfurt/Oder, Decision 8 L 1075/18.A, 17 April 2019; Administrative Court of Würzburg, Decision W 2 K 18.32496, 14 May 2019; Administrative Court of Cottbus, Decision 5 K 1980/15.A, 21 May 2019.

<sup>153</sup> AIDA, *Country Report Romania – 2019 Update*, April 2020, available at: <https://bit.ly/3e9q6L5>, 54-55.

<sup>154</sup> (Netherlands) Council of State, Decision No 201810397/1, 28 August 2019.

<sup>155</sup> Swiss Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

<sup>156</sup> AIDA, *Country Report Croatia – 2019 Update*, April 2020, available at: <https://bit.ly/3j8IUOb>, 40.

<sup>157</sup> AIDA, *Country Report Croatia – 2019 Update*, April 2020, available at: <https://bit.ly/3j8IUOb>, 23-30.

<sup>158</sup> Swiss Federal Administrative Court, Decision E-3078/2019, 12 July 2019. See EDAL summary at: <https://bit.ly/2ZA2ScM>.

second most transfers after Germany,<sup>159</sup> did not seek individual guarantees from the Croatian authorities.<sup>160</sup>

## Reduction in standards for persons subject to the Dublin procedure

### *Dublin returnees*

Where Dublin transfers went ahead, Dublin returnees continued to face reduced standards and a risk of human rights violation after their return. Many 2019 reports highlighted the hurdles faced by Dublin returnees in re-accessing asylum procedures and the reception system. The three countries which received the majority of Dublin returnees in 2019 were **Germany** (6,087), **Italy** (5,979) and **France** (2,666). While no particular issues were observed for Dublin returnees in Germany, they did arise in the other two countries.

In **Italy**, significant obstacles in accessing both the asylum procedure and the reception system were reported.<sup>161</sup> With regard to the procedure, Dublin returnees must approach the Questura to obtain an appointment to lodge their claim. However, the waiting time for such an appointment is several months in most cases.<sup>162</sup> As regards reception, there is no standardised procedure for Dublin returnees to re-access the reception system. Along with the administrative obstacles to accessing reception, the weakness of social welfare, housing, employment, and integration programmes contributes to generally challenging conditions for Dublin returnees in Italy. Recent reports have also denounced the lack of adequate facilities for vulnerable persons. This includes systemic deficiencies in the recognition of victims of human trafficking and the impact of recent reforms on vulnerable asylum seekers (including families), who are no longer entitled to back-up accommodation.<sup>163</sup>

In **France**, reports confirm that many Dublin returnees face street homelessness or live in squats after their transfer back. This is due to the lack of capacity of the reception system, as under 50% of asylum seekers were accommodated at the end of 2019.<sup>164</sup> This has led domestic courts to suspend transfers to France. On 25 April 2020, the **German** Administrative Court of Arnsberg suspended the transfer of an asylum applicant and her daughter to France as it would violate their rights under Article 3 ECHR. The Court stated that Dublin returnees in France must use a high degree of personal initiative in order to find accommodation and to gain access to care.<sup>165</sup>

Reduced standards for Dublin returnees are also visible in other countries which receive an important number of applicants transferred back under the Regulation. In **Sweden**, this primarily affects Dublin returnees with a final negative decision as they fall under the responsibility of the police instead of the Migration Agency, and they are usually held in detention to facilitate their removal.<sup>166</sup> If their case is still pending, they are usually placed in an accommodation centre near a point of departure. Transfers to Sweden of “take back” cases with a legally enforceable removal order in Sweden are not automatically provided with accommodation if they are unwilling to return voluntarily to their home country. This also applies to families with children, and has resulted in homelessness in certain cases, e.g. for Afghan

<sup>159</sup> In 2019, Germany and Austria transferred respectively 28 persons and 21 persons to Croatia. For a full list of transfers to Croatia, see: AIDA, *Country Report Croatia – 2019 Update*, April 2020, available at: <https://bit.ly/3j8IUOb>, 40.

<sup>160</sup> AIDA, *Country Report Austria – 2019 Update*, March 2020, available at: <https://bit.ly/2DHQuit>, 40.

<sup>161</sup> AIDA, *Country Report Italy – 2019 Update*, June 2020, available at: <https://bit.ly/3fkCJV8>, 61-65.

<sup>162</sup> AIDA, *Country Report Italy – 2019 Update*, June 2020, available at: <https://bit.ly/3fkCJV8>, 63.

<sup>163</sup> Swiss Refugee Council, *Reception conditions in Italy - Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy*, January 2020, available at: <https://bit.ly/2OamL3F>.

<sup>164</sup> AIDA, *Country Report France – 2019 Update*, June 2020, available at: <https://bit.ly/30kUtsY>, 84.

<sup>165</sup> (Germany) Administrative Court of Arnsberg, Decision 12 L 190/19.A, 25 October 2019. See EDAL summary at: <https://bit.ly/2ZxYhYC>.

<sup>166</sup> AIDA, *Country Report Sweden – 2019 Update*, May 2020, available at: <https://bit.ly/2OwNLuB>, 37.

families returned from Germany or France forced into destitution unless they agree to return to Afghanistan voluntarily.<sup>167</sup>

In **Malta**, the asylum application of persons under the Dublin procedure is usually withdrawn if they leave the country.<sup>168</sup> This means that, upon return, they face difficulties in accessing the procedure. In 2019, the majority of Dublin returnees were detained upon their transfer and, in some cases, faced criminal charges.<sup>169</sup>

### *Dublin applicants*

Reduced standards are also applied to applicants falling under the Dublin procedure before their actual transfer to the responsible country, in particular regarding their access to reception conditions.

**France** for example, the second main user of the Dublin system in 2019, excludes asylum seekers who fall under the Dublin procedure from accessing reception centres for asylum seekers (CADA), although they can in theory benefit from emergency accommodation up until the notification of the decision of transfer. This puts thousands of Dublin applicants at risks of homelessness and human rights violations.

In **Belgium**, the third main user of the Dublin system in 2019, a reception crisis has heavily affected the access to reception centres. Consequently, the authorities decided to exclude certain categories of applicants from reception in early 2020. This applies to applicants for whom Belgium becomes responsible by default due to failure to transfer within the six-month deadline, with no assessment of the individual situation of the concerned person or potential vulnerabilities, thus raising serious doubts as regards compliance with EU law.<sup>170</sup>

In the **Netherlands**, the fourth main user of the Dublin system in 2019, several persons falling under the Dublin procedure have been accommodated in so-called Extra Guidance and Supervision Locations (*Extra begeleiding en toezichtlocaties*, EBTL), which were centres with stricter house rules, compulsory activities and limited access to the outside world.<sup>171</sup> The possibility to reduce material reception conditions for Dublin applicants was further examined in 2019, *inter alia* through the potential creation of separate sub-standard reception facilities which would accommodate both Dublin applicants and applicants from safe countries of origin.<sup>172</sup> Moreover, under a pilot project launched by the Repatriation and Departure Service (DT&V), disruptive applicants under the Dublin procedure can be placed in detention during the appeal stage.<sup>173</sup>

Beyond housing, reduced standards for Dublin applicants are also visible in other important services such as access to healthcare. In **Croatia**, a report published in February 2019 by Médecins du Monde highlighted that mental health support is especially lacking for applicants returned to Croatia under the Dublin Regulation, who are reportedly facing a lower quality of life than other asylum applicants.<sup>174</sup>

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<sup>167</sup> Ibid.

<sup>168</sup> AIDA, *Country Report Malta – 2019 Update*, April 2020, available at: <https://bit.ly/3h4Spfp>, 34-35.

<sup>169</sup> Ibid..

<sup>170</sup> AIDA, *Country Report Belgium – 2019 Update*, April 2020, available at: <https://bit.ly/3jbyAFI>, 18-19.

<sup>171</sup> AIDA, *Country Report Netherlands – 2019 Update*, March 2020, available at: <https://bit.ly/32ftwcW>, 67.

<sup>172</sup> Ministry of Justice and Security, *Kamerbrief over evaluatie EBTL-locaties en overlastgevende vreemdelingen*, 18 December 2019, available in Dutch at: <https://bit.ly/32str5z>.

<sup>173</sup> EASO, *Asylum Report 2019*, June 2020, available at: <https://bit.ly/3dBCB11>, 88.

<sup>174</sup> Médecins du Monde, *Nearing a point of no return? Mental health of asylum seekers in Croatia*, February 2019, available at: <https://bit.ly/2UC9sLf>.



## The implementation of the Dublin Regulation during COVID-19

### Decrease of asylum applications and suspension of Dublin procedures

In the first quarter of 2020, around 175,000 persons applied for international protection in the 27 Member States of the European Union, compared to 227,500 persons during the same period in 2019.<sup>175</sup> This marks a -23% decrease, largely due to the introduction of emergency and containment measures in response to COVID-19.<sup>176</sup>

EASO reported that 34,737 applications were lodged in March, 8,730 in April and 10,200 in May 2020. When comparing these figures with the month of February 2020, during which 61,000 applications were lodged, this marks a decrease of -43% in March,<sup>177</sup> -83% in April,<sup>178</sup> and -84% in May 2020.<sup>179</sup> Nevertheless, this does not mean that there is less demand for international protection and it has been rightly highlighted that the EU should be prepared for an increase of asylum applications in the medium term, including due to the repercussions of COVID-19 in low income countries.<sup>180</sup>

The outbreak of COVID-19 and subsequent containment measures also affected the implementation of Dublin transfers, as Member States closed their borders and reduced travel and air traffic. Given the limited information made available at national level during COVID-19 emergency – *inter alia* due to the suspension and/or delays of certain activities within the asylum authorities – the observations made in the following section provide only partial information on the implementation of Dublin III in the first half of 2020.

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<sup>175</sup> Eurostat migr\_asyappctzm, rounded. It should be noted that the number of applications registered in January and February 2020 (130,875) had increased compared to the first two months of 2019 (116,395).

<sup>176</sup> ECRE, *Information sheet 28 May 2020: Covid-19 measures related to asylum and migration across Europe*, 29 May 2020, available at: <https://bit.ly/3ePFLj8>.

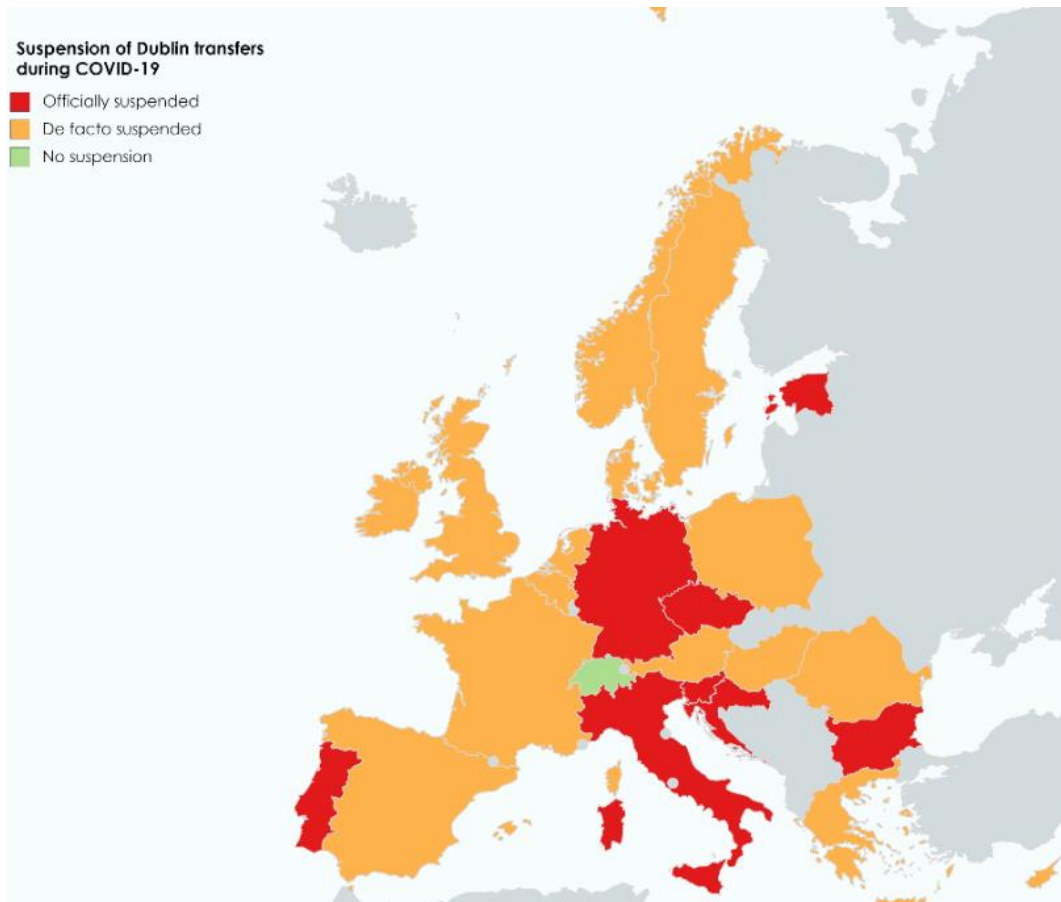
<sup>177</sup> EASO, *COVID-19: Asylum applications down by 43% in March*, 30 April 2020, available at: <https://bit.ly/3eFLfN3>.

<sup>178</sup> EASO, *Record low number of asylum applications lodged in EU*, 11 June 2020, available at: <https://bit.ly/3fWp1aY>.

<sup>179</sup> EASO, *Asylum applications in EU remain limited in May*, 14 July 2020, available at: <https://bit.ly/3fNZhxM>.

<sup>180</sup> EASO, *EASO Special Report: Asylum Trends and COVID-19*, 7 May 2020, available at: <https://bit.ly/30omTIY>.

The following map shows suspension of transfers in resulting from COVID-19:



The map indicates that almost all European countries temporarily suspended Dublin transfers in response to COVID-19 with the exception of **Switzerland** (see [Statistics on outcoming and incoming procedures in the first half of 2020](#)). Nevertheless, there were different approaches to the suspensions of Dublin procedures and transfers; in some countries the suspension of transfers was officially announced while in others transfers were *de facto* suspended.

The Dublin Unit in **Italy** was the first to officially announce the suspension of Dublin transfers through a Circular Letter of 25 February 2020. Postponement of transfers was also publicly announced in **Bulgaria**, the **Czech Republic**, **Croatia**, **Germany**, **Estonia**, **Spain** and **Portugal**. In other countries, Dublin transfers were *de facto* suspended because the activities of authorities were put on hold and/or because transfers could not be implemented for practical reasons, such as the closure of borders and airports, travel restrictions, or other emergency and containment measures. This was the case in **Austria**, **Belgium**, **Denmark**, **Greece**, **France**, **Ireland**, **Luxembourg**, **Malta**, the **Netherlands**, **Poland**, **Romania**, **Sweden** and **Slovenia**.<sup>181</sup>

On timing, many asylum authorities suspended activities that required direct contact with applicants throughout the month of March 2020. Nonetheless, as of end March 2020, some countries were

<sup>181</sup> AIDA country reports, available at: <https://bit.ly/3171Yph>; ECRE, *Information sheet 28 May 2020: Covid-19 measures related to asylum and migration across Europe*, 29 May 2020, available at: <https://bit.ly/3ePFLj8>; EASO, *COVID-19 emergency measures in asylum and reception systems*, 2 June 2020, available at: <https://bit.ly/3eQMwkv>, 13.

reportedly still carrying out transfers. This was the case in **Norway**,<sup>182</sup> while in **France** no specific measures had been taken with regard to the Dublin procedure and Dublin transfers were only suspended to countries which did not accept Dublin returnees.<sup>183</sup>

On 16 April 2020, the European Commission released its guidance on the implementation of EU provisions in the area of asylum during the COVID-19 emergency.<sup>184</sup> On Dublin specifically, the Commission encouraged all Member States to resume transfers as soon as practically possible in view of the evolving circumstances, provided that the situation related to COVID-19 has been assessed – including issues resulting from pressure on health systems in receiving countries.<sup>185</sup>

### Statistics on outcoming and incoming procedures in the first half of 2020

As already mentioned, collecting up-to-date statistics on the operation of the Dublin system is a challenge. Only a few countries release figures on the activities of their Dublin Units, at varying intervals and with varying levels of detail. In **Greece**, the positive practice of publishing detailed statistics on asylum processes, including Dublin, ended in February 2020 without explanation.<sup>186</sup>

At the time of writing, statistics on Dublin requests in the first half of 2020 were only available for **Germany**, **Sweden** and **Switzerland**. Germany sent a total of 13,146 outgoing requests and received 8,061 incoming requests, although a breakdown per country was not made available.<sup>187</sup> In **Sweden** and **Switzerland**, a total of 1,369 and 1,640 outgoing requests were sent respectively and both countries received 2,179 and 1,876 requests respectively.

The few available figures shed light on which countries continued to conduct Dublin procedures after the COVID-19 outbreak. Between April and May 2020, **Switzerland**,<sup>188</sup> and **Poland**,<sup>189</sup> received incoming requests from at least 13 European countries, predominantly from **Germany**, **France**, the **Netherlands**, the **United Kingdom**, **Belgium** and **Sweden**. This indicates that the asylum authorities in these countries continued to process applications for international protection under the Dublin III Regulation and to issue requests accordingly.

In fact, although COVID measures heavily affected face-to-face services in most countries, especially registration of applications and personal interviews, decision-making continued, thereby decreasing the backlog of pending cases. In more than 20 European countries, flexible working arrangements, such as teleworking or staff rotation, were introduced.<sup>190</sup> More than 200,000 first instance decisions were issued between January and May 2020, and the backlog of pending cases decreased to some 460,000 cases as of May 2020,<sup>191</sup> compared to around 540,000 pending cases at the end of 2019.<sup>192</sup> While there

<sup>182</sup> European Migration Network (EMN), *Special Annex to the 30th EMN Bulletin EU Member States & Norway: responses to COVID-19 in the migration and asylum area January – March 2020*, available at: <https://bit.ly/32B15WY>, 6.

<sup>183</sup> AIDA, *Country Report France – 2019 Update*, March 2020, available at: <https://bit.ly/3dQzGmc>, 17.

<sup>184</sup> European Commission, *Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (2020/C 126/02)*, 16 April 2020, available at: <https://bit.ly/32J7csl>.

<sup>185</sup> Ibid. Para. 1.2.

<sup>186</sup> RSA, *Asylum statistics for 2020 should be published and unpacked*, 15 July 2020, available at: <https://bit.ly/39hVlx9>.

<sup>187</sup> BAMF, *Aktuelle Zahlen 06/2020*, July 2020, available in German at: <https://bit.ly/2CBbvLG>, 10.

<sup>188</sup> This includes, Germany, Greece, the United Kingdom, Belgium, France, Sweden, Portugal, Denmark, Italy, Finland, Luxembourg, Spain and Slovenia. See: SEM, *Statistiques en matière d'asile – Juin 2020*, available in French at: <https://bit.ly/3aAjGUZ>.

<sup>189</sup> This includes Germany, France, Belgium, Sweden and the Netherlands as well as 'others' which are not specified. See: OFF, *Monthly statistical reports*, available in Polish at: <https://bit.ly/3kVjyEt>.

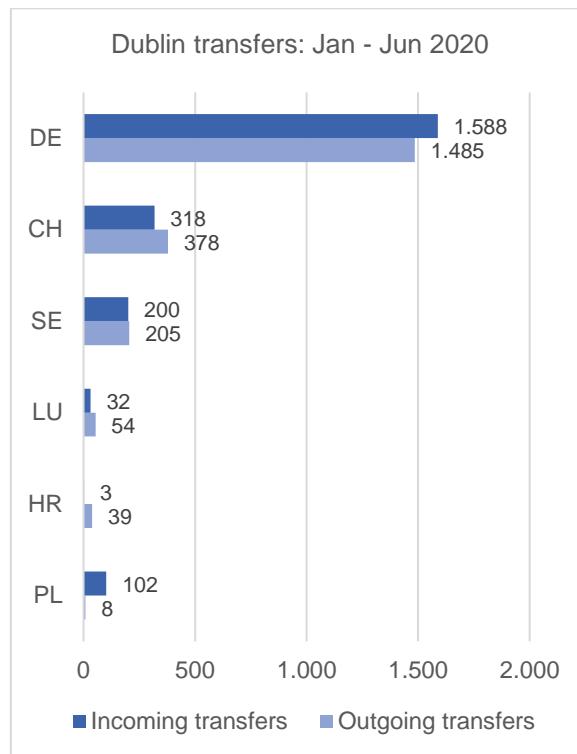
<sup>190</sup> EASO, *COVID-19 emergency measures in asylum and reception systems*, 2 June 2020, available at: <https://bit.ly/30FVD2o>, 11.

<sup>191</sup> EASO, *Asylum applications in EU remain limited in May*, 14 July 2020, available at: <https://bit.ly/3fNZhxM>.

<sup>192</sup> EASO, *Asylum Report 2019*, June 2020, available at: <https://bit.ly/3dBCB11>, 79.

is no available figure on the number of decisions issued in the context of Dublin procedures specifically, it is reasonable to assume that many countries continued to process Dublin cases. It should be further noted that the European Commission had expressly encouraged Member States to give due consideration to not delaying the examination of applications. It recommended conducting Dublin interviews remotely through the use of videoconferencing with the necessary remote interpretation.<sup>193</sup>

For actual transfers, figures are available only in 6 countries at the time of writing:



Source: National authorities. Figures on PL refer to the period Jan-May 2020.

The graph suggests that, as a result of COVID-19, the number of transfers carried out during the first six months of 2020 significantly decreased compared to the first half of 2019. By way of illustration, the number of outgoing transfers during the first six months of 2020 decreased by -73% in Luxembourg, -63% in **Germany**; -59% in **Switzerland** compared to the first half of 2019.<sup>194</sup> Similarly, the number of incoming transfers has significantly decreased during that period in these countries.<sup>195</sup>

When looking exclusively at the first half of 2020 in the countries presented above, it appears that **Luxembourg**,<sup>196</sup> and **Poland**,<sup>197</sup> did not transfer anyone between April and June 2020, while **Germany** and **Switzerland** continued to do so.

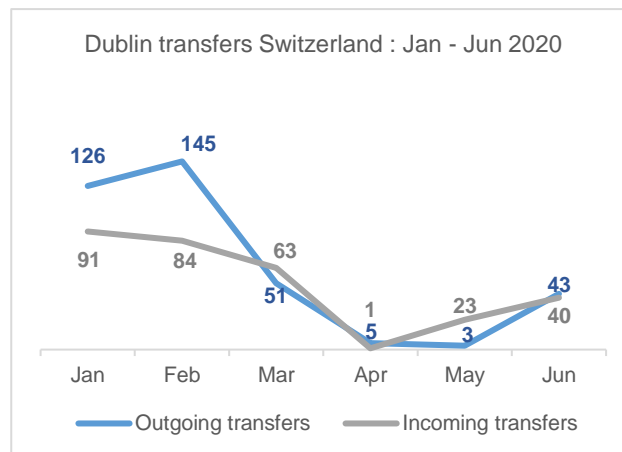
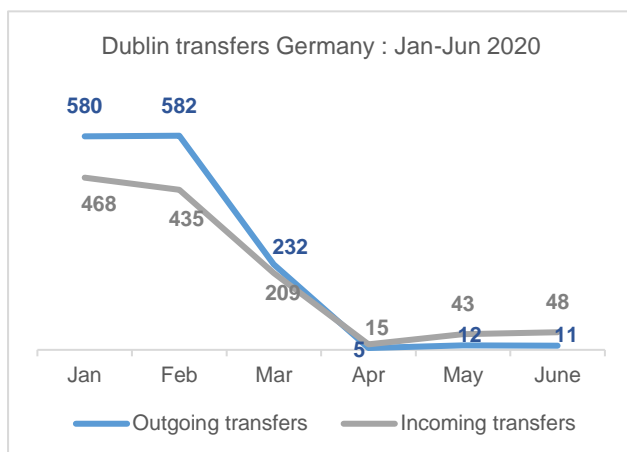
<sup>193</sup> European Commission, *Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (2020/C 126/02)*, 16 April 2020, available at: <https://bit.ly/32J7csl>, para. 1.2.

<sup>194</sup> The number of outgoing Dublin transfers during the first half of the respective year was as follows: in Germany: 1,485 in 2020 compared to 4,088 in 2019; in Switzerland: 378 in 2020, compared to 922 in 2019; in Luxembourg: 54 in 2020, compared to 201 in 2019.

<sup>195</sup> For an overview of the implementation of the Dublin III Regulation during the first half of 2019, see also: AIDA, *The implementation of the Dublin III Regulation in the first half of 2019*, August 2019, available at: <https://bit.ly/3496pl5>.

<sup>196</sup> (Luxembourg) Ministry of Foreign and European Affairs, *Statistiques concernant la protection internationale au Grand-Duché de Luxembourg Mois de juin 2020*, July 2020 available in French at: <https://bit.ly/2BgRA47>, 5.

<sup>197</sup> (Poland) Office for Foreigners, *Monthly statistical reports*, available in Polish at: <https://bit.ly/2E9SgJF>.



Source: BAMF, *Aktuelle Zahlen 06/2020*, July 2020, available in German at: <https://bit.ly/2CBbvLG>, 10; SEM, *Statistiques en matière d'asile*, July 2020, available in French at: <https://bit.ly/3kX4QNi>.

In **Germany**, the Federal Office for Migration and Refugees (BAMF) officially announced a suspension of transfers towards the end of March, but the figures above indicate that it still transferred 28 people between April and June 2020. Similarly, in **Switzerland**, eight people were transferred in April and May 2020. While this marks a significant decrease compared to transfers in pre-COVID-19 times, it also indicates that both Member States continued to transfer people despite the health risks. Moreover, it seems that the transfers from Switzerland have resumed as of June 2020, as the number of transfers significantly increased during that month.

Figures on transfers from **Croatia** during the first half of 2020 indicate that 39 transfers were carried out to 8 countries – namely Austria, Belgium, Finland, France, the Netherlands, Germany, Slovenia and Switzerland.<sup>198</sup> During that same period, **Sweden** transferred 205 persons to a total of 19 European countries, mainly to Italy, Norway, Germany, Denmark and France. Nevertheless, these figures on Croatia and Sweden do not specify in which months the transfers took place, meaning that they could have been carried out prior to the COVID-19 outbreak. It can probably be assumed that, at least where possible and appropriate, other countries continued to conduct *ad hoc* transfers under the Dublin III Regulation during the first half of 2020 – not excluded by the European Commission's guidance.<sup>199</sup>

Nevertheless, most countries had not officially resumed Dublin transfers as of end June 2020. Exceptions included **Switzerland** as demonstrated above, but also **Denmark**,<sup>200</sup> **France**,<sup>201</sup> and **Germany**, the latter of which opted for a progressive resumption of transfers, first to countries including the Netherlands, the Czech Republic, France, Belgium, Switzerland and Austria. This was further extended to Finland and Sweden in early July 2020, and to Italy in mid-July 2020.<sup>202</sup> Despite the progressive lifting of travel restrictions and confinement measures, the social distancing rules, persisting health risks, and other adaptation measures continue to render the implementation of Dublin transfers difficult.

<sup>198</sup> (Croatia) Ministry of Interior, *Statistički pokazatelji osoba kojima je odobrena međunarodna zaštita u Republici Hrvatskoj zaključno do 30.06.2020*, available in Croatian at: <https://bit.ly/3eSqiyQ>.

<sup>199</sup> In Cyprus for example, the Cyprus Refugee Council is aware that a few transfers were carried out in June 2020. Information provided by the Cyprus Refugee Council on 22 July 2020.

<sup>200</sup> (Denmark) Ministry of Immigration and Integration Affairs, *Regeringen genoptager overførsler efter Dublinforordningen*, 3 July 2020, available in Danish at: <https://bit.ly/3hm0qwW>.

<sup>201</sup> Information provided by Forum Réfugiés-Cosi on 23 July 2020.

<sup>202</sup> PRO ASYL, *Newsticker Coronavirus: Informationen für Geflüchtete und Unterstützer\*innen*, available in German at: <https://bit.ly/3eRRUEf>.

## The suspension of the time limit for transfers during COVID-19 crisis

Along with the various emergency measures taken in relation to asylum procedures to contain the spread of COVID-19, some countries adopted measures on the time limits applicable under the Dublin III Regulation, *inter alia* in order to avoid a situation whereby responsibility shifted back to them.

This was the case in **Germany** which announced in March 2020 that, along with the overall suspension of transfers, the deadline to carry out transfers would also be suspended.<sup>203</sup> This meant that Germany would not become responsible for the asylum application, despite not having complied with the six-month deadline in the Regulation.<sup>204</sup> As already mentioned in [Time limits for transfers](#), many countries become responsible for asylum applications due to their non-compliance with the set deadline. The European Commission stated that the inability to transfer applicants to the Member State responsible due to COVID-19 resulted in a shift of responsibility of over 1,000 cases between 25 February 2020 and 16 April 2020, and it further estimated that 25 Member States will have up to 6,000 such cases by 1 June 2020 where transfers are not resumed due to COVID-19.<sup>205</sup>

Germany's suspension of the time limit for transfers was criticised by NGOs as not compliant with the Dublin III Regulation. They argued it would leave asylum seekers in a prolonged state of limbo and significantly extend the length of their asylum procedure.<sup>206</sup>

In its guidance of 16 April 2020, the European Commission clarified that, "where a transfer to the responsible Member State is not carried out within the applicable time limit, responsibility shifts to the Member State that requested the transfer pursuant to Article 29(2) of the Dublin Regulation". More particularly, it explicitly stated that "no provision of the Regulation allows to derogate from this rule in a situation such as the one resulting from the COVID-19 pandemic."<sup>207</sup>

Several domestic Courts have also ruled against the suspension of the time limit for transfers during COVID-19. In **Germany**, the Administrative Court of Schleswig-Holstein ruled in May 2020 that the official suspension of the execution of the transfer decision "until further notice" due to the massive spread of the coronavirus in Italy does not lead to the interruption of the transfer deadline in the Dublin procedure.<sup>208</sup> A similar position was taken by several other German Administrative Courts in May and June 2020.<sup>209</sup> Similarly, in the **Netherlands**, the Regional Court of the Hague ruled on 21 April 2020

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<sup>203</sup> The BAMF referred to Section 80 (4) of the German Administrative Court Regulations (VwGO) which foresees that an authority can suspend the execution of an administrative act that remains enforceable despite legal remedies. Accordingly, this would apply to Dublin procedures as appeals against such decisions have no suspensive effect. The BAMF further relied on Article 27 (4) of the Dublin III Regulation, which enables the Member States to suspend the implementation of the transfer decision pending the outcome of the appeal or review. See: ECRE, *Germany: Temporary Suspension of Dublin Returns Due to COVID-19*, 26 March 2020, available at: <https://bit.ly/32FqI94>; Informationsverbund Asyl & Migration, *BAMF setzt wegen Corona-Krise Dublin-Überstellungen aus*, 23 June 2020, available in German at: <https://bit.ly/3fQJcY9>.

<sup>204</sup> Article 29(2) of the Dublin III Regulation.

<sup>205</sup> European Commission, *Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (2020/C 126/02)*, 16 April 2020, available at: <https://bit.ly/32J7csl>, para. 1.2.

<sup>206</sup> PRO ASYL, *Dublin-Abschiebungen ausgesetzt*, March 2020, available in German at: <https://bit.ly/32DLeqv>.

<sup>207</sup> European Commission, *Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (2020/C 126/02)*, 16 April 2020, available at: <https://bit.ly/32J7csl>, para. 1.2.

<sup>208</sup> (Germany) Administrative Court of Schleswig-Holstein, Decision 10 A 596/19, 15 May 2020.

<sup>209</sup> (Germany) Administrative Court of Düsseldorf, Decision 15 L 776/20.A, 18 May 2020; Administrative Court of Potsdam, Decision 2 K 3425/18.A, 12 June 2020; Administrative Court of Berlin, Decision 25 L 123/20.A, 22 June 2020.



that the Dublin III Regulation does not provide for the possibility to extend or interrupt time limits as a result of a pandemic or other circumstances where a transfer can otherwise not physically take place.<sup>210</sup>

While not directly related to the outbreak of COVID-19, **Belgium** implemented a practice that has led to a semi-automatic extension of transfer time limits. At the end of January 2020, it became known that the Immigration office now issues a new annex called "Information travel arrangements" in case of a negative Dublin decision. In this annex, the Immigration Office asks the applicant for international protection to fill in, sign and return to the Dublin Unit at the Immigration Office within ten days a form called "Declaration of voluntary return". If the applicant does not comply with this request or subsequently indicates that he/she does not wish to depart to the responsible Member State, the transfer period provided for in Article 29(2) of the Dublin III Regulation is extended from six months to eighteen months. Through this practice Belgium semi-automatically extends the transfer period, and avoids becoming responsible for the asylum applications, and also avoids providing reception to the applicant.<sup>211</sup> This practice does not appear to be in compliance with Article 29(2) of the Dublin III Regulation or with CJEU jurisprudence which underlines the exceptional nature of extending the six-month period.<sup>212</sup>

The Council for Alien Law Litigation provided some clarification on the practice: referring *inter alia* to the *Jawo* case,<sup>213</sup> it ruled that if an asylum seeker refuses to sign the voluntary return declaration, the authorities cannot infer from this that he/she deliberately wishes to abscond and avoid a transfer to the other Member State. In this particular case, the authorities were aware of the address at which the asylum seekers lived, and the latter had indicated that they would inform the authorities if they moved. The authorities could thus not demonstrate that this made the transfer to another Member State impossible. The decision to extend the Dublin transfer period by one year was annulled.<sup>214</sup>

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<sup>210</sup> (Netherlands) Regional Court of the Hague, Decision NL20.6494, 4 April 2020. See EDAL summary at: <https://bit.ly/39jSJEp>.

<sup>211</sup> Belgian Agency for Integration and Civic Integration, *DVZ asks asylum seekers with appendix 26quater to sign voluntary departure and otherwise extends the transfer term*, 24 March 2020, available at: <https://bit.ly/2CMx10h>.

<sup>212</sup> CJEU, *Case C-163/17 Jawo*, Judgment of 19 March 2019.

<sup>213</sup> CJEU, *Case C-163/17 Jawo*, Judgment of 19 March 2019.

<sup>214</sup> CCE, Decision 237 903, 2 July 2020, available in Dutch at: <https://bit.ly/2EdI3Nu>.

## THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database \(AIDA\)](#) is a database managed by the European Council on Refugees and Exiles (ECRE), containing information on asylum procedures, reception conditions, detention and content of international protection across 23 countries. This includes 19 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia) and 4 non-EU countries (Switzerland, Serbia, Turkey, United Kingdom).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

- ❖ **Country reports:** AIDA contains [national reports](#) documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries. An overview of the country reports can be found [here](#).
- ❖ **Comparative report:** AIDA comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in [2013](#), [2014](#) and [2015](#). From 2016 onwards, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on [reception](#) (March 2016), [asylum procedures](#) (September 2016), [content of protection](#) (March 2017), [vulnerability](#) (September 2017), [detention](#) (March 2018), [access to the territory](#) and [registration](#) (October 2018), [reception](#) (May 2019) and [asylum authorities](#) (October 2019).
- ❖ **Fact-finding visits:** AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#), [Croatia](#), [France](#), Belgium and Germany.
- ❖ **Legal briefings:** Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. With the assistance of information gathered from country reports, these short papers identify and analyse key issues in EU asylum law and policy and identify potential protection gaps in the asylum *acquis*. Legal briefings so far cover: (1) [Dublin detention](#); (2) [asylum statistics](#); (3) [safe countries of origin](#); (4) [procedural rights in detention](#); (5) [age assessment](#) of unaccompanied children; (6) [residence permits](#) for beneficiaries of international protection; (7) the [length of asylum procedures](#); (8) [travel documents](#) for beneficiaries of international protection; (9) [accelerated procedures](#); (10) the [expansion of detention](#); (11) [relocation](#); and (12) [withdrawal of reception conditions](#).
- ❖ **Statistical updates** AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for [2016](#), the [first half of 2017](#), [2017](#), the [first half of 2018](#), [2018](#) and the [first half of 2019](#).

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