Time for a Change: The Case For Dublin Rule Reform

By Kirstin Erickson

***Resolved: The European Union should substantially reform its immigration policy.***

When a refugee applies for asylum in the European Union, the EU faces a difficult dilemma – how to determine which member state will be in charge of examining and processing that application. The current solution comes in the form of the Dublin system, a policy that sets forth criteria to indicate which country is responsible. Unfortunately, the Dublin system has serious flaws that make it an unfair and impractical way to process applications. Three of these flaws are in the 1AC, with an additional one in the 2A brief
The fundamental problem with the Dublin rule is that it mostly assumes the first country a migrant arrives in should take ownership of their situation. If you ‘re in an interior country or in the far north of Europe, you are insulated from these unexpected arrivals (migrants have to pass through other countries first to get to you, so you have every right to send them back). If you’re in the Mediterranean (like Italy), everyone finds you first. If you’re a country with generous welfare benefits, you might want the Dublin rule enforced to keep migrants from passing through other nations in search of the best deal. But sending everyone back to the first country creates unfair burdens on those suffering from the accident of their geographical location.
Don’t be confused by some of the evidence referring to the EU Parliament having “approved” or “passed” the reform mentioned in this plan. The EU Parliament voted for it in 2017, but it was never approved by the other necessary EU agencies, so it never got implemented. This Plan overcomes that inherency barrier by having them approve and implement the reforms.

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Time for a Change: The Case to Reform the Dublin Rule

The European Union immigration system is plagued numerous problems caused by a policy known as the Dublin Regulation that was initiated in 1990. Please join us as we gain the comparative advantages of affirming that: The European Union should substantially reform its immigration policy.

OBSERVATION 1. DEFINITIONS

Substantial

Merriam Webster Online Dictionary copyright 2020. <https://www.merriam-webster.com/dictionary/substantially>

considerable in quantity:significantly great

Reform

Merriam Webster Online Dictionary copyright 2020 <https://www.merriam-webster.com/dictionary/reform>

to put or change into an improved form or condition

Prof. Marc Helbling, Liv Bjerre, Friederike Römer and Malisa Zobel 2014 (Helbling - professor in political sociology at the Department of Political Science at the University of Bamberg. Bjerre – PhD student, WZD Berlin Social Science Center. Romer - doctoral researcher at the Berlin Social Science Center. Zobel - research assistant at Berlin Social Science Center) April 2014 Conceptualizing and Measuring Immigration Policies. A Comparative Perspective https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2423075



OBSERVATION 1. INHERENCY, the structure of the Status Quo. Two important FACTS:

FACT1. The Dublin Agreement

Manasi Gopalakrishnan 2017 (journalist and editor for the Deustche Welle, German government-funded public international news agency) 6 Feb 2017 “The Dublin regulation – explained” <https://www.infomigrants.net/en/post/1857/the-dublin-regulation-explained>



FACT 2. Reform blocked. The EU Parliament proposed a Dublin reform plan but the European Council hasn’t accepted it

Ali Cain 2020. (M.A. Candidate in the European History, Politics and Society Program at Columbia Univ. and Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights) 28 Feb 2020 “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

Following the 2015 refugee crisis, the EU began to discuss reforming the Dublin system to include burden-sharing measures and increased human rights protections. The European Commission [proposed](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf) a reallocation quota determined by each country’s population and gross domestic product (GDP). The European Parliament suggested amendments to the Commission’s proposal also to include family reunification and prior residence/study in relocation decisions. The European Council must decide whether to implement burden-sharing provisions, but has been [divided on the best way to actually relocate](https://euobserver.com/migration/143703) refugees since December 2018. The Visegrád countries – Hungary, Poland, the Czech Republic and Slovakia – have refused to accept refugees or abide by quotas.

OBSERVATION 2. FAILURES

FAILURE 1. Unfair burden on frontline countries

Countries at the frontline access points, where migrants come first, get excessive burdens compared to the rest of the EU

Jason Mitchell 2017 (Deputy County Attorney in Arizona and a member of San Diego International Law Journal) “The Dublin Regulation and Systemic Flaws” June 2017 <https://digital.sandiego.edu/ilj/vol18/iss2/5/>

Border countries, such as Greece, Italy, and Hungary, have the unequal task and responsibility of caring for the asylum seekers due to the EU regulations that manage asylum, which are governed in large part by the Dublin Regulation. The Dublin Regulation is a decision drafted by the European Parliament and the Council of European Union that assigns the responsibility of processing the asylum seekers application to the first EU Member State the asylum seeker enters. If an asylum seeker moves to another nation, other than the nation he or she first entered, then the Dublin Regulation allows a state to ask the first state responsible for the application to take charge or to take back the asylum seeker. This idea is based on the principle that responsibility primarily lies with the Member State that played the greatest role in the asylum seeker’s entry into the EU. Due to the hierarchical criteria and lack of burden-sharing provisions in the Dublin Regulation, asylum applications are not equally shared between all Member States. Countries like Greece, Hungary, and Italy, are burdened with an unequal portion of the refugees, which results in flaws in the way asylum seekers are processed.

FAILURE 2. System inefficiencies

The Dublin Rule creates inefficiencies because migrants shift between countries and then have to be sorted out again

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

The second is that Dublin *doesn't work efficiently*. It is inefficient because, despite the criteria of giving responsibility to the first country of arrival, most applicants seek asylum in a different country to the one in which they arrived. For example, according to Eurostat and Frontex statistics, only 64,625 of the 170,000 irregular arrivals in Italy sought asylum there. In 2013, more than a third of the asylum claims were made by people who had previously applied in another European Union country. Of those, 11% applied in Italy and did so again in Germany, Sweden or Switzerland.

FAILURE 3. Jeopardizes refugees’ rights

Enforcement of the Dublin Rule creates unfair practices that harm refugees

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

The third and final criticism is that Dublin jeopardises refugees’ rights. As condemned in the report by the European Council on Refugees and Exiles (ECRE, 2013), the fair and efficient examination of asylum applications is not guaranteed in all member states. Additionally, the allocation of responsibility is applied in a very disparate way, for example, by not taking into account the presence of family members, applying the humanitarian clause very restrictively and using the country of first arrival as the main criterion. Other reports, such as those by Fratzke (2015) and Guild et al. (2015) also denounce the way that, even if all the deadlines are met, the asylum seekers that are returned to another country must wait a year or more before their case is examined. Ultimately, all these reports also coincide in pointing out that the detention of applicants prior to transfer to another country is a common practice and that, in most cases, these transfers are made against their will.

OBSERVATION 3. We offer the following PLAN implemented by the Council of the European Union, the EU Parliament and any other necessary agencies

1. The EU implements the European Parliament’s proposal to reform the Dublin rule. Details will be provided in our Advantage evidence.

2. Funding and enforcement through normal means and existing budgets.
3. Timeline: Plan takes effect one day after an affirmative ballot.
4. All Affirmative speeches may clarify

OBSERVATION 4. ADVANTAGES

ADVANTAGE 1. Fairer distribution

The reform plan creates fairer distribution of migrants

Luigi Achilli 2018 (Marie Curie Fellow at the Robert Schuman Centre of the European University Institute in Florence) “Why are we not reforming the Dublin Regulation yet?” 25 Oct 2018 <https://www.euractiv.com/section/justice-home-affairs/opinion/why-are-we-not-reforming-the-dublin-regulation-yet/>

There might not be a silver bullet to address both the reality of migratory pressures to Europe and satisfy populist demands. Yet, more human and effective proposals to reform the Regulation are at arm’s reach. In November 2017, for example, the European Parliament approved a proposal that neither encourages migration toward the richer countries nor disregards migrants’ choice of the destination country. The proposal establishes that asylum applicants that do not have genuine links with a particular country will be able to “choose between the four-member states which have received the lowest amount of applicants”. The fair relocation share of each Member State is calculated so that “larger and wealthier countries will have a larger share than smaller and less wealthy countries.”

ADVANTAGE 2. Improved efficiency

Explaining the EU Parliament reform plan, Cecelia Wilkstrom in 2017 explains how it reduces burdens and delays

Cecilia Wilkstrom 2017 (Rapporteur; former member of the European Parliament from Sweden) Briefing Note – Reforms of the Dublin regulation 19 Oct 2017 <https://www.ceciliawikstrom.eu/briefing-note-reforms-dublin-regulation/>

**Appropriate procedures in the first Member States of arrival**The current Dublin regulation places an unreasonable burden on the first member states of arrival. The procedures need to be fast and ensure that applicants that need to be relocated to other member states are moved quickly. A light procedure for family reunification and other genuine links is therefore introduced.

ADVANTAGE 3. Better treatment of migrants

Writing in context about the EU Parliament reform proposal, Jose Ignacio Garcia in 2018 explains how treatment of migrants would improve

José Ignacio García 2018 (regional director of JRS Europe, an international Catholic organization that advocates for the respectful and fair treatment of all migrants affected by European policy, and defends their access to procedures that guarantee the basic rights enshrined in international law) Feb 2018 “A new reform proposal of the Dublin Regulation” (ellipses in original) <http://www.europe-infos.eu/a-new-reform-proposal-of-the-dublin-regulation>

The [proposal](http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A8-2017-0345&language=EN#top) seeks to define a common asylum space, which is opposed by the positions of some member States very reluctant to receive refugees or migrants. They support the idea that the aid should take place in the same countries of origin, or in the neighbouring countries, but not anywhere within the European Union. This frontal opposition to the relocation mechanism by some member States is the main stumbling block in the dialogue at the Council of Ministers of the EU. The objection concerning the right of the asylum seekers to choose freely the destination of their preference is balanced in the procedure by paying attention to already existing real links (family, previous residence…), facilitating family reunification or allowing groups of up to 30 people to apply together because of special bonds, for example, the same region of origin. All these elements are intended to facilitate the process and to avoid secondary movements.

2A Evidence: Dublin Rule

OPENING QUOTES / AFF PHILOSOPHY

Dublin works neither for the member states nor for the refugees

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

 If Dublin works neither for the member states (for being unfair and inefficient) nor for the asylum seekers (for putting their rights at risk) and is also expensive, why do we carry on with this system?

Europe’s asylum system needs a fresh start

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia University) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

During her 2019 candidacy for European Commission President, Ursula von der Leyen proposed a New Pact on Migration and Asylum to “relaunch the Dublin reform of asylum rules.” Ms. von der Leyen is correct: Europe’s asylum system needs a fresh start.

Dublin is failing to accomplish its goals and adjustment is needed

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Formerly worked for the U.S. Dept of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” March 2015 <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

In recent years, various stakeholders, including the European Commission and advocacy groups, have conducted extensive evaluations of Dublin II’s impact and functioning, and made numerous recommendations on how to mitigate some of its less desirable consequences. This report draws on the existing literature and on interviews with select Member State officials to present a critical assessment of the Dublin system. The report finds that while Dublin fills a crucial gap in the CEAS—by providing a mechanism to determine responsibility for asylum claims—the system as it currently functions is failing to achieve its twin goals of streamlining asylum procedures and providing swift access to protection. A mechanism such as Dublin will be necessary as long as separate national asylum systems exist in a European area without internal border controls. But adjustments are needed—within the framework of the current legislation—to enable the system to live up to its potential.

Example of how Dublin fails: Adrien the Congolese immigrant

José Ignacio García 2018 (regional director of JRS Europe, an international Catholic organization that advocates for the respectful and fair treatment of all migrants affected by European policy, and defends their access to procedures that guarantee the basic rights enshrined in international law) Feb 2018 “A new reform proposal of the Dublin Regulation” (ellipses in original) <http://www.europe-infos.eu/a-new-reform-proposal-of-the-dublin-regulation>

Adrien, a young Congolese, was staying in a Jesuit community in Toulouse, as part of the [Welcome Programme](http://www.welcometoulouse.fr/) of the [Jesuit Refugee Service](http://www.jrsfrance.org/) in France. Through this programme, asylum seekers such as Adrien receive support from families and religious communities, facilitating a path of integration. One day, as he had to do regularly, he reported to the police station. To his surprise, he was arrested and sent back to Italy - his first European country of entry- and was put into custody at a detention centre. He is still being held there after sixteen months, without news about his future.
**Towards Dublin IV**This story illustrates very clearly some of the most important shortcomings of the asylum system in Europe and, more specifically, of the [Dublin Regulation](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en).

INHERENCY

Clarification of Dublin System’s purposes

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

Dublin does not seek to fairly distribute responsibility for refugees between the various member states but to establish the state responsible for processing each application quickly, based on some pre-established criteria. One of the main objectives is to avoid someone seeking asylum in the country of their choice (so-called “asylum shopping) or being present in Europe without any country taking responsibility for examining their request (“orbiting”).

For this, Dublin establishes three principles: 1) asylum seekers have only one opportunity to apply for asylum in the European Union and, if the request is denied, this is recognised by all member states; 2) the member state responsible for examining the application is established by the criteria set out in the Dublin Convention, rather than the preference of the applicants themselves; and, 3) asylum seekers may be "transferred" to the member state to which they have been assigned.

Criteria for determining responsibility

Hanne Beirens 2020 (Director of the Migration Policy Institute (MPI) Europe. She specializes in European Union policies related to asylum and migration, human trafficking, labour migration, and youth) “Chasing Efficiency: Can operational changes fix European asylum systems?” March 2020 <https://www.migrationpolicy.org/research/operational-changes-european-asylum-systems>

Family unity and vulnerability (e.g., that of unaccompanied minors) are, by law, the primary criteria to establish responsibility for examining the asylum application. If not applicable, Dublin authorities investigate which Member State facilitated the asylum seeker’s entry into the European Union (i.e., the first entry principle) via, for example, a visa or residence permit granted or fingerprints taken after the applicant crossed the border. An evaluation of the Dublin III Regulation found that this first entry principle is *de facto* dominant in the responsibility determination process.

In practice, first entry is the most frequently applied criteria

Hannah Wilkins and Melissa Macdonald 2019 (Macdonald is an assistant research analyst/ Wilkins is a senior researcher at the House of Commons Library. They specialise in immigration and asylum research) “What is the Dublin III Regulation? Will it be affected by Brexit?”4 Nov 2019 <https://commonslibrary.parliament.uk/home-affairs/immigration/what-is-the-dublin-iii-regulation-will-it-be-affected-by-brexit/>

The European Parliament notes that in practice, however, the most frequently applied criteria is irregular entry. The application of that criteria means that the Member State through which the asylum-seeker first entered the EU is responsible for examining their asylum claim. Although this is the most frequently applied criteria, there are limits to the extent irregular entry can be used as a reason for transfer. For instance, a Member State will be responsible for a claim submitted by a person who has been living there for at least five consecutive months (known as tolerated illegal presence). This is true even when that person first gained entry into the EU by an irregular crossing of a border in another Member State.

Background on disputes blocking implementation of the EU Parliament reform proposal. A few countries are blocking it.

Anja Radjenovic 2019 (researcher for the European Parliamentary Research Service) published by the EU Parliament, 1 March 2019 “Reform of the Dublin system” [https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS\_BRI(2016)586639\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf)



HARMS / SIGNIFICANCE

Significance: In 2019, the EU received its highest number of asylum applicants since 2015

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia Univ.) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” (“714,2000 applications” is a typo in the original. It probably should be 714,200) 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

To complicate issues further, the EU received its highest numbers of asylum applications since 2015; the European Asylum Support Office reported that 714,2000 applications were received in 2019. Future migration crises are inevitable, especially given climate change as an increasingly central driver of forced displacement. Commission President von der Leyen must prioritize the reform of the Dublin Regulation to create a cohesive asylum process in Europe.

Laundry list of harms

European Council on Refugees and Exiles 2016 (a pan-European network of refugee-assisting non-governmental organizations) December 2016 “The Road Out of Dublin: Reform of the Dublin Regulation” <https://www.refworld.org/docid/5857b9224.html>

The European Commission identifies the current “refugee crisis” as the impetus for reform of the Dublin Regulation as it exposed significant weaknesses in both its design and implementation. In particular, the fact that Dublin was not designed to ensure responsibility sharing has put Member States where the majority of asylum seekers arrive under intense strain. The Commission also points to complex, lengthy procedures and the fact that responsibility shifts between Member States after a given length of time, as factors limiting effectiveness. The Commission also highlights that a lack of provisions on applicants’ obligations and consequences for non-compliance has meant that the system is prone to abuse by applicants.

1. Unfair burden on frontline countries

Countries on the frontline have disproportionate responsibilities imposed on them

Luigi Achilli 2018 (Marie Curie Fellow at the Robert Schuman Centre of the European University Institute in Florence) “Why are we not reforming the Dublin Regulation yet?” 25 Oct 2018 <https://www.euractiv.com/section/justice-home-affairs/opinion/why-are-we-not-reforming-the-dublin-regulation-yet/>

Under the current legislative framework, the first EU country that asylum seekers enter is responsible for examining their asylum claim. Countries such as Italy, Greece and to a lesser extent Malta and Spain, which are the frontline of migrants’ routes to Europe, have repeatedly protested against the disproportionate responsibilities that Dublin imposes on them.

The European Commission was forced to adopt temporary relocation schemes in 2015

Luigi Achilli 2018 (Marie Curie Fellow at the Robert Schuman Centre of the European University Institute in Florence) “Why are we not reforming the Dublin Regulation yet?” 25 Oct 2018 <https://www.euractiv.com/section/justice-home-affairs/opinion/why-are-we-not-reforming-the-dublin-regulation-yet/>

Nevertheless, the scale of the migration phenomenon has become a heavy burden on the asylum system of frontline countries and in September 2015 it prompted the European Commission to adopt temporary relocation schemes to alleviate the pressure faced by these countries.

Varying asylum practices results in inequitable burdens

Manasi Gopalakrishnan 2017 (journalist and editor for the Deustche Welle, a German government-funded public international broadcaster) “The Dublin regulation – explained” 6 Feb 2017 <https://www.infomigrants.net/en/post/1857/the-dublin-regulation-explained>

The Dublin system assumes that asylum laws and practices are at the same level in all European Union countries and those applicants will be afforded equal status of protection everywhere within the EU. However, asylum practices vary from country to country. Member states at EU borders have also complained that the system puts all the burden of migrants on them, since they are usually the first point of refugees fleeing to Europe.

Application of disproportionate responsibility: Italy

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

There are basically three criticisms of the Dublin system. The first is that Dublin *doesn't work fairly*. Given that the most commonly-used criterion is that of the first country of arrival, the responsibility falls disproportionately (in theory at least) on the border countries. Being registered in the first country of arrival means being unable to seek asylum in other member states, or, in the case of doing so, running the risk of being returned. In 2013, for example, Italy received almost a third of the asylum seekers transferred from another member state.

The Impact: Disfunction in Italy’s asylum system

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Formerly worked for the U.S. Dept of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” March 2015 <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

Accommodating Dublin transferees in addition to rising numbers of new arrivals has clearly been a struggle for the Italian asylum system. A 2011 joint report by Swiss and Norwegian nongovernmental organisations (NGOs) evaluating the state of Italy’s asylum procedures and reception conditions, raised serious doubts as to whether Italy was fulfilling its obligations under the European Convention on Human Rights (ECHR) and EU law. A 2013 update to the report found continued deficiencies in the system. More recently, UNHCR highlighted ongoing processing delays and inadequate accommodation for applicants in Italy. Dublin transfers to Italy have been challenged in courts in Austria, Switzerland, and the Netherlands due to poor reception conditions (with limited success outside cases of particularly vulnerable individuals).

2. Inefficient and burdens the system

Dublin was intended to improve efficacy, but in practice, it adds unnecessary hurdles

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Before joining MPI, Ms. Fratzke worked for the U.S. Department of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

Dublin has also come under scrutiny for its costs and low effective transfer rates; meanwhile, the incidence of secondary movement remains high. Although Dublin II was established with the primary goal of increasing the efficiency of the European asylum system, some reports have suggested that in certain cases Dublin transfers may add unnecessary hurdles to the asylum process. These challenges have been recognised by the Commission; improving the efficiency of the Dublin system was an explicit goal of the recast process.

Dublin is inefficient in fulfilling transfer requests

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” Nov 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

If Dublin is inefficient in preventing asylum applications in a country other than that assigned, it is just as inefficient in fulfilling transfer requests between member states. In 2013 of the total of 76,358 requests, 56,466 were accepted by the reception countries but only 15,938 (20%) were really carried out (Fratzke, 2015: 11).

Member states transfer many immigrants only to receive a similar number in return

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

Beyond the implementation difficulties, the member states that send most transfer requests are also those that receive the most. What is more, states often exchange a similar number of requests. For example, in 2013 Germany sent 1,380 requests to Sweden and received 947 back. This led the European Commission to propose a mechanism between states that would allow “redundant” transfers to be cancelled, that is to say, when the sum of those who go and those who come is similar. This mechanism, however, has not been included in either Dublin II or Dublin III. In consequence, the European Union continues to devote a large part of its resources to exchanging asylum seekers without it having a significant effect on the final distribution.

Large numbers of redundant transfers

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Formerly worked for the U.S. Dept of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” March 2015 <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

Evaluations of the system by asylum advocates, and the Commission itself, have noted that some Dublin transfers may be redundant or unnecessary. For example, several Member States frequently exchange similar numbers of asylum seekers. A brief look at recent data on Dublin II requests confirms this. In 2012 three of the top five sending Member States (Germany, Sweden, and Belgium) were also among the top five Member States *receiving* the most Dublin II requests (see tables A-1 and A-2). A number of these requests involved exchanges with each other. Similarly in 2013 Germany sent 1,380 requests *to* Sweden and received 947 requests *from* Sweden; France received 355 requests *from* Belgium and sent 562 requests *to* Belgium; and Sweden sent 627 requests *to* Norway while at the same time receiving 403 requests *from* Norway. Exchanges like these have led the Commission, and asylum advocates, to ask whether there is a more efficient way to handle these sorts of transfers. In its evaluation of Dublin II, the Commission raised the possibility that Member States could cooperate to ‘annul’ redundant transfers, potentially saving transfer costs, expediting asylum procedures for the individuals concerned, and reducing secondary movement.

The Impact: Financial burden

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Formerly worked for the U.S. Dept of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” March 2015 <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

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

The Impact: Greece’s backlog of cases is driving them to refuse refugees

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia University) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

According to Politico, there is a backlog of 90,000 asylum cases in Greece alone. The Greek government recently released a plan to create a “floating wall” to block migration routes on the Aegean Sea and will soon begin construction of closed detention centers that will limit the movement of asylum seekers. At a press conference on February 27, the Greek Prime Minister Kyriakos Mitsotakis explicitly told those who do not qualify for international protection to “not come to Greece”, and warned that they will remain stuck on the islands until they are returned home. Although Greece’s treatment of refugees is appalling, their actions and rhetoric towards refugees demonstrates the depths of desperation which border states are being driven to due to EU inaction.

3. Poor treatment of refugees / Jeopardizes refugees’ rights

Inordinately prolonged wait times

Manasi Gopalakrishnan 2017 (journalist and editor for the Deustche Welle, a German government-funded public international broadcaster) “The Dublin regulation – explained” 6 Feb 2017 <https://www.infomigrants.net/en/post/1857/the-dublin-regulation-explained>

Another problem with the Dublin system is that people applying for asylum often have to wait for some time without knowing whether their application will be accepted. During this period, they are forced to live in detention centers and are separated from their families. In some cases, their appeals are never heard, according to the United Nations High Commission for Refugees (UNHCR).

Family criteria is not often applied

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Formerly worked for the U.S. Dept of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” March 2015 <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

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

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

Refugees’ rights are not fairly enforced across member states

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia University) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

The number of refugees already present in a state are not taken into consideration when determining relocation destinations or places of stay during the processing of asylum applications. Although the Dublin Framework includes rights for refugees that are already solidified under international law, including family unification and speedy asylum decisions, those rights are not enforced equally among EU member states. Following the 2015 refugee crisis, the EU began to discuss reforming the Dublin system to include burden-sharing measures and increased human rights protections.

Current measures to curb migration pose threats to human rights

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia University) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

As a result of Council gridlock, member states have relied heavily on third-party agreements to curb migration. These agreements have been successful in achieving the EU’s overall goal of curbing migration but pose threats to human rights and are not sustainable in the long-term. Although the EU’s 2016 deal with Turkey led to a 97% decrease in migration from Turkey to Greece, 3RP reported that over 64% of the 3.6 million refugees living in Turkey are living in poverty. Turkish President Recep Tayyip Erdogan announced plans for the “voluntary” resettlement of refugees in a “peace zone” in Northern Syria. Pushing refugees to return to Syria would violate non-refoulement standards under international law, which mandates that a host country cannot return asylum seekers to a country where they would be in danger or would be persecuted. Furthermore, President Erdogan announced on February 27, 2020 that Turkish authorities will not prohibit Syrian refugees from leaving Turkey to go to Europe, as Turkey is facing an influx of Syrian refugees from Idlib due to recent attacks by the Assad government and Russia. This recent announcement demonstrates the precise issue with third-party agreements: they provide short term reprive for host countries but kick the can of dealing with refugees down the road at refugees’ expense.

Application: Refugees stranded on Lesbos

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia University) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

The EU-Turkey deal also has implications for those already in Europe. For example, thousands of refugees are stranded on the Greek island of Lesbos as the EU-Turkey agreement prohibits their arrival on mainland Greece. Most recently, protests against inhumane living conditions broke out at the Moria refugee camp, where 20,000 refugees are cramped into facilities built to house 3,000 individuals. These conditions, which are common in many refugee camps throughout Europe, infringe on basic human rights secured under international conventions, including the 1951 Refugee Convention.

Application: Refugees diverted to Tunisia

Dr. Shoshana Fine 2019 (visiting fellow with the Middle East and North Africa Programme at the European Council on Foreign Relations. PhD in international relations from Sciences Po Paris.) “All at sea: Europe’s crisis of solidarity on migration” <https://www.ecfr.eu/publications/summary/all_at_sea_europes_crisis_of_solidarity_on_migration>

According to the Global Detention Project, the EU and the Italian government have pushed the Tunisian Coast Guard to intercept boats carrying migrants towards the EU from Libya. They expect Tunisia to process asylum claims on its own soil and return those it deems to have no protection needs. On both sides of the Mediterranean, then, there are attempts to shift responsibility for migration. For instance, a group of 75 migrants were stranded off the coast of Tunisia for three weeks after the authorities claimed that they could not disembark because the local reception facilities were full. The authorities eventually allowed the migrants – most of whom had Bangladeshi nationality – to disembark, on the understanding that they would be deported immediately. The Bangladeshi embassy’s envoy threatened to withdraw the migrants’ food and water if they refused to agree to their return. One migration analyst based in Tunisia told the author that such threats are frequently used to pressure migrants to return to their country of origin. In Tunisia, detention centres are often hidden in unknown locations. Detainees are frequently deprived of the opportunity to seek asylum, forcing them to either pay for their own deportation or, if they lack the funds to do so, to fend for themselves after the Tunisian security forces dump them in the desert on the Tunisian-Algerian border.

4. Noncompliance

Dublin incentivizes border guards to push the burden onto other countries

Hanne Beirens 2020 (Director of the Migration Policy Institute (MPI) Europe. She specializes in European Union policies related to asylum and migration, human trafficking, labour migration, and youth) “Chasing Efficiency: Can operational changes fix European asylum systems?” March 2020 <https://www.migrationpolicy.org/research/operational-changes-european-asylum-systems>

Yet at a national level, the Dublin architecture is known to incentivise border guards and other law enforcement authorities to deter third-country nationals from entering their country’s territory at external or internal EU borders, or to allow them to travel onwards to another Member State without registration. In particular, the Dublin system’s use of the first country of entry principle to determine national responsibility for asylum cases has limited the incentives to register asylum seekers rather than trying to push the burden onto another country. In the absence of a policy move to disentangle registration from the question of responsibility(-sharing), the progress made on registration in the wake of the 2015–16 crisis may remain limited.

Italy has attempted to shift responsibility for migration

Dr. Shoshana Fine 2019 (visiting fellow with the Middle East and North Africa Programme at the European Council on Foreign Relations. PhD in international relations from Sciences Po Paris.) “All at sea: Europe’s crisis of solidarity on migration” 14 Oct 2019 <https://www.ecfr.eu/publications/summary/all_at_sea_europes_crisis_of_solidarity_on_migration>

According to the Global Detention Project, the EU and the Italian government have pushed the Tunisian Coast Guard to intercept boats carrying migrants towards the EU from Libya. They expect Tunisia to process asylum claims on its own soil and return those it deems to have no protection needs. On both sides of the Mediterranean, then, there are attempts to shift responsibility for migration.

Immigrants attempt to circumvent the system

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Before joining MPI, Ms. Fratzke worked for the U.S. Department of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” March 2015 <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

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

Reports such as these have raised questions about the effectiveness of the Dublin regime as a whole, in the face of what is perceived as systemic abuse. Allegations have even been made that asylum officials in some Member States are actively helping applicants circumvent Dublin procedures.

Variations in manner of enforcement across member states

Nikolaj Nielsen 2020 (Danish-American journalist and editor based in Brussels and contributes for the EUobserver) “Commission bins 'Dublin' asylum-reform proposal” 20 Feb 2020 <https://euobserver.com/migration/147511>

In reality, the existing system has ground to a halt, with only around three percent of 'Dublin returns' executed EU-wide. "It would be safe to suggest that there exists a variation in the manner in which the regulation is implemented by responsible Dublin units across the member states," said Markos Karavias, director of the Greek Asylum Service.

Dublin’s underlying problem is the differences in procedures among member states

Susan Fratzke 2015 (Associate Policy Analyst and Program Coordinator with the Migration Policy Institute’s International Program, where she primarily works with the Transatlantic Council on Migration. Formerly worked for the U.S. Dept of State’s Bureau of Population, Refugees, and Migration) “Not Adding Up: The Fading Promise of Europe’s Dublin System” March 2015 <https://www.migrationpolicy.org/research/not-adding-fading-promise-europes-dublin-system>

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

Some countries are non-communicative or have systemic deficiencies in asylum procedures

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

It is also common for asylum seekers not to cooperate in their return to other European countries. In other cases, the reception countries do not accept the request because of lack of evidence or, in practice, they do not respond. For example, various member states have complained about communication problems when transferring asylum seekers to Italy. Another factor that explains the difficulty of transferring asylum seekers to another country (normally that of arrival) is the action of the law courts. In 2011, various judgements from the European Court of Human Rights and the Court of Justice of the European Union banned returns to Greece because of systematic deficiencies in its asylum procedures and reception conditions. Since then, Italy has also been subject to criticisms, with cases in the courts of Austria, Switzerland and the Netherlands. The examples of Greece and Italy reveal the impossibility of assuming that the rights of refugees are guaranteed in all member states. Without this, the Dublin system falls apart. Basically because, as Merkel condemned, there is then nowhere to return them to.

SOLVENCY / ADVOCACY / ADVANTAGES

Full text of the EU Parliament reform plan

<https://www.europarl.europa.eu/doceo/document/A-8-2017-0345_EN.pdf?redirect>

[It’s 151 pages long]

Summarized details of the EU Parliament reform plan

Anja Radjenovic 2019 (researcher for the European Parliamentary Research Service) published by the EU Parliament, 1 March 2019 “Reform of the Dublin system” [https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS\_BRI(2016)586639\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf)



Reform proposal from the European Parliament

Elsa Fernando Gonzalo 2019 (PhD student in the International Public Law department at the University of Salamanca; doctoral thesis focuses on cooperation with third countries) “The Dublin Asylum System: An Old Challenge for the New European Executive” 24 Sept 2019 <https://blogs.eurac.edu/eureka/the-dublin-asylum-system-an-old-challenge-for-the-new-european-executive/>

The European Parliament (EP), through its LIBE Committee, also gave suggestions for a new Dublin Regulation. In its report, the EP suggested that asylum seekers who have a “genuine link” with a particular Member State should be transferred there. This would mean changing the first criterion regarding the family link. The EP also suggested stronger consequences for Member States that refuse to accept the reallocation of applicants by limiting these States’ access to EU funds.

EU Parliament reform plan would work in practice and on the ground and would be able to handle any crisis

Cecilia Wilkstrom 2017 (Rapporteur; former member of the European Parliament from Sweden) Briefing Note – Reforms of the Dublin regulation 19 Oct 2017 <https://www.ceciliawikstrom.eu/briefing-note-reforms-dublin-regulation/>

The European Parliament is proposing a system that will work in practice and on the ground. In order to achieve this we need to ensure that both member states and applicants are incentivised to follow the rules within the Dublin system. Member states, which are all signatories to the Geneva Convention, will need to accept a fair sharing of the responsibility to receive asylum seekers in Europe. Applicants will need to accept that they do not have a free choice as regards the member state that will conduct the evaluation of their asylum claims. The system proposed by the European Parliament would function in times of normal migratory flows as well as in times of crisis. It would also be able to cope with a crisis on any of the common borders of the union.

Funding: EU spends $65 billion/year on farm subsidies. Most of it goes to the connected and powerful few

NEW YORK TIMES 2019. (journalists Selam Gebrekidan, Matt Apuzzo and Benjamin Novak) “The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions” 3 Nov 2019 <https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html>

Every year, the 28-country bloc pays out $65 billion in farm subsidies intended to support farmers around the Continent and keep rural communities alive. But across Hungary and much of Central and Eastern Europe, the bulk goes to a connected and powerful few. The prime minister of the Czech Republic collected tens of millions of dollars in subsidies just last year. Subsidies have underwritten Mafia-style land grabs in Slovakia and Bulgaria. Europe’s farm program, a system that was instrumental in forming the European Union, is now being exploited by the same antidemocratic forces that threaten the bloc from within. This is because governments in Central and Eastern Europe, several led by populists, have wide latitude in how the subsidies, funded by taxpayers across Europe, are distributed — even as the entire system is shrouded in secrecy.

Funding: EU spends $65 billion/year on farm subsidies, and it goes to corrupt politicians

NEW YORK TIMES 2019. (journalists Selam Gebrekidan, Matt Apuzzo and Benjamin Novak) “The Money Farmers: How Oligarchs and Populists Milk the E.U. for Millions” 3 Nov 2019 <https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html>

The European Union spends $65 billion a year subsidizing agriculture. But a chunk of that money emboldens strongmen, enriches politicians and finances corrupt dealing.

1. Fairer distribution of asylum applicants

Choice between four member states

José Ignacio García 2018 (regional director of JRS Europe, an international Catholic organization that advocates for the respectful and fair treatment of all migrants affected by European policy)“A new reform proposal of the Dublin Regulation” Feb 2018 <http://www.europe-infos.eu/a-new-reform-proposal-of-the-dublin-regulation>

The main characteristic of the proposal approved by the European Parliament is the setting up of a permanent and automatic relocation mechanism, without thresholds. The relocation system thus replaces the previous “fall-back-criterion” of the member state of first entry. The system applies at all times, not only in periods of crisis and with no thresholds. Other important elements of the proposal are: the definition of the appropriate procedures in the first Member States of arrival to speed up the process of relocation and a clear contribution from the EU-budget and the EU Asylum Agency (EUAA) to meet the costs of this relocation. The calculation of fair responsibility is based on the GDP and population of the receiving state. As long as the applicant has registered in the first member state of entry in the Union, he or she will be given the option to choose between the four member states which have received the lowest number of applicants in relation to their fair share.

Corrective allocation mechanism promotes fairness

Anja Radjenovic 2019 (researcher for the European Parliamentary Research Service) published by the EU Parliament, 1 March 2019 “Reform of the Dublin system” [https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS\_BRI(2016)586639\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586639/EPRS_BRI%282016%29586639_EN.pdf)

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

European countries are becoming more open to asylum relocations and burden sharing

Ali Cain 2020 (Program Coordinator for the Cardozo Law Institute in Holocaust and Human Rights, and an M.A. Candidate in the European History, Politics and Society Program at Columbia University) “A Fresh Start in EU Migration Policy: Re-examining the Dublin Regulation” 28 Feb 2020 <http://blogs.cuit.columbia.edu/rightsviews/2020/02/28/a-fresh-start-in-eu-migration-policy-re-examining-the-dublin-regulation/>

A report released by the European Council on Foreign Relations argues that member states may now be more open to asylum relocations and burden sharing. In July 2019, fourteen states signed a solidarity mechanism, pledging to relocate migrants across the EU. In September 2019, Italy’s staunchly anti-migrant interior minister Matteo Salvini was recently replaced by migration specialist Luciana Lamorgese in September 2019. Italy’s migration policies have already begun to change as private charity’s boats can now dock at Italian ports. Additionally, a recent European Council on Foreign Relations survey found that a majority of EU citizens no longer see migration as the most pressing issue of concern. Instead, survey respondents reported “health, housing unemployment, and living costs as standout issues.” Although it is easy to get caught up in the pessimism of current EU affairs, all European countries can agree that the current system under the Dublin Regulation is not working.

2. Protects applicants’ rights

Fairness must be balanced with applicants’ choice

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

Thinking about how to distribute the responsibility means thinking about how to do it in a fairer way but also in a way that takes into account the preferences of the asylum seekers themselves. A distribution system that does not take asylum seekers’ preferences into account is not only ethically reprehensible but also terribly inefficient.

3. Promotes compliance

Plan penalizes noncompliance by cutting funding to non-compliant states

José Ignacio García 2018 (regional director of JRS Europe, an international Catholic organization that advocates for the respectful and fair treatment of all migrants affected by European policy, and defends their access to procedures that guarantee the basic rights enshrined in international law)“A new reform proposal of the Dublin Regulation” Feb 2018 <http://www.europe-infos.eu/a-new-reform-proposal-of-the-dublin-regulation>

Refugees have to know, very precisely, that the only path to international protection within Europe will be to remain in the responsible member state. This is the most effective way to tackle secondary movements. The proposal looks to encourage applicants to remain within the official system. What is crucial for this proposal to succeed, and this is more controversial politically, is to ensure the full participation of all Member States. Frontline member states that refuse to register applicants would see the relocation of applicants from their territory stopover. Member states refusing to accept relocation of applicants to their territory would face limits on their access to EU-funds and would not be able to use EU-funds for the return of applicants that had their asylum claims rejected.

Encourages compliance among asylum applicants

Francesco Maiani and Constantin Hruschka 2017 (Maini - Associate Professor of European Law at the University of Lausanne. Hruschka - senior researcher at the Max Planck Institute for Social Law and Social Policy in Munich) “The Report of the European Parliament on the reform of the Dublin system: certainly bold, but pragmatic?” 20 Dec 2017 <https://eumigrationlawblog.eu/the-report-of-the-european-parliament-on-the-reform-of-the-dublin-system-certainly-bold-but-pragmatic/>

The logic of these amendments is to encourage persons to apply in the first State entered into: they (should) remove the prospect of being ‘stuck’ in the first port of entry, and enhance the prospect of being transferred to a desirable destination. Much in the same logic, applicants are entitled to request the application of the discretionary clauses, and ‘sponsor organisations’ may ask the admission of an applicant – with his or her consent – to the Member State where they are based. However, Member States are left free to reject or even to ignore such requests. Past experience suggests that they will predominantly do so.

Corrective allocation mechanism punishes noncompliance

Francesco Maiani and Constantin Hruschka 2017 (Francesco Maiani is Associate Professor of European Law at the University of Lausanne. Constantin Hruschka is a senior researcher at the Max Planck Institute for Social Law and Social Policy in Munich) “The Report of the European Parliament on the reform of the Dublin system: certainly bold, but pragmatic?” 20 Dec 2017 <https://eumigrationlawblog.eu/the-report-of-the-european-parliament-on-the-reform-of-the-dublin-system-certainly-bold-but-pragmatic/>

Substantively, the allocation mechanism incorporates two new features intended to promote acceptance and cooperation on the applicants’ side:

First, an element of choice is inserted in the allocation process: the determining State is to ‘shortlist’ the four least-burdened States at the moment of the application, and the applicant is to be given a short deadline to choose among them. As a form of ‘punishment’, this choice would be denied to applicants who enter the Union irregularly without applying in the first State, and to those who are transferred on the basis of the ‘light procedure’ when it surfaces that the prima facie application of the criteria was wrong.

Second, applicants are allowed to register as groups of maximum 30 persons. Family members and relatives are to be ‘allocated’ together in all circumstances. Other applicants are to be allocated together ‘to the extent possible’.

DISAD RESPONSES

A/T “Asylum Shopping”

Refugees’ desire for a specific country stems from their basic human rights

Blanca Garcés-Mascareñas 2015 (Senior Research Fellow in the area of migration and Research Coordinator at the Barcelona Centre for International Affairs) “Why Dublin "Doesn't Work"” November 2015 <https://www.cidob.org/en/publications/publication_series/notes_internacionals/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work>

The preferences of asylum seekers are often linked to personal concerns − such as the presence of friends and acquaintances in the preferred country and knowledge of the language − but they are also often connected to significant differences between reception countries, above all when it comes to asylum processes, reception conditions, social rights and the chances of finding work. Avoiding seeking asylum in a country that barely recognises refugees and has little reception infrastructure (such as Spain) is the result not of the feared asylum shopping but rather of the need for their most basic rights as refugees to be recognised.

So-called “asylum shopping” is merely seeking out the reception conditions to which they are entitled

Prof. Elspeth Guild, Dr. Cathryn Costello, Madeline Garlick, and Dr. Violeta Moreno-Lax 2015 (Guild is Senior Associate Research Fellow at the Centre for European Policy Studies. Costello is Andrew W. Mellon Associate Professor in International Human Rights and Refugee Law, Refugee Studies Centre, University of Oxford. Garlick is Guest Researcher at the Centre for Migration Law at Radboud University. Moreno-Lax is Lecturer in Law at Queen Mary, Univ of London and the EU Asylum Law Coordinator at the Refugee Law Initiative of the University of London) “Enhancing the Common European Asylum System and Alternatives to Dublin” July 2015 [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/519234/IPOL\_STU(2015)519234\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/519234/IPOL_STU%282015%29519234_EN.pdf)

To illustrate, the Italian Refugee Council reported that only 36,000 of the 106,000 people who had arrived by boat in the first half of 2014 had filed asylum claims in Italy. By the end of 2014, the total number of irregular arrivals in Italy was 170,000 (a 277% increase by comparison with the previous year), 40% of whom were Syrian and Eritreans (a nationality with a 75% positive recognition rate across the EU). Asylum applications in Italy over the same period totalled 64,625. This would appear to suggest that, at least, some of those arriving in Italy who are likely to be refugees are not claiming asylum in that country, but may be moving on to other Member States where they may seek protection. This is not the ‘asylum shopping’ which Dublin ostensibly aims to avoid, but rather asylum seekers seeking out the reception conditions and procedures to which they are entitled in EU and international law.

The goal is not unlimited choice, but a balance between fair distribution and applicants’ preferences

Lukasz Dziedzic 2019 (PhD Researcher at the Legal Philosophy Group of the Department of European and International Public Law, and the International Victimology Institute Tilburg) “Rethinking Refugee Choices in the Dublin System” 7 June 2019 <https://www.rethinkingrefuge.org/articles/rethinking-refugee-choices-in-the-dublin-system>

What is demanded in this literature is not an unlimited right for protection seekers to choose their country of destination – which has long been demanded by refugee rights activists and thus far been regarded as a taboo in states’ policy discourses – but rather a responsibility-sharing framework that takes protection seekers’ rights and preferences into consideration when thinking about a just distribution of responsibilities between states. Such a framework would enhance refugees’ autonomy by acknowledging their agential capacity.

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