

# Admissibility, responsibility and safety in European asylum procedures



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The information contained in this report is up-to-date as of August 2016.

## THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database](#) is a database containing information on asylum procedures, reception conditions and detention across 20 European countries. This includes 17 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Sweden, United Kingdom) and 3 non-EU countries (Switzerland, Serbia, Turkey).

AIDA started as a project of the European Council on Refugees and Exiles (ECRE), running from September 2012 to December 2015 in partnership with Forum Réfugiés-Cosi, the Hungarian Helsinki Committee and the Irish Refugee Council, and is now developing into a core activity of ECRE. 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 and detention in 20 countries.

❖ **Comparative reports**

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. Beyond the annual reports [2012/2013](#), [2013/2014](#) and [2014/2015](#), a thematic report on [reception](#) was published in March 2016.

❖ **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](#) and [Austria](#) so far.

❖ **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. Six [briefings](#) have been published in 2015, covering: the legality of detention of asylum seekers under the Dublin Regulation; key problems in the collection and provision of asylum statistics in the EU, the concept of "safe country of origin"; the way the examination of asylum claims in detention impacts on procedural rights and their effectiveness; age assessment of unaccompanied children; and duration and review of international protection status.

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## GLOSSARY

<b>Acquis</b>	Accumulated legislation and jurisprudence constituting the body of European Union law.
<b>Asylum Procedures Directive (recast)</b>	Directive 2013/32/EU on common procedures for granting and withdrawing international protection, adopted on 26 June 2013.
<b>Asylum Procedures Regulation</b>	European Commission proposal for a Regulation establishing a common procedure for international protection in the Union and repealing the recast Asylum Procedures Directive, tabled on 4 May 2016.
<b>Asylum seeker(s) or applicant(s)</b>	Person(s) seeking international protection, whether recognition as a refugee, subsidiary protection beneficiary or other protection status on humanitarian grounds.
<b>Distribution key</b>	Arrangement for the distribution of applicants between countries according to respective reception capacity.
<b>Dublin system</b>	System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application, set out in Regulation (EU) No 604/2013.
<b>First country of asylum</b>	Country in which an applicant has received refugee status and can avail him or herself of that protection, or otherwise enjoys sufficient protection from <i>refoulement</i> . This concept is defined in Directive 2013/32/EU and is used as a ground for declaring asylum applications inadmissible.
<b>Hotspot</b>	<p>Facility for the first reception, registration and initial processing of migrants, established at the external borders of the European Union. Hotspots combine an EU integrated inter-agency approach, with the presence of agencies including Frontex and EASO.</p> <p>Hotspots are relevant to <b>Italy</b> (Lampedusa, Pozzallo, Porto Empedocle, Trapani, Augusta, Taranto) and <b>Greece</b> (Lesvos, Chios, Samos, Leros, Kos).</p>
<b>Person in clear need of international protection</b>	Person coming from a country which has an average EU recognition rate of 75% or higher. The term is employed by Council Decisions (EU) 2015/1523 or 2015/1601.
<b>Recognition rate</b>	Rate of positive asylum decisions, including refugee status, subsidiary protection status or other protection status.
<b>Relocation</b>	Transfer of an asylum seeker in clear need of international protection from one European Union Member State to another under Council Decisions (EU) 2015/1523 or 2015/1601, concerning transfers from <b>Italy</b> or <b>Greece</b> .
<b>Safe country of origin</b>	Country whose nationals may be presumed not to be in need of international protection. The concept is defined in Directive 2013/32/EU and is a ground for channelling an asylum application into an accelerated procedure.
<b>Safe third country</b>	Country of transit of an applicant which is considered as capable of offering him or her adequate protection against persecution or serious harm. The concept is defined in Directive 2013/32/EU and is used as a ground for declaring asylum applications inadmissible.

## LIST OF ABBREVIATIONS

<b>ACCEM</b>	Spanish Catholic Commission on Migration   Comisión Católica Española de Migración (Spain)
<b>AIDA</b>	Asylum Information Database
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>ASGI</b>	Association for Legal Studies on Immigration   Associazione per gli Studi Giuridici sull'Immigrazione (Italy)
<b>BAMF</b>	Federal Office for Migration and Refugees   Bundesamt für Migration und Flüchtlinge (Germany)
<b>BFA</b>	Federal Agency for Immigration and Asylum (Austria)
<b>CEAS</b>	Common European Asylum System
<b>CGRS</b>	Commissioner-General for Refugees and Stateless Persons   Commissaire-général aux réfugiés et aux apatrides (Belgium)
<b>CJEU</b>	Court of Justice of the European Union
<b>DFT</b>	Detained Fast-Track Procedure (UK)
<b>DGMM</b>	Directorate-General for Migration Management (Turkey)
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRE</b>	European Council on Refugees and Exiles
<b>EDAL</b>	European Database of Asylum Law
<b>ELENA</b>	European Legal Network on Asylum
<b>EPIM</b>	European Programme for Integration and Migration
<b>EU</b>	European Union
<b>Eurodac</b>	European fingerprint database
<b>Eurostat</b>	European Commission Directorate-General for Statistics
<b>FARR</b>	Swedish Network of Refugee Support Groups   Flyktinggruppernas Riksråd (Sweden)
<b>Frontex</b>	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
<b>FYROM</b>	Former Yugoslav Republic of Macedonia
<b>JRS</b>	Jesuit Refugee Service
<b>LFIP</b>	Law on Foreigners and International Protection (Turkey)
<b>MS</b>	Member State of the European Union
<b>NGO(s)</b>	Non-governmental organisation(s)
<b>NSA</b>	Non-Suspensive Appeal procedure (UK)
<b>OFPRA</b>	French Office for the Protection of Refugees and Stateless Persons   Office français de protection des réfugiés et apatrides (France)
<b>ORAC</b>	Office of the Refugee Applications Commissioner (Ireland)
<b>SEM</b>	State Secretariat for Migration (Switzerland)
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## INTRODUCTION

Refugee protection is underpinned by a tension between fundamental legal principles and the management of refugee flows in practice. The central international principle enshrined in the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”)<sup>1</sup> is the right of refugees to seek asylum and have their claim examined. When implementing their international obligations, however, states have devised sophisticated asylum systems underpinned by complex procedural tools. Some procedural tools are designed and used for the purpose of deflecting responsibility for refugees before looking at the merits of their claims. Asylum systems, comprising of rules, procedures, and the necessary administrative resources to put them to practice, very often shift from substantive protection enquiries to distribution-related ones; focus is placed on “where” rather than “who” gets protection. These questions hinge around concepts such as responsibility, safety and admissibility, which underlie Europe’s asylum systems as an additional procedural layer, preceding the assessment of asylum seekers’ international protection needs.

Central to this debate are “safe country” concepts used by European countries to dismiss asylum claims for reasons of admissibility. Notably, an asylum seeker may have his or her application rejected without any examination of the merits, on the basis that he or she has already received protection in a “first country of asylum”, or may effectively obtain it in a “safe third country”.<sup>2</sup> Within Europe and the European Union (EU), a similar premise is embodied in the Dublin system.<sup>3</sup>

The deflection of protection responsibilities both within and beyond Europe and the EU has acquired renewed political impetus in the European Commission’s reform initiatives taken under the rubric of the European Agenda on Migration.<sup>4</sup> The proposals for a third phase of harmonisation of the Common European Asylum System entail a substantial overhaul of the different legislative instruments of the asylum *acquis*. The two centrepieces of this reform, however, concern procedural and responsibility questions: the proposal for an Asylum Procedures Regulation imposes safe country concepts as mandatory presumptions on national asylum administrations, meaning that Member States will be required not to examine an application on the merits if a person is deemed to come from a “first country of asylum” or a “safe third country”.<sup>5</sup> On the other hand, the proposal for a recast Dublin Regulation sets the application of these concepts as a precondition to the allocation of responsibility within the EU.<sup>6</sup> The broader policy goal is a reorientation of refugee status determination further away from European soil and closer to regions of origin: “Protection in the region and resettlement from there to the EU should become the model for the future, and best serves the interests and safety of refugees.”<sup>7</sup>

This Thematic Report documents the interpretation and implementation of these procedural tools and presumptions through a discussion of asylum procedures in the 20 AIDA countries, bearing in mind the “variable geometry” of the EU asylum *acquis* with regard to the United Kingdom and Ireland, as well as

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<sup>1</sup> United Nations Convention Relating to the Status of Refugees, UN Treaty Series vol. 189, 137.

<sup>2</sup> In European Union law, this is provided in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (hereafter “recast Asylum Procedures Directive”), OJ 2013 L180/60.

<sup>3</sup> See Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanism 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 stateless person (recast) (hereafter “Dublin Regulation”), OJ 2013 L180/31.

<sup>4</sup> See e.g. European Commission, *European Agenda on Migration*, COM(2015) 240, 13 May 2015, 4.

<sup>5</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council on a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, COM(2016) 467, 13 July 2016, Articles 36(1)(a)-(b) and 40(1)(e).

<sup>6</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council 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 stateless person (recast)*, COM(2016) 270, 4 May 2016, Article 3(3).

<sup>7</sup> *Ibid*, 2.

the peculiar legal and policy context applicable in non-EU countries such as Switzerland, Turkey or Serbia. The practical application of notions of admissibility, responsibility and safety in European asylum procedures illustrates a fragmented landscape, which raises critical protection concerns and often contradicts the vision of the latest proposals for reform of the Common European Asylum System.

The information provided in this update combines desk research, with emphasis on the findings of the latest update of AIDA country reports in 2015, as well as input from national experts in the countries concerned.<sup>8</sup> Information on the implementation of the relocation scheme in **Portugal**, a country not covered by AIDA, is provided through the support of the European Legal Network on Asylum (ELENA) Coordinator for Portugal.

The report is structured in two chapters:

- ❖ **Chapter I** discusses conceptual challenges related to the fragmentation and categorisation of asylum seekers into different asylum procedures, followed by a statistical overview of procedures, including the application of the Dublin system and relocation;
- ❖ **Chapter II** examines national asylum procedures on the practical application of admissibility, namely the criteria and processes underlying the “first country of asylum” and “safe third country” concepts, and provides an update on the implementation of the Dublin system and the emergency relocation scheme.

A final part draws conclusions and sketches out recommendations to European countries and EU institutions for the development of protective, streamlined asylum procedures in the EU and beyond.

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<sup>8</sup> A copy of the questionnaire circulated to experts for this Thematic Report can be found in [Annex IV](#).

## CHAPTER I: ASYLUM PROCEDURES IN TERMS AND FIGURES

### 1. Fragmenting and stereotyping the refugee

International protection, a predominantly legal concept entailing important legal entitlements for individuals and obligations for states, is underpinned by complex definitions under international law. Building on the refugee definition in Article 1A of the 1951 Refugee Convention, the EU's recast Qualification Directive defines persons eligible for international protection as including "refugees" on one hand, and "persons eligible for subsidiary protection" on the other.<sup>9</sup> Yet the process of ascertaining a person's international protection needs, requires a careful, individualised assessment of that person's predicament. For that purpose, the EU has established a set of rules and procedures governing international protection status determination in the recast Asylum Procedures Directive.<sup>10</sup>

Although the aim of the Common European Asylum System was streamlining the asylum process to achieve higher administrative efficiency in Member States, in practice the recast Asylum Procedures Directive has promoted further fragmentation of asylum procedures depending on the location – previous and current – of the applicant or the presumed content of his or her applicant. To illustrate, the recast Asylum Procedures Directive provides for the following types of procedures:

- (i) A regular asylum procedure to examine protection needs;<sup>11</sup>
- (ii) A "prioritised procedure" to examine protection needs of vulnerable or manifestly well-founded cases;<sup>12</sup>
- (iii) An "accelerated procedure" to examine protection needs of ostensibly unfounded or security-related cases;<sup>13</sup>
- (iv) An "admissibility procedure" which does not examine protection needs, for asylum seekers who may be the responsibility of another country or have lodged repetitive claims;<sup>14</sup>
- (v) A "Dublin procedure" which does not determine either protection needs or admissibility, for asylum seekers whose claims may fall under the responsibility of another EU Member State;<sup>15</sup> and
- (vi) A "border procedure" to speedily conduct admissibility or examine the merits under an accelerated procedure at borders or in transit zones.<sup>16</sup>

The fragmentation of the examination of claims into different procedures has relied upon often rudimentary categorisations of different asylum seekers.<sup>17</sup> Through the use of different procedural

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<sup>9</sup> Article 2(d) and (f) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of protection granted (recast), *OJ* 2011 L337/9. The Directive recast Council Directive 2004/83/EC.

<sup>10</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *OJ* 2013 L180/60. The Directive recast Council Directive 2005/85/EC.

<sup>11</sup> Article 31(1) recast Asylum Procedures Directive.

<sup>12</sup> Article 31(7) recast Asylum Procedures Directive.

<sup>13</sup> Article 31(8) recast Asylum Procedures Directive.

<sup>14</sup> Articles 33-34 recast Asylum Procedures Directive.

<sup>15</sup> This procedure is governed by a separate instrument, known as the Dublin Regulation: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanism 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 stateless person (recast), *OJ* 2013 L180/31.

<sup>16</sup> Article 43 recast Asylum Procedures Directive.

<sup>17</sup> See Cathryn Costello and Emily Hancox, 'The Recast Asylum Procedures Directive 2013/32: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee' in Vincent Chetail,

frameworks and presumptions, the recast Asylum Procedures Directive has enabled Member States to speed up the examination of individual claims for reasons of administrative convenience. Before ever interviewing individual applicants, national authorities may presume the admissibility and well-foundedness of their claim. If they come from a “safe third country” or a “first country of asylum”,<sup>18</sup> they can be presumed to be removable to those countries for want of admissibility, unless they prove otherwise. If they come from a “safe country of origin”,<sup>19</sup> it is their protection needs which are presumed to be absent, unless they prove otherwise.

In that sense, the fragmentation of asylum procedures has not only become a problem in itself, but has also served as a means towards an overall objective of deflection. Increasingly complex procedures and presumptions against applicants have allowed European countries to deflect responsibility for asylum seekers more easily and further away from their territory.

Over the past year, further nuances to the “refugee” definition have been carved by the EU in a more recent trend of procedural fragmentation. The notion of “person in clear need of international protection” has been introduced in the European Commission’s policy discourse<sup>20</sup> and codified in the emergency Relocation Decisions adopted in September 2015,<sup>21</sup> without ever having been legally defined. As far as the Relocation Decisions are concerned, the “clear need of international protection” criterion is fulfilled by nationalities which benefit from a 75% or higher EU-wide average recognition rate,<sup>22</sup> thereby appearing as an over-simplified and somewhat circular interpretation of refugeehood. To be in clear need of international protection, one must belong to a nationality group which is accepted by the majority of Member States as qualifying as such. Equally opaque is the concept of “reasonable likelihood of being granted international protection”, referred to by the Commission in its Communication of 6 April 2016 on the reform of the Common European Asylum System.<sup>23</sup> This term seems to connote a broader category of asylum seekers than the “clear need of international protection” class, which would include all individuals who come from countries other than designated “safe countries of origin”.<sup>24</sup>

### The Dutch “Five Tracks” policy

One illustrative example of fragmentation of asylum procedures can be found in the **Netherlands**, where a “Five Tracks” policy was introduced by the Secretary of State as of 1 March 2016,<sup>25</sup> delimitating five separate procedures for different categories of asylum seekers:

- |                |   |
|----------------|---|
| <b>Track 1</b> | The Immigration and Naturalisation Service (IND) deems that the application falls within the scope of the Dublin Regulation and channels it into the Dublin procedure.  |
| <b>Track 2</b> | Procedure for asylum seekers coming from “safe countries of origin” or who already benefit from protection in another Member State. This procedure usually lasts less than 8 days and, by way of derogation to the general procedural rules, does not include a rest and preparation period or a medical examination. |

Philippe de Bruycker and Francesco Maiani (eds), *Reforming the Common European Asylum System: The New European Refugee Law* (Martinus Nijhoff 2015).

<sup>18</sup> Articles 38 and 35 recast Asylum Procedures Directive.

<sup>19</sup> Articles 36-37 recast Asylum Procedures Directive.

<sup>20</sup> See e.g. European Commission, *European Agenda on Migration*, COM(2015) 240, 13 May 2015, 4.

<sup>21</sup> Council Decisions (EU) 2015/1523 of 14 September 2015 and 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015 L239/146 and L248/80.

<sup>22</sup> For a discussion, see AIDA, *Common asylum system at a turning point: Refugees caught in Europe’s solidarity crisis*, Annual Report 2014/2015, 42.

<sup>23</sup> European Commission, *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*, COM(2016) 197, 6 April 2016, 8.

<sup>24</sup> *Ibid*, 8, fn. 19.

<sup>25</sup> Besluit van de Staatssecretaris van Veiligheid en Justitie van 26 februari 2016, nummer WBV 2016/4, houdende wijziging van de Vreemdelingencirculaire 2000, available in Dutch at: <https://goo.gl/ozlWaL>.

<b>Track 3</b>	Procedure for manifestly well-founded cases such as specific nationalities. This procedure has not yet been applied.
<b>Track 4</b>	Regular procedure, lasting in principle 8 days. Where the claim cannot be examined within the deadline, the application can be examined under the extended procedure which lasts 6 months, subject to a possibility of extension by a further 9 months. <sup>26</sup>
<b>Track 5</b>	Procedure for applicants who would fall under “Track 3” but do not hold documents to substantiate their identity or nationality. Similar to “Track 3”, this procedure has not been applied in practice either.

Though both the 1951 Refugee Convention and the EU Charter of Fundamental Rights enjoin states to treat all refugees equally, regardless of their country of origin,<sup>27</sup> recent practice has seen crude procedural distinctions and discrimination between nationalities taking stronger and more explicit forms than in the past.<sup>28</sup> This over-simplification of refugee status determination has had the effect of underplaying the complexities of the asylum process, and of who should get protection and who should not. This ill-founded conception underlies recent policy and legislative initiatives in the EU. The “hotspot” approach implemented in **Greece** and **Italy** rests on the assumption that national authorities and assisting EU Agencies present in border locations are able to quickly and accurately separate those who are in need of international protection from those who ought to be returned. As further discussed in this report, this increases the risk of standardised and poorly motivated decisions, as well as risks of *refoulement*. When applied in practice, however, this filtering process can be simplistic and misleading. In **Italy**, for instance, asylum seekers entering “hotspots” are given a brief questionnaire and asked to tick between boxes entitled “occupation”, “to join relatives”, “escaping poverty” or “asylum”.<sup>29</sup> Officials determine whether a person is to be channelled into the asylum procedure or to be returned on the basis of this questionnaire.<sup>30</sup>

Moreover, the proposed reform of the Dublin Regulation,<sup>31</sup> tabled by the Commission on 4 May 2016, entrusts Member States situated at the external borders with the responsibility to filter out persons coming from a “first country of asylum”, a “safe third country” or a “safe country of origin”, along with security risks, before triggering the mechanism allocating responsibility across the EU. As explained in the Commission’s proposal for an Asylum Procedures Regulation,<sup>32</sup> submitted on 13 July 2016 with the aim of replacing the current Directive with a more harmonised “common procedure for international protection in the Union”, the assessment of admissibility would have to be conducted within ten working days by the external border countries.<sup>33</sup>

In sum, the vision of a single, non-discriminatory asylum procedure treating all applicants equally seems to yield to a complex, fragmented and bureaucratic reality. Throughout its development, the Common European Asylum System entrenches different categories of refugees and different procedures for their treatment, often more straightforward on paper than in practice.

<sup>26</sup> The maximum duration of the extended procedure was raised from 6 to a total of 15 months due to the large number of arrivals in the Netherlands: See Besluit van de Staatssecretaris van Veiligheid en Justitie van 9 februari 2016, nummer WBV 2016/3, houdende wijziging van de Vreemdelingenverordening 2000, available in Dutch at: <https://goo.gl/2nuApu>.

<sup>27</sup> Article 3 Refugee Convention; Article 21 EU Charter of Fundamental Rights.

<sup>28</sup> On similar practices in the area of reception, see AIDA, *Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe*, March 2016, available at: <http://goo.gl/MmYyaJ>, 39-40.

<sup>29</sup> For the questionnaire distributed to asylum seekers in the Italian hotspots, see <http://goo.gl/ok4eZb>.

<sup>30</sup> On the procedures in Italian “hotspots”, see e.g. ASGI, *Il diritto negato: dalle stragi in mare agli hotspot*, January 2016, available in Italian at: <http://goo.gl/D0oBll>.

<sup>31</sup> European Commission, *Proposal for a [Dublin IV Regulation]*, COM(2016) 270, 4 May 2016, Article 3(3).

<sup>32</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU* (hereafter “proposal for an Asylum Procedures Regulation”), COM(2016) 467, 13 July 2016.

<sup>33</sup> Article 34(1) proposal for an Asylum Procedures Regulation.

## 2. Procedures in numbers: key asylum statistics for 2016

### 2.1. Applications and asylum procedures

While 2015 was marked as a key year in Europe's response to the plight of refugees, with 1.3 million asylum applications made in EU Member States, 2016 seems to indicate a significant decrease in the number of persons seeking protection in the continent. The European Asylum Support Office (EASO) reports more than 632,000 asylum applications in the 28 EU Member States, Switzerland and Norway,<sup>34</sup> several countries such as **Sweden** have received lower numbers of asylum seekers compared to 2015. The following table, elaborated upon in [Annex II](#), shows the number of asylum applicants registered in AIDA countries during the first half of the year, with the overwhelming majority of asylum seekers being recorded in **Germany**:



Conversely, statistical information on the asylum procedure in **Turkey** continues to be highly limited. As the Directorate-General for Migration Management (DGMM) has not made data on international protection applications and decisions available,<sup>35</sup> the only available statistics are the “active caseload” figures of the United Nations High Commissioner for Refugees (UNHCR). During the first half of the year, UNHCR had an active caseload of 271,466 persons.<sup>36</sup> However, information made available by the European Commission suggested a backlog of 141,530 pending international protection applications at the beginning of April 2016.<sup>37</sup> DGMM has committed to taking a proactive approach aimed at eliminating this backlog, which has raised concerns among civil society organisations as it risks compromising the quality of decision-making by the newly established Turkish asylum authority.<sup>38</sup>

<sup>34</sup> EASO, *Latest asylum trends – June 2016*, available at: <http://goo.gl/uuQtDr>.

<sup>35</sup> Information provided by Refugee Rights Turkey, 30 August 2016.

<sup>36</sup> UNHCR Turkey, *Monthly statistics 2016*, available at: <http://goo.gl/hqpmc0>.

<sup>37</sup> European Commission, *Third report on progress by Turkey in fulfilling the requirements of its visa liberalisation roadmap*, COM(2016) 278, 4 May 2016, 9.

<sup>38</sup> Information provided by Refugee Rights Turkey, 30 August 2016.

Limited data is available on the use of special asylum procedures so far in 2016. The use of accelerated procedures, or procedures with similar purpose aimed at processing manifestly unfounded caseloads, in selected European countries is indicated below:

Use of the accelerated procedure in selected countries: 1 January – 30 June 2016				
*	Type of accelerated procedure	Applicants in accelerated procedure	Total applicants	Percentage
BG	Accelerated procedure	118	7,845	1.5%
ES	Urgent procedure <sup>39</sup>	1,536	7,251	21.2%
HR	Accelerated procedure	20	639	3.1%
IE	s. 12 Refugee Act 1996 Directive	38	994	3.8%
PL	Accelerated procedure	96	6,997	1.4%
SE	Manifestly unfounded procedure	1,044	15,488	6.7%
UK	Certified refusal	1,404	16,038	8.7%
CH	Fast-track procedure, 48-hour procedure, Testphase	3,886	14,277	27.2%

Source: Bulgarian Helsinki Committee; Spanish Office for Asylum and Refuge; Croatian Law Centre; Irish Refugee Council; aditus foundation / JRS Malta; Helsinki Foundation for Human Rights; FARR; UK Home Office; Swiss SEM.

In countries where accelerated procedures have been recently introduced, precise figures are not available. In **Germany**, the accelerated procedure established in March 2016 is only carried out in two branches of the Federal Office for Migration and Refugees (BAMF) in Manching/Ingolstadt and Bamberg, Bavaria at the moment,<sup>40</sup> and these likely concerned a limited number of applicants.<sup>41</sup> On the other hand, in **Italy**, the use of the recently introduced accelerated procedure<sup>42</sup> in practice is not always clear, thereby hindering the collection of reliable data. As the law does not clarify at what point the procedure may be declared accelerated, in several regions, asylum seekers whose claims have been rejected as manifestly unfounded or subsequent are only informed that they were subject to the accelerated procedure upon notification of the negative decision.<sup>43</sup>

As regards first instance decisions on asylum applications, the rate of inadmissibility decisions among negative decisions is not available in all countries. Limited information is available for the following countries in the first half of 2016:

Use of inadmissibility in selected countries: 1 January – 30 June 2016			
*	Inadmissibility decisions	Total negative decisions	Percentage
BE	1,356	4,749	28.5%
ES	:	1,310	2%
HR	13	70	18.6%

<sup>39</sup> This is a prioritised procedure as it does not entail lower procedural guarantees for the applicant: AIDA Country Report Spain, April 2016, 17.

<sup>40</sup> Information provided by Informationsverbund Asyl und Migration, 24 August 2015, following email correspondence with BAMF on 28 July 2016 and 19 August 2016.

<sup>41</sup> The “combined reception and return centre” in Bamberg, with a capacity of 1,500 persons, was only hosting 266 asylum seekers on 15 August 2016: Regional Government of Oberfranken, ‘Aufnahmeeinrichtung Oberfranken’, available in German at: <http://goo.gl/maFzPT>.

<sup>42</sup> The accelerated procedure was introduced by Legislative Decree 142/2015 in September 2015.

<sup>43</sup> Information provided by ASGI, 22 August 2016.

MT	71	157	45.2%
PL	423	1,095	38.6%
CH	2,006	7,004	28.6%
SR	23	54	42.6%

Source: Ruben Wissing; Spanish Office for Asylum and Refuge; Croatian Law Centre; Helsinki Foundation for Human Rights; Swiss SEM; Belgrade Centre for Human Rights.

The overview above reveals an important gap in data collection as regards the application of accelerated and admissibility procedures. For the vast majority of Member States, disaggregated data on the use of accelerated or equivalent procedures or the various admissibility grounds are not available. Yet the mandatory use of inadmissibility grounds such as the “safe third country” and “first country of asylum” concepts figures among the key objectives of the Commission’s proposal for the reform of asylum procedures.

## 2.2. The Dublin procedure

Statistics on the application of the Dublin procedure remain highly scarce in Europe,<sup>44</sup> despite clear obligations on Member States to provide data to Eurostat under the Migration Statistics Regulation.<sup>45</sup> To illustrate, the EASO Annual Report 2015, published in July 2016, only contained Dublin statistics on 16 out of the 32 countries operating the Dublin system.<sup>46</sup> **Switzerland** remains the only country which proactively publishes Dublin statistics in its national statistical reports. This welcome practice allows for clear information on the country’s use of the Dublin procedure.

In **Germany**, by far the main operator of the Dublin system in Europe, detailed information on the application of the Regulation has been made available through parliamentary requests. Following an information request by the “Left” (*Die Linke*) party, the authorities have disclosed statistics on the Dublin procedure in the first half of the year.<sup>47</sup> On the other hand, data on the functioning of the Dublin Regulation in the first half of 2016 has been made available by some national authorities for the purpose of this Thematic Report.<sup>48</sup>

For other countries such as **Austria**, only piecemeal information has been made available by media outlets on the functioning of the Dublin system.<sup>49</sup> Der Standard reported that, out of approximately 25,000 asylum seekers arriving in the country, 13,500 had already been registered in another Member State, and more than 5,000 had been registered in Hungary.<sup>50</sup> With regard to returns, Die Presse mentioned on 2 June 2016 that, so far in the year, only 554 persons had been returned to other countries under the Regulation.<sup>51</sup>

The limited available information on the use of the Dublin Regulation in the first half of the year shows the following trends:

<sup>44</sup> For a discussion, see ECRE, *Asylum Statistics in the European Union: A Need for Numbers*, AIDA Legal Briefing No 2, August 2015.

<sup>45</sup> Regulation (EC) No 862/2007 of 11 July 2007 on Community statistics on migration and international protection, OJ 2007 L199/23.

<sup>46</sup> EASO, *Annual Report on the situation of asylum in the European Union 2015*, July 2016, 27.

<sup>47</sup> Federal Government of Germany, *Response to information request by the parliamentary group “Die Linke”*, No 18/9145, 17 August 2016, available in German at: <http://goo.gl/vaGg7L>.

<sup>48</sup> For more information, see Annex III.

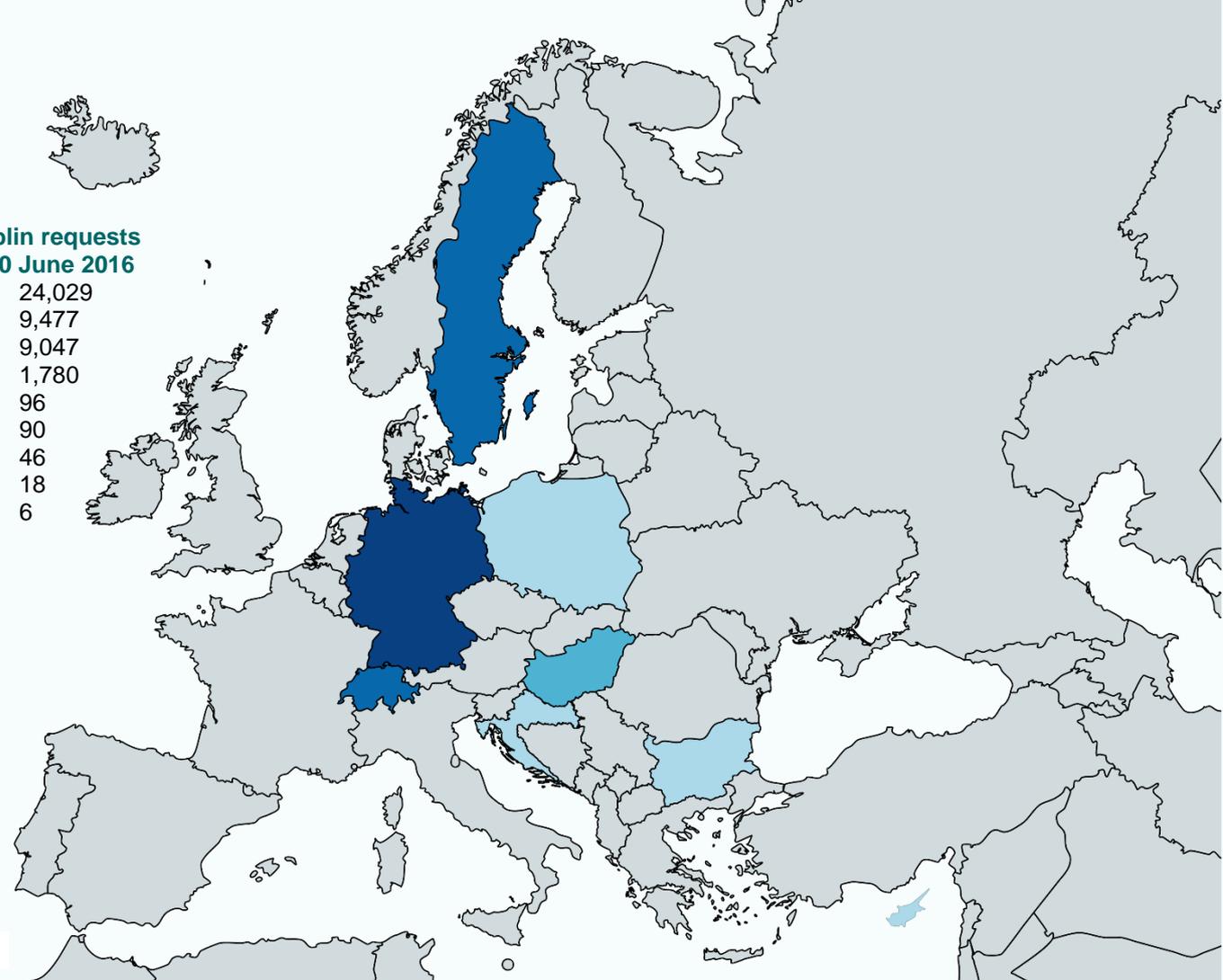
<sup>49</sup> The Austrian Ministry of Interior was not able to provide the requested data on the Dublin system.

<sup>50</sup> Die Standard, ‘Rückschiebungen nach Ungarn mühevoll’, 28 July 2016, available in German at: <http://goo.gl/4p0w8e>.

<sup>51</sup> Information provided by Asylkoordination Österreich, 19 August 2016. See Die Presse, ‘Flüchtlinge: Notverordnung wird die nächste Hürde’, 2 June 2016, available in German at: <http://goo.gl/lm31h7>.

### Outgoing Dublin requests 1 January – 30 June 2016

Germany	24,029
Sweden	9,477
Switzerland	9,047
Hungary	1,780
Poland	96
Cyprus	90
Malta	46
Croatia	18
Bulgaria	6



In the first half of 2016, Dublin transfers have continued to be significantly lower than the number of requests issued by European countries, yet with substantial improvements compared to the ratio of transfers per outgoing requests reported in 2015; with the exception of **Hungary**.<sup>52</sup> The main countries for which Dublin data is available performed the following transfers during this period:

Outgoing Dublin requests and transfers in selected countries: 1 January – 30 June 2016				
*	Outgoing requests	Outgoing transfers	Rate first half 2016	Rate 2015
DE	24,029	1,777	7.4%	4.4%
SE	9,477	2,983	31.5%	17.4%
CH	9,047	2,217	24.5%	14.1%
HU	1,780	82	4.6%	11.8%
PL	96	44	45.8%	7.5%
BG	6	5	83.3%	24.2%

These limited figures therefore seem to indicate a more efficient use of the Dublin procedure in 2016 compared to the previous year. Overall, however, the number of effected Dublin transfers remains low compared to the number of procedures initiated by asylum authorities and the costs entailed for both European countries and asylum seekers throughout the Dublin procedure.

<sup>52</sup> See Eurostat, [migr\\_dubro](#) and [migr\\_dubto](#). Information on Hungary's use of the Dublin procedure in 2015, with 517 outgoing requests and 61 transfers, was provided by the Hungarian Helsinki Committee.



IT	x	x	x	x	x
MT	√	√	√	√	√
NL	x	√	√	√	x
PL	√	√	x	√	√
SE	x	x	x	x	x
UK	x	x	√	x	x
CH	-	x	√	x <sup>59</sup>	x
SR	-	√	√	x	x
TR	-	√	√	√	√

Source: AIDA Country Reports. x: not applicable; √: applicable.

The overview of national legislative frameworks reveals considerable disparities in the way admissibility criteria have been incorporated in domestic asylum systems. The majority of countries have not transposed the inadmissibility ground relating to applications by dependants, while a significant number of countries have not introduced the notion of “first country of asylum” (**Austria**,<sup>60</sup> **Belgium**,<sup>61</sup> **Bulgaria**, **Italy**, **Sweden**, **UK**, **Switzerland**) or “safe third country” (**Belgium**,<sup>62</sup> **France**, **Ireland**, **Italy**, **Poland**). In **Sweden**, the “safe third country” concept is provided in law as a ground for rejecting an application,<sup>63</sup> even though the country does not have an admissibility procedure. The diversity of legislative frameworks in relation to admissibility grounds is particularly important, given the European Commission’s proposal for mandatory admissibility procedures under the Asylum Procedures Regulation, whereby Member States would be obliged not to examine asylum applications on the merits where the above grounds are applicable.<sup>64</sup>

The following section makes specific reference to the two grounds enabling states to dismiss claims where an applicant has either received protection in a third country and may access it again (“first country of asylum”) or is able to receive it there (“safe third country”). In both cases, responsibility for the asylum seeker can be transferred to a third country.

#### a. *First country of asylum*

Under Article 35 of the recast Asylum Procedures Directive, the concept of “first country of asylum” entails that an asylum seeker has obtained refugee status in a third country and may avail him or herself of this protection, or “otherwise enjoys sufficient protection in that country”. The Directive also enables Member States to take into account the criteria relating to “safe third countries”, which include the possibility for an individual to request and receive protection in accordance with the Refugee Convention.<sup>65</sup>

Four countries using this concept as an inadmissibility ground (**France**, **Spain**, **Croatia** and **Hungary**) expressly require the applicant to be recognised as a refugee and to be able to benefit from that protection.<sup>66</sup> In **France**, the Council of State has detailed the need for such protection to be “effective”,

<sup>59</sup> However, subsequent applications within 5 years must be made in writing and with reasoning. Unfounded applications or repeated applications with the same reasoning will be dismissed without a formal decision, without access to an effective remedy.

<sup>60</sup> Article 4a of the Austrian Asylum Act applies the concept only to EEA countries.

<sup>61</sup> Under a draft amendment to the Belgian Aliens Act, this will be introduced as a ground for inadmissibility.

<sup>62</sup> Under a draft amendment to the Belgian Aliens Act, this will be introduced as a ground for inadmissibility.

<sup>63</sup> Chapter 5, Section 1(b) Swedish Aliens Act, as amended on 1 January 2010.

<sup>64</sup> Article 36(1) proposal for an Asylum Procedures Regulation. Note that the ground related to an applicant having obtained protection in another Member State is incorporated in the proposal for a Dublin IV Regulation.

<sup>65</sup> Article 38(1)(e) recast Asylum Procedures Directive, cited in Article 35.

<sup>66</sup> Article L723-11 French Ceseda; Article 20(1) Spanish Asylum Law; Article 43(1) Croatian Law on International and Temporary Protection; Section 51(2) Hungarian Asylum Act. Note that **Ireland** has a

although further guidance on the meaning of effective protection has only been provided in respect of protection provided by another EU Member State.<sup>67</sup> Conversely, **Greece** previously provided that the “first country of asylum” must satisfy the cumulative criteria of the “safe third country” concept,<sup>68</sup> but removed this requirement in April 2016, with likely support from the European Commission.<sup>69</sup> **Serbia** has a provision resembling the “first country of asylum” in its national law,<sup>70</sup> but has not applied it in practice.<sup>71</sup> **Turkey** has equally not applied the concept in practice to date.<sup>72</sup>

**Germany**, on the other hand, does not specifically refer to the notion of “first country of asylum”. However, an amendment of the Asylum Act entering into force on 6 August 2016 refers to the possibility of dismissing an asylum application as inadmissible if the applicant may be readmitted to “another third country” (“*sonstiger Drittstaat*”) in which he or she has been safe from persecution.<sup>73</sup>

Finally, **Belgium** considers the “first country of asylum” a ground for declaring an application unfounded on the merits, in anticipation of a legislative reform which will introduce the concept as an inadmissibility ground. In current practice, the Belgian Commissioner-General for Refugees and Stateless Persons (CGRS) has applied the concept in the case of Syrian refugees who had a residence permit and sufficient socioeconomic opportunities in a country in the region and could be returned there.<sup>74</sup>

With regard to the “first country of asylum” concept, the Commission proposal for an Asylum Procedures Regulation contains important changes with respect to the criteria to be complied with in the third country concerned. In order to assess whether an applicant “otherwise has enjoyed sufficient protection” in a first country of asylum, the proposal now requires the determining authority to assess the level of protection in the country concerned against the same criteria applicable to safe third countries, whereas this is currently optional for Member States.<sup>75</sup> Furthermore, in addition to compliance with these criteria, the concept of “sufficient protection” requires the determining authority to satisfy itself that there is access to the labour market, reception facilities, healthcare and education,<sup>76</sup> as well as a right to family reunification in accordance with international human rights standards.<sup>77</sup> While the inclusion of access to basic socio-economic rights as well as the right to family reunification increase the threshold for considering countries as first countries of asylum, the mandatory nature of the concept in the Commission proposal risks having important adverse effects on access to the asylum procedure in the EU, as it will require a number of Member States to reject applications as inadmissible on the basis of a concept which is currently unknown in their national practice. Secondly, the Commission proposal sets a lower threshold with respect to the status the applicant must have received in the first country or asylum, compared with the current recast Asylum Procedures Directive. Whereas the latter requires that the applicant has been recognised “as a refugee” in the country concerned, according to Article

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similar provision in s. 17(4) of the current applicable Refugee Act 1996, which does not frame the concept as an inadmissibility ground.

<sup>67</sup> French Council of State, *OFPR c. M.S.*, Judgment No 369021 B, 17 June 2015, available in French at: <http://goo.gl/jWDVzQ>.

<sup>68</sup> Article 19 Greek Presidential Decree 113/2013.

<sup>69</sup> Article 55 Greek Law 4375/2016, repealing Presidential Decree 113/2013. See European Commission, *Implementing the EU-Turkey Statement*, 20 March 2016, on file with the author. Part IV Legal Preconditions includes the following reference: “Greece needs to [...] amend its legislation to ensure that the safeguards under Article 38(1) Asylum Procedures Directive are not compulsory for applying the First Country of Asylum.”

<sup>70</sup> Article 31(1)(2) Serbian Asylum Act.

<sup>71</sup> Information provided by the Belgrade Centre for Human Rights, 15 July 2016.

<sup>72</sup> Information provided by Refugee Rights Turkey, 30 August 2016.

<sup>73</sup> Section 27 German Asylum Act, as amended on 6 August 2016.

<sup>74</sup> Information provided by Ruben Wissing, 24 August 2016, citing Myria, *Verslag contactvergadering Asiel*, 19 April 2016, available in Dutch at: <http://goo.gl/WTrt5a>, 9.

<sup>75</sup> With the exception of the “possibility to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention”. The remaining four criteria listed in Article 38(1) are copy/pasted in proposed Article 44(2).

<sup>76</sup> Article 44(2)(f) proposal for an Asylum Procedures Regulation.

<sup>77</sup> Article 44(2)(g) proposal for an Asylum Procedures Regulation.

44(1)(a) of the Commission proposal the applicant must have enjoyed “protection in accordance with the Geneva Convention”. This is further defined in the preamble as requiring protection “in accordance with the substantive standards of the Geneva Convention.”<sup>78</sup> This reflects, albeit implicitly, the contested position of the Commission that protection in accordance with the Refugee Convention can be granted to a person without necessarily recognising him or her as a refugee.

### *b. Safe third country*

The concept of “safe third country” existed as a procedural tool used to dismiss asylum applications long before the harmonisation of protection standards in the EU.<sup>79</sup> As far as transfers to non-EU Member States are concerned,<sup>80</sup> however, the majority of European countries have not systematically used the “safe third country” notion to declare applications inadmissible in practice, despite its incorporation in their legislative frameworks. For instance, **Switzerland** and **Germany** have lists of safe third countries, which however only include countries applying the Dublin Regulation.<sup>81</sup> Moreover, the **UK** uses the concept on a case-by-case basis but a Home Office policy mentions the United States, Canada and Switzerland as examples of countries where it has been applied.<sup>82</sup> A notable exception is **Serbia**, where the Asylum Office has dismissed applications on the basis of a list of safe third countries, adopted in 2009,<sup>83</sup> which includes Turkey and the Former Yugoslav Republic of Macedonia (FYROM) among others.<sup>84</sup> This automatic application of the “safe third country” concept has been criticised by UNHCR and other organisations.<sup>85</sup>

However, over the past year the use of the “safe third country” concept has been reinvigorated with the aim of deflecting larger numbers of arriving asylum seekers in countries situated at the external borders of the EU. **Hungary** introduced a list of safe third countries in July 2015, including Serbia, FYROM and Kosovo among others,<sup>86</sup> and has since resorted to a blanket application of the concept in respect of **Serbia**, which has been heavily criticised for disregarding fundamental rights and crucial protection guarantees in the asylum process.<sup>87</sup> The Hungarian list of safe third countries was subsequently amended to include **Turkey**.<sup>88</sup>

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<sup>78</sup> Recital 36 proposal for an Asylum Procedures Regulation.

<sup>79</sup> See e.g. Rosemary Byrne and Andrew Shacknove, ‘The Safe Country Notion in European Asylum Law’ (1996) 9 Harvard Human Rights Journal 185; Cathryn Costello, ‘The European asylum procedures directive in legal context’, UNHCR Working Paper No 134, November 2006. In an EU context, UNHCR research on the transposition and application of the 2005 Asylum Procedures Directive in 12 EU Member States in 2010, revealed that only in two Member States, the United Kingdom and Spain, the concept had any meaningful practical significance, whereas it was “very rarely applied in the 15 other Member States not of focus of this research”, leading to the conclusion that Article 27 of the 2005 Asylum Procedures Directive “appears largely superfluous”: UNHCR, *Improving Asylum Procedures. Comparative analysis and recommendations for law and practice. Study on Asylum Procedures*, March 2010, 60.

<sup>80</sup> The Dublin system embodies the “safe third country” concept in respect of EU Member States. For an overview of recent practice in this context, see Section 2 below.

<sup>81</sup> Information provided by Informationsverbund Asyl und Migration, 24 August 2016; Swiss Refugee Council, 19 August 2016.

<sup>82</sup> UK Home Office, *Safe Third Country Cases*, available at: <http://goo.gl/e0gM7L>, Section 7.

<sup>83</sup> Serbian Decision Determining the List of Safe Countries of Origin and Safe Third Countries, Official Gazette of the Republic of Serbia, no. 67/2009.

<sup>84</sup> AIDA Country Report Serbia, March 2016, 24.

<sup>85</sup> *Ibid*, citing UNHCR, *Serbia as a country of asylum*, August 2012, 12; Committee against Torture (CAT), *Concluding observations on the second periodic report of Serbia*, 3 June 2015, para 15.

<sup>86</sup> Hungarian Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries.

<sup>87</sup> For an overview, see AIDA Country Report Hungary: Fourth Update, November 2015, 43-45; ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015; UNHCR, *Hungary as a country of asylum*, May 2016.

<sup>88</sup> Information provided by the Hungarian Helsinki Committee, 16 August 2016.

The situation in **Greece** in 2016 is less straightforward. The implementation of the EU-Turkey deal agreed on 18 March 2016,<sup>89</sup> entailing the return of all irregular migrants entering the Greek islands to Turkey, has relied upon the ability of the Greek Asylum Service to presume Turkey as a “safe third country” with a view to dismissing the applications of those entering its territory from Turkey as inadmissible. Though Greek law does not set out a list of safe third countries,<sup>90</sup> contrary to **Serbia** or **Hungary**, applications have been declared inadmissible at first instance on the basis that Turkey satisfies the safety criteria. On appeal, these inadmissibility decisions were deemed incompatible with the asylum *acquis*, as the majority of Appeals Committees found Turkey not to qualify as a “safe third country”.<sup>91</sup> The composition of these Appeals Committees was modified in June 2016, therefore it remains to be seen whether the same interpretation will be followed.<sup>92</sup>

Two central conditions of the “safe third country” concept concern the requisite level of protection in the third country, on one hand, and the necessary connection between the individual asylum seeker and that country on the other. The interpretation of these elements in European practice is sketched out below, followed by an overview of practice relating to procedural guarantees attached to the “safe third country” concept.

#### *The safety criteria: level of protection*

The criteria relating to the “safe third country” presumption have raised further questions in the recent implementation of the concept in Europe. One contentious criterion concerns the possibility for an applicant “to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.”<sup>93</sup> This does not seem to be rigorously interpreted by all countries, however. For example, in a pending case before the European Court of Human Rights (ECtHR), **Hungary** maintained the position that its commitments under the Refugee Convention are honoured insofar as the “safe third country” does not expose the asylum seeker to direct or indirect *refoulement*, regardless of the content and level of protection available to him or her there.<sup>94</sup>

According to the European Commission, protection in accordance with the Convention may be available in a third country even where that country applied geographical limitations to the Convention.<sup>95</sup> **Hungary** and **Greece** have not opposed this line of reasoning, as the former includes Turkey on its list and the latter assesses whether Turkey can be considered a “safe third country” for specific nationals despite its geographical limitation to the Convention.<sup>96</sup> The **Netherlands**, which applies the concept on a case-by-case basis, does not expressly require the ratification of the Refugee Convention without geographical limitation as a condition for applying the concept either.<sup>97</sup>

Conversely, in **Switzerland**, the Asylum Appeals Commission, preceding the Federal Administrative Court, has ruled that a person cannot find actual protection in a country that only applies the Refugee

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<sup>89</sup> European Council, *EU-Turkey statement*, 18 March 2016, available at: <http://goo.gl/reBVOt>.

<sup>90</sup> Article 56 Greek Law 4375/2016 only defines the concept of “safe third country”.

<sup>91</sup> Greek Council for Refugees, ‘Ελπιδοφόρος η έκδοση της πρώτης θετικής απόφασης των Επιτροπών Προσφυγών επί του παραδεκτού του αιτήματος ασύλου υπηκόου Συρίας, μετά τη Συμφωνία ΕΕ – Τουρκίας’, 22 May 2016, available at: <http://goo.gl/j2E3VF>; ProAsyl, ‘Appeals Committee on Lesbos stops deportations to Turkey’, 1 June 2016, available at: <https://goo.gl/mbvXVI>. See also European Commission, *Second Report on the progress made in the implementation of the EU-Turkey statement*, COM(2016) 349, 15 June 2016, 6.

<sup>92</sup> AIDA, ‘Greece: Appeal rules amended after rebuttal of Turkey’s safety’, 16 June 2016, available at: <http://goo.gl/Gxf9Mk>.

<sup>93</sup> Article 38(1)(e) recast Asylum Procedures Directive.

<sup>94</sup> See the observations of the Hungarian Government in ECtHR, *Ilias and Ahmed v. Hungary*, Application No 47287/15.

<sup>95</sup> European Commission, *On the State of play of Implementation of Priority Actions under the European Agenda on Migration*, COM(2016) 85, 10 February 2016, 18.

<sup>96</sup> Information provided by the Greek Council for Refugees, 5 August 2016.

<sup>97</sup> Information provided by the Dutch Council for Refugees, 18 August 2016.

Convention to European refugees.<sup>98</sup> Likewise in **Serbia**, which requires the “safe third country” to satisfy the requirements of the Refugee Convention, several second-instance decisions by the Asylum Commission have rebutted the presumption in respect of Turkey due to its geographical limitation to the Refugee Convention, though Turkey has not been removed from the list of safe third countries.<sup>99</sup>

The Commission proposal for an Asylum Procedures Regulation confirms a restrictive trend as regards the threshold of requisite protection available to the applicant in a “safe third country”, as the concept no longer requires the possibility to be recognised as a refugee. The proposal refers to the possibility to “receive protection in accordance with the substantive standards of the Geneva Convention or sufficient protection as referred to in [the first country of asylum concept], as appropriate.”<sup>100</sup> This illustrates the abovementioned but highly contested position of the Commission that ratification of the Refugee Convention without geographical limitation to the Convention is not a precondition to the application of the “safe third country” concept.

The normative importance of the Refugee Convention as a threshold of protection in safe third countries ensures that applications are deemed inadmissible, at least in theory, as long as an asylum seeker may benefit from protection according to internationally acceptable standards. However, this guarantee is jeopardised by the Commission’s reasoning, which suggests that a person may be returned to a “safe third country” insofar as he or she may access Convention protection “or sufficient protection” which may fall below that standard.<sup>101</sup> The proposed EU reform of asylum procedures therefore distances the Common European Asylum System from its promise to faithful adherence to the Refugee Convention,<sup>102</sup> by obliging Member States to dismiss asylum claims on the ground that applicants may seek – potentially lower – protection elsewhere.

#### *The safety criteria: sufficient connection*

The recast Asylum Procedures Directive also requires Member States to establish “rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country”,<sup>103</sup> in an effort to curtail risks of automatic application of the concept to declare asylum claims inadmissible. In the context of the EU-Turkey deal, however, the European Commission has set a particularly low threshold with regard to the requisite degree of connection which would make asylum seekers’ return to said third countries reasonable. As explained in a letter addressed to the Greek Ministry of Interior on 5 May 2016, the Commission deems the mere transit through a third country sufficient to satisfy the requirement of such a connection;<sup>104</sup> contrary to submissions in that letter, this position has not been publicly put forward by the Commission.<sup>105</sup> On the

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<sup>98</sup> Swiss Asylum Appeals Commission, Decisions EMARK 2000/10 and 2001/14: Information provided by the Swiss Refugee Council, 19 August 2016.

<sup>99</sup> Information provided by the Belgrade Centre for Human Rights, 15 July 2016.

<sup>100</sup> Article 45(1)(e) proposal for an Asylum Procedures Regulation.

<sup>101</sup> Article 45(1)(e) proposal for an Asylum Procedures Regulation, citing Article 44(2).

<sup>102</sup> Article 78(1) Treaty on the Functioning of the European Union.

<sup>103</sup> Article 38(2)(a) recast Asylum Procedures Directive.

<sup>104</sup> European Commission, *Letter of Director-General for Migration and Home Affairs, Matthias Ruete, to the Secretary-General of the General Secretariat for Population and Social Cohesion, Ministry of Interior of Greece*, Ares(2016)2149549, 5 May 2016, 2.

<sup>105</sup> The letter mentions European Commission, *Next operational steps in EU-Turkey cooperation in the field of migration*, COM(2016) 166, 16 March 2016, 3, which however contains no reference to the criterion of sufficient connection to Turkey. A Commission Communication of 2 February 2016 states, without further argumentation, that it is not required for the safe third country to have ratified the 1951 Refugee Convention without geographical limitation. With respect to the connection requirement it mentions that “it can also be taken into account whether the applicant has transited through the safe third country in question, or whether the third country is geographically close to the country of origin of the applicant”, without, however, submitting that this is sufficient to comply with Article 38(2) recast Asylum Procedures Directive. See European Commission, *Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration*, COM(2016) 85, 2 February 2016, 18.

other hand, the assumption that a person's transit through a country suffices as a connection with that country is opposed by UNHCR and non-governmental organisations.<sup>106</sup>

The **Netherlands** provides that a special connection ("*zodanige band*") with the third country exists where the applicant has a spouse or partner who holds the country's nationality, has a family member residing in the country with whom he or she is still in contact, or has stayed in that country.<sup>107</sup> The readmission of the person to the third country must also be guaranteed. In practice, mere transit from a country has not been deemed sufficient to fulfil the sufficient connection criterion to date.<sup>108</sup> The Administrative High Court and Constitutional Court of **Austria** have also ruled – in pre-2004 accession cases where the concept was relevant – that transit or stay in a third country is not sufficient to trigger the "safe third country" concept.<sup>109</sup> In the same strand, **Bulgaria** requires prolonged stay or residence to determine a "safe third country" and does not deem transit a sufficient connection.<sup>110</sup> As far as **Sweden** is concerned, the Migration Court of Appeal has held that residence in a third country is not necessary for the concept to be applied, as long as the applicant has a connection to the country that would make return thereto reasonable.<sup>111</sup> The connection criterion is rigorously assessed however: the court has found ethnicity and mother tongue to be insufficient evidence *per se* of such bond, even where the applicant's ethnicity would facilitate the acquisition of citizenship in the third country.<sup>112</sup>

**Greece** has not laid down provisions on the assessment of the criterion of sufficient connection between applicant and third country, as required by the Directive.<sup>113</sup> Nevertheless, most second-instance decisions by the Greek Appeals Committees until mid-June 2016 have lent support to the position of UNHCR and found that mere transit does not satisfy the sufficient connection criterion.<sup>114</sup>

On the other hand, **Hungary** has introduced connection-related criteria in its Asylum Act and deems transit or stay as a sufficient connection in practice, even where the person was smuggled through a country and has no knowledge of that country.<sup>115</sup> Beyond the EU, **Serbia** has not introduced rules requiring a connection, but also deems mere transit through a country sufficient for the "safe third country" concept to be applied.<sup>116</sup>

In **Germany** and **Switzerland's** case, given that all countries listed as "safe third countries" are also Dublin States, cases where a person has transited through a country are treated under the Dublin Regulation, whereas the "safe third country" concept is used in cases where the person has received international protection from the country concerned.<sup>117</sup>

Examples from countries with long-standing practice on the application of the "safe third country" notion therefore seem to mandate against an assumption that the concept may be applied to persons merely

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<sup>106</sup> See e.g. UNHCR, *Legal considerations on the return of asylum-seekers from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, March 2016, available at: <http://goo.gl/PkJnV0>; ECRE and Dutch Council for Refugees, *Desk research on application of a safe third country or a first country of asylum concepts to Turkey*, May 2016, available at: <http://goo.gl/ZBdrMF>, 3.

<sup>107</sup> Dutch Aliens Circular 2000, para C2/6.3.

<sup>108</sup> Information provided by the Dutch Council for Refugees, 18 August 2016.

<sup>109</sup> Austrian Administrative High Court, Decision No 98/01/0284, 11 November 1998; Austrian Constitutional Court, Decision No U 5/08, 8 October 2008. Information provided by Asylkoordination Österreich, 19 August 2016.

<sup>110</sup> Information provided by the Bulgarian Helsinki Committee, 5 August 2016.

<sup>111</sup> Swedish Migration Court of Appeal, MIG 2015:2, 4 February 2015. On the issue of ethnicity, see also Swedish Migration Court of Appeal, MIG 2011:5, 10 March 2015.

<sup>112</sup> Information provided by the Bulgarian Helsinki Committee, 5 August 2016.

<sup>113</sup> Article 56(1)(στ) Greek Law 4375/2016 does not specify what is meant by "connection".

<sup>114</sup> Information provided by the Greek Council for Refugees, 5 August 2016.

<sup>115</sup> Information provided by the Hungarian Helsinki Committee, 16 August 2016.

<sup>116</sup> Information provided by the Belgrade Centre for Human Rights, 15 July 2016.

<sup>117</sup> Information provided by Informationsverbund Asyl und Migration, 24 August 2016; Swiss Refugee Council, 19 August 2016.

transiting through a third country. Nevertheless, the Commission's line of reasoning in the context of the EU-Turkey deal seems somewhat codified in the proposed Asylum Procedures Regulation, which deems transit through a country "geographically close to the country of origin" as a sufficient connection.<sup>118</sup>

### *Procedural guarantees*

In addition to the aforementioned safety criteria, the recast Asylum Procedures Directive requires Member States to follow specific procedural steps when applying the "safe third country" concept. This includes the duty to inform the asylum seeker of the application of the concept and to "provide him or her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance."<sup>119</sup> **Greece** and **Hungary** issue this document in practice.<sup>120</sup> However, this guarantee is not followed in practice by the asylum authorities in **Bulgaria**.<sup>121</sup> **Serbia** and **Switzerland**, not bound by the Directive, do not apply this guarantee either.<sup>122</sup> In **Serbia**, asylum seekers are only given an expulsion order in Serbian and the Serbian authorities do not communicate with the third country in question.<sup>123</sup>

#### *c. Inadmissibility grounds beyond the Directive*

Although Article 33(2) of the recast Asylum Procedures Directive lays down an exhaustive list of grounds for declaring asylum applications inadmissible, a number of EU Member States retain additional inadmissibility grounds beyond the scope permitted by EU law. This is particularly the case in relation to applicants coming from EU Member States, whose claims are considered inadmissible in **Spain, Hungary, Croatia, the UK and Belgium**,<sup>124</sup> the latter also including nationals of EU accession countries in this category. Whereas the Directive does not include claims by EU citizens as a ground for inadmissibility, it should be noted that the definition of "refugee" and "person eligible for subsidiary protection" would exclude them, since it refers to third-country nationals or stateless persons.<sup>125</sup> Nevertheless, a very small number of asylum applications from nationals of Romania were accepted in **Belgium** and the **Netherlands** in 2014.<sup>126</sup> In the first half of 2016, **Sweden** also granted protection to 4 Romanian nationals and 3 Greek nationals.<sup>127</sup>

## *1.2. Challenging inadmissibility*

The right to an effective remedy against negative decisions guaranteed by the recast Asylum Procedures Directive requires Member States to provide applicants with the possibility to challenge admissibility decisions,<sup>128</sup> within "reasonable time limits".<sup>129</sup> However, due to the *raison d'être* of admissibility procedures as a means to filter out claims which in principle should be the responsibility

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<sup>118</sup> Article 45(3)(a) and Recital 37 proposal for an Asylum Procedures Regulation.

<sup>119</sup> Article 38(3) recast Asylum Procedures Directive.

<sup>120</sup> Information provided by the Greek Council for Refugees, 5 August 2016; Hungarian Helsinki Committee, 16 August 2016.

<sup>121</sup> Information provided by the Bulgarian Helsinki Committee, 5 August 2016.

<sup>122</sup> Information provided by the Swiss Refugee Council, 19 August 2016.

<sup>123</sup> AIDA Country Report Serbia, March 2016, 24; Information provided by the Belgrade Centre for Human Rights, 15 July 2016.

<sup>124</sup> Article 57/6 Belgian Aliens Act; Article 20(1) Spanish Asylum Law; Article 43(1) Croatian Law on International and Temporary Protection; Section 51(2) Hungarian Asylum Act; UK Home Office, *Asylum Policy Instruction EU/EEA Asylum Claims*, December 2015, available at: <http://goo.gl/2DN592>.

<sup>125</sup> Article 2(d) and (f) recast Qualification Directive.

<sup>126</sup> See Canadian Immigration and Refugee Board, *European Union: Application of the Protocol on Asylum for Nationals of Member States of the European Union (2013 – June 2015)*, 9 July 2015, ZZZ105193.E, citing ECRE's submission.

<sup>127</sup> Swedish Migration Agency, *Asylum decisions 1 January – 30 June 2016*.

<sup>128</sup> Article 46(1)(a)(ii) recast Asylum Procedures Directive.

<sup>129</sup> Article 46(4) recast Asylum Procedures Directive.

of another country, most European countries have laid down more restrictive appeal rights regarding inadmissibility decisions compared to those applicable in decisions on the merits of asylum applications. Providing for truncated time limits for challenging an inadmissibility decision is not prohibited by the Directive, so long as they do “not render such exercise [of the right to an effective remedy] impossible or excessively difficult.”<sup>130</sup> In the context of accelerated procedures, whose aim is to enable Member States to quickly reject likely unfounded applications, the CJEU has found a time limit of 15 days to be reasonable and proportionate in relation to the rights and interests involved”.<sup>131</sup>

Yet, whereas the justification behind the accelerated procedure seems to be that an asylum claim is likely to be unfounded or present security concerns,<sup>132</sup> these factors are not relevant in admissibility procedures. In such procedures, decisions are taken based on the assumption that the applicant is able to access protection in another country and therefore no examination on the merits of the claim is carried out. Admissibility questions are largely different from merit-related questions, but may require equally rigorous examination. Accordingly, there seems little basis in principle to subject applicants undergoing admissibility procedures to lower procedural safeguards than applicants in the regular asylum procedure; the *Diouf* ruling is not a relevant interpretation of rules pertaining to admissibility procedures. In addition, practice in Member States is widely divergent as regards the implementation of “reasonable” time limits for appeals against inadmissibility decisions. The following time limits are provided for lodging an appeal against an inadmissibility decision:

Time limits for appeal against inadmissibility decision	
Days	Country
3	MT
7	FR, AT, DE, NL, HU, CH, BG
8	HR
14	PL, UK
15	BE, GR, SR, TR
30	BE
60	ES

Source: AIDA Country Reports. Time-limits are calculated in working days for: Malta (3 working days); Switzerland (5 working days). **Belgium** provides for different time limits for subsequent applicants (15 days) and persons with status in another EU Member State (30 days), which also differ when the person is detained. **Spain** has different rules for inadmissibility decisions issued in the border procedure or in detention.

The rules on automatic suspensive effect in the context of challenges to inadmissibility decisions are another illustration of the fragmentation of procedural guarantees under EU law. The recast Asylum Procedures Directive enables Member States to derogate from automatic suspensive effect in respect of appeals against certain inadmissibility decisions, namely those relating to: protection granted by another Member State; “first country of asylum”; and subsequent applications.<sup>133</sup> Crucially, this means that challenges to “safe third country” decisions must always automatically suspend the execution of return decisions.

The procedural fragmentation and complexity of the Directive has led to a highly divergent landscape concerning the suspensive effect of admissibility-related appeals in different countries. While **France, Greece, Hungary, Malta, Poland, Serbia** and **Turkey** provide for automatic suspensive effect for

<sup>130</sup> Article 46(4) recast Asylum Procedures Directive.

<sup>131</sup> CJEU, Case C-69/10 *Samba Diouf*, Judgment of 28 July 2011, para 67.

<sup>132</sup> Recital 20 recast Asylum Procedures Directive.

<sup>133</sup> Article 46(6)(b) recast Asylum Procedures Directive.

appeals against all inadmissibility decisions, a number of countries have opted for more complex arrangements. **Austria, Germany, Spain** and the **UK** exclude any automatic suspensive effect, including in cases concerning the “safe third country” concept, which contravenes the standards set by the Directive. Conversely, **Croatia** provides automatic suspensive effect in all cases excluding “first country of asylum” cases, while the **Netherlands** only provides automatic suspensive effect for “safe third country” cases. Finally, the automatic suspensive effect of appeals in **Belgium** depends on the nature of the appeal and the time limit within which it is lodged: “extreme urgency” appeals lodged within 10 days of the decision, invoking the breach of an absolute fundamental right, benefit from automatic suspensive effect until the issuance of the judgment.<sup>134</sup>

## 2. Safety within the EU: The application of the Dublin Regulation

The Dublin Regulation is the instrument *par excellence* enabling Member States to transfer asylum seekers to other countries on grounds of responsibility for examining their claims, arguably subject to lower guarantees than those applicable to the “safe third country” concept. Firstly, the requisite level of protection in Dublin cases is met as long as the applicant does not face a real risk of a serious violation of his or her fundamental rights upon return.<sup>135</sup> Secondly, looser connections between the asylum seeker and the Dublin country are accepted compared to the “safe third country”, as mere irregular entry or transit suffices for the person to be returned to the country concerned.<sup>136</sup>

The application of the Dublin Regulation has continued to be closely scrutinised by courts to prevent violations of fundamental rights in receiving countries. Member States receiving the majority of incoming requests under the Regulation have often been those situated at the external borders of the EU, and often at the heart of rights-related debates.



In 2015, **Hungary** was by far the main recipient of Dublin requests. Out of a total 42,923 incoming requests, the overwhelming majority was issued by **Germany, Austria, Sweden** and **France**.<sup>137</sup> In practice, however, only 3.2% of requests resulted in transfers, as Hungary only received 1,402 transfers in 2015, therefore less than France or Germany.<sup>138</sup> In the first half of 2016, a total 15,154 requests were received and 348 asylum seekers have been returned, mainly from **Germany** and **Switzerland**.<sup>139</sup> These Dublin procedures were initiated in spite of growing evidence of human rights risks facing asylum seekers in Hungary, which have led to suspension of Dublin transfers by courts in countries such as: **Germany, Austria, Belgium, Switzerland, Netherlands, Finland, Denmark, Norway, Luxembourg** and more recently the **UK**.<sup>140</sup> In contrast, the Migration Court of Appeal of **Sweden** found the conditions in Hungary not to have deteriorated to the point of meeting the requisite threshold for suspending transfers on human rights grounds.<sup>141</sup>

Beyond legal considerations, transfers to Hungary have also been impeded by practical obstacles more recently. As explained by the Head of the **Italian** Dublin Unit, transfers to Hungary are *de facto* impossible due to the fact that the airport is available one or two days per month, and dates for transfers

<sup>134</sup> AIDA Country Report Belgium: Fourth Update, December 2015, 35-36.

<sup>135</sup> Article 3(2) Dublin III Regulation; ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>136</sup> Article 13 Dublin III Regulation.

<sup>137</sup> Information provided by the Hungarian Helsinki Committee, May 2016.

<sup>138</sup> *Ibid.*

<sup>139</sup> Information provided by the Hungarian Helsinki Committee, 16 August 2016.

<sup>140</sup> See e.g. German Administrative Court of Kassel, Decision 5 L 2585/15.KS.A, 1 March 2016; Swiss Federal Administrative Court, Decision D-127/2016, 20 January 2016; Belgian Council of Alien Law Litigation, Decision No 166 905, 29 April 2016; Finnish Supreme Administrative Court, Decision KHO:2016:53, 20 April 2016; High Court of England and Wales, *Ibrahimi & Abasi* [2016] EWHC 2049 (Admin), Judgment of 5 August 2016.

<sup>141</sup> Swedish Migration Court of Appeal, Decision MIG 2016:16, 1 July 2016.

are communicated only three days in advance.<sup>142</sup> Due to such practical obstacles, transfers to Hungary were suspended by **Slovakia** on 21 July 2016, for instance.<sup>143</sup>



In **Greece**, given the ongoing prohibition of transfers following the rulings in *M.S.S. v. Belgium and Greece*<sup>144</sup> and *N.S. v. Secretary of State for the Home Department*,<sup>145</sup> most Member States have not made requests to the authorities under Dublin. However, Greece received 137 requests in 2015, the overwhelming majority of which came from **Switzerland** and concerned persons holding residence permits from Greece.<sup>146</sup> A few incoming requests were also received from **Germany, Netherlands, Belgium** and **Finland**. Last year Greece received 15 transfers, 12 of which came from Switzerland.<sup>147</sup>

In this regard it should be noted that the Commission launched the debate on reinstating Dublin transfers to Greece by publishing two Recommendations to Greece on the urgent measures it should take in view of the resumption of transfers to this Member State. Referring to the funding Greece received for structural improvements to its asylum system, the Commission's first set of recommendations remain as general as requiring Greece to ensure that reception conditions for asylum applicants, including for vulnerable persons, meet the standards laid down in EU law or that previous commitments with regard to staffing of the Regional Asylum Offices or the Appeal Committees are upheld as soon as possible.<sup>148</sup>

Contrary to the first Recommendation, which does not contain any specific deadline to be met by Greece, the Commission's second Recommendation contains a more detailed list of measures to be taken and targets to be met.<sup>149</sup> Parallel to the objective of returning to the normal functioning of the Schengen area by removing internal border controls by that date, according to the Commission the long list of measures identified as necessary to resume Dublin transfers, should be adopted at the latest by December 2016.<sup>150</sup> This appears a very unrealistic deadline in view of the Commission's own finding that the situation in Greece has substantially changed since the implementation of the EU-Turkey deal and the *de facto* closure of the Western Balkan route, resulting in over 58,000 persons stranded in the country.<sup>151</sup> In light of the country's financial situation, the unsuccessful efforts to step up pace and volume of relocation from Greece, as discussed below, the Commission's continued efforts to keep Dublin transfers to Greece on the political agenda appear paradoxical. However, as also illustrated by current practice, so far there seems to be little appetite at Member State level for such a move. One notable exception is **Hungary**, which considers that the Regulation should be once again applicable to Greece,<sup>152</sup> and has sent 698 requests thereto in the first half of 2016.<sup>153</sup> At the same time, recent

<sup>142</sup> Italian Chamber of Representatives, *Hearing of Simona Spinelli, Head of the Dublin Unit, before the Parliamentary Commission of Inquiry on reception, identification and expulsion*, 5 July 2016, available in Italian at: <http://goo.gl/Whz1v1>, cited in information provided by ASGI, 22 August 2016.

<sup>143</sup> Slovak Ministry of Interior, 'Suspension of Dublin returns to Hungary', 21 July 2016, available in Slovak at: <https://goo.gl/1CjDz8>.

<sup>144</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

<sup>145</sup> CJEU, Joined Cases C-411/10 and C-493/10, Judgment of 21 December 2011.

<sup>146</sup> Eurostat, *Incoming Dublin transfers*, [migr\\_dubto](#).

<sup>147</sup> Eurostat, *Incoming Dublin transfers*, [migr\\_dubto](#).

<sup>148</sup> European Commission, *Recommendation of 10.02.2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, C(2016) 871, 10 February 2016.

<sup>149</sup> European Commission, *Recommendation of 15.06.2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, C(2016) 3805, 15 June 2016. See also AIDA, 'Greece: new Commission Recommendation before reinstatement of Dublin transfers', 15 June 2016, available at: <http://goo.gl/vC15Sn>.

<sup>150</sup> *Ibid*, Recital 26.

<sup>151</sup> Greek Coordination Body for the Management of the Refugee Crisis, *Summary statement of refugee flows*, 19 August 2016, available at: <http://goo.gl/8H3fNK>.

<sup>152</sup> See e.g. AIDA, 'Hungary: Decisions reinstating Dublin transfers to Greece', 12 May 2016, available at: <http://goo.gl/f7AVbz>.

<sup>153</sup> Information provided by the Hungarian Helsinki Committee, 16 August 2016.

comments from the Minister of Interior of **Germany**<sup>154</sup> and the European Commission<sup>155</sup> could point to a renewed interest in reinstating Dublin transfers to Greece.

The situation in other external border countries has led to less straightforward pronouncements in different Member States.



Transfers of vulnerable groups such as families to **Italy** were subject to stricter conditions following the European Court of Human Rights' ruling in *Tarakhel v. Switzerland*,<sup>156</sup> which called on sending countries to request individual guarantees that families with children will be guaranteed appropriate reception conditions upon return.

However, Italy was the second largest recipient of Dublin requests in 2015, with 24,990 incoming requests coming principally from **Switzerland, Germany** and **France**. However, only 480 incoming transfers were reported in Italy, meaning that only 1.9% of requests led to a transfer.<sup>157</sup> Several Member States such as **Austria, Sweden** or the **UK** have distanced themselves from the duty to obtain individualised guarantees prior to carrying out transfers to Italy,<sup>158</sup> finding there to be sufficient assurances from Italian authorities that the conditions in the country no longer pose a challenge to guaranteeing asylum seekers' fundamental rights.<sup>159</sup> At the same time, a number of rulings in **Belgium** and the **Netherlands** have suspended transfers to Italy,<sup>160</sup> while the **Austrian** Constitutional Court has recently recalled the duty of asylum authorities to obtain individualised guarantees from Italy on the reception conditions available to vulnerable asylum seekers prior to performing a Dublin transfer.<sup>161</sup>



With regard to **Bulgaria**, national courts have continued to oscillate on the legality of transfers on account of inadequate reception conditions and lack of integration possibilities for asylum seekers and beneficiaries of protection.<sup>162</sup> In 2016, several Member States' judicial authorities have ruled on this issue, though the conclusions

reached have often diverged from case to case: transfers have been suspended in certain cases in **Belgium, Switzerland, Germany** and the **Netherlands**,<sup>163</sup> but upheld in other cases in **Belgium, Austria, the Netherlands, Switzerland** and the **UK**.<sup>164</sup> Nevertheless, as many as 5,982 Dublin

<sup>154</sup> Deutsche Welle, 'German interior minister floats idea of returning migrants to Greece', 4 September 2016, available at: <http://goo.gl/DI3w5T>.

<sup>155</sup> Kathimerini, 'European Commission urges Greece to implement Dublin regulations', 5 September 2016, available at: <http://goo.gl/12h2PH>.

<sup>156</sup> Application No 29217/12, Judgment of 4 November 2014. For an analysis of subsequent practice, see ECRE/ELENA, *Information Note on Dublin transfers post-Tarakhel*, October 2015, available at: <http://goo.gl/DejEeq>.

<sup>157</sup> Eurostat, *Incoming Dublin transfers*, *migr\_dubto*.

<sup>158</sup> See e.g. Austrian Federal Administrative Court, Decision W212 2124365-1, 22 April 2016; Swedish Migration Agency, *Legal Comment on transfers to Italy under Regulation 604/2013*, 01/2016, January 2016, available in Swedish at: <http://goo.gl/VvHuVS>; UK High Court, *BG v Secretary of State for the Home Department*, [2016] EWHC 786 (Admin), 12 April 2016.

<sup>159</sup> This is based on a Circular Letter issued by the Italian Dublin Unit on 15 February 2016, listing a total 85 places available for families returned under the Dublin Regulation: <http://goo.gl/M16Oto>.

<sup>160</sup> See e.g. Belgian Council of Alien Law Litigation, Decision No 161 457, 5 February 2016; Dutch District Court of The Hague, Decision VK-16\_4943, 7 April 2016, Decision NL 16.1221, 18 July 2016.

<sup>161</sup> Austrian Constitutional Court, Decision E449/2016, 30 June 2016.

<sup>162</sup> For a detailed analysis, see ECRE/ELENA, *Research Note: Reception conditions, detention and procedural safeguards for asylum seekers and content of international protection status in Bulgaria*, February 2016, available at: <http://goo.gl/xq5ziF>.

<sup>163</sup> See e.g. Belgian Council of Alien Law Litigation, Decision No 162 937, 26 February 2016; Swiss Federal Administrative Court, Decision E-8188/2015, 11 February 2016; German Administrative Court of Freiburg, Decision A 6 K 1356/14, 4 February 2016; Dutch District Court of The Hague, Decision AWB 16/7663, 13 May 2016.

<sup>164</sup> See e.g. Belgian Council of Alien Law Litigation, Decision No 166 056, 19 April 2016; Swiss Federal Administrative Court, Decision D-5605/2015, 23 March 2016; Dutch District Court of The Hague, Decision AWB 16/7451, 18 May 2016; UK High Court, *Khaled v Secretary of State for the Home Department*, [2016] EWHC 857 (Admin), 18 April 2016.

requests have been addressed to Bulgaria so far this year and 352 persons have been returned thereto.<sup>165</sup>

### 3. The implementation of the emergency relocation scheme

The relocation scheme set up by Council Decisions 2015/1523 and 2015/1601 in September 2015, for a target of 160,000 asylum seekers, presents a different form of transfer of responsibility in the Common European Asylum System. It was designed as an emergency measure to alleviate pressure on **Italy** and **Greece**,<sup>166</sup> and constitutes a partial derogation to the Dublin Regulation rules.

Out of the target of 106,000 asylum seekers to be relocated from Italy and Greece, 4,473 had effectively been transferred as at the end of August 2016.<sup>167</sup> The European Commission has been regularly reporting on the scheme, highlighting a number of challenges resulting in slow and inefficient implementation of Member States' commitment to relocate 66,400 asylum seekers from Greece and 39,600 from Italy.<sup>168</sup>

#### *The solidarity / responsibility conundrum*

One perverse element in the nature of the relocation scheme is its operation parallel to the Dublin system. Though designed as an emergency measure aimed at assisting Italy and Greece to cope with migratory pressure, the Council Decisions do not entail a suspension of Dublin transfers to these countries. As far as **Italy** is concerned, this has created an uneasy situation whereby European countries relocate – limited numbers of – asylum seekers out of the country in a demonstration of solidarity, but continue to return other asylum seekers to the country under the responsibility criteria of the Dublin Regulation. This can be illustrated in the practice of a number of Member States in the course of this year:

Dublin transfers and relocation concerning Italy		
*	Relocations <i>from</i> Italy since start of the relocation scheme	Dublin transfers <i>to</i> Italy: 1 January – 30 June 2016
DE	20	522
CH	34	730
SE	39	156

Source: [European Commission](#); Federal Government of Germany, [Response to Information Request 18/9146](#), 17 August 2016; FARR; SEM.

This problem points to a fundamental contradiction at the heart of the Commission's approach to relocation. Crucially, this contradiction persists in the corrective allocation mechanism introduced in the proposal for a reform of the Dublin system than it is in the relocation scheme.

The following section provides an overview of national practice with regard to the implementation of the scheme and the treatment of benefitting asylum seekers post-relocation.

<sup>165</sup> Information provided by the Bulgarian Helsinki Committee, 5 August 2016.

<sup>166</sup> For a discussion of its modalities, see AIDA, *Common asylum system at a turning point: Refugees caught in Europe's solidarity crisis*, Annual Report 2014/2015.

<sup>167</sup> European Commission, *Member States' Support to the Emergency Relocation Mechanism*, 1 September 2016, available at: <http://goo.gl/xzgA4D>.

<sup>168</sup> The Commission's reports of 16 March, 12 April, 18 May, 15 June and 13 July 2016 are available at: <http://goo.gl/VkOUJX>.

### 3.1. *The relocation procedure in practice*

The national modalities of relocation following the September 2015 Council Decisions have been spelt out in the absence of a legislative framework in most cases. One exception is **Poland**, where the legislative framework has established a procedure for relocated asylum seekers as distinct from the regular procedure,<sup>169</sup> though this is not applied in practice. As per the Polish Law on Protection, persons eligible for relocation may apply for asylum before arriving in Poland and obtain a temporary identity document valid for 90 days, while their personal interview can be held in the country where they are staying.<sup>170</sup>

In most countries, the necessary arrangements for the implementation of the relocation scheme stem from administrative practice. **France**, by far the main country relocating asylum seekers from Greece and Italy, has developed its practice on relocation since the implementation of the scheme last November. The French Office for the Protection of Refugees and Stateless Persons (OFPRA) has deployed 12 agents in Greece, who work closely with the Greek authorities and civil society organisations such as PRAKSIS.<sup>171</sup> OFPRA informs the Greek authorities of the number of available places in France and receives from them a list of persons eligible for relocation. After sending the list of eligible persons to the Ministry of Interior for verification of family links or documentation, OFPRA conducts interviews with the selected candidates in Greece within a period of 15 days, in order to assess the applicability of exclusion clauses.<sup>172</sup> OFPRA does not conduct a refugee status determination interview in this context, although in rare cases it appears impossible to dissociate the examination of exclusion clauses from an assessment of the person's protection needs.<sup>173</sup>

**Portugal**, another key Member State in terms of relocation so far, has established a Working Group for the Agenda for Migration, comprising of representatives of relevant Ministries, public entities and NGOs. The Working Group's task is the assessment of existing capacities and the implementation of a dispersal policy in cooperation with local authorities and civil society. The process of relocation starts from a selection of persons by the liaison officers deployed by the Aliens and Borders Service. A table with data is transmitted to the agencies responsible for reception in order to match the profiles with available places in Portugal.<sup>174</sup>

#### *Security assessments*

In **France**, following the aforementioned interview conducted by OFPRA in Greece to assess exclusion, the list of persons to be relocated must be approved from the Ministry of Interior following a security check.<sup>175</sup> This step has been added to the procedure following the November 2015 attacks in Paris, and follows French practice on resettlement.<sup>176</sup> Conversely, **Portugal's** approach to security checks does not include an interview with the asylum seeker. Security-related questions are made by the liaison officers to a representative of the Security Coordination Office of the Working Group for the Agenda for Migration, requesting police authorities to conduct background checks.<sup>177</sup>

As regards **Poland**, as per the relocation framework, the Head of the Office for Foreigners is obliged to ask the main security agencies in Poland whether the person is a threat to security or public order in

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<sup>169</sup> Chapter 5a Polish Law on Protection.

<sup>170</sup> Information provided by the Helsinki Foundation for Human Rights, 12 August 2016.

<sup>171</sup> Information provided by Forum Réfugiés-Cosi, 19 August 2016.

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*

<sup>174</sup> Information provided by the Portuguese Refugee Council, 10 August 2016.

<sup>175</sup> French Senate, *L'Europe à l'épreuve de la crise des migrants : la mise en oeuvre de la « relocalisation » des demandeurs d'asile et des hotspots*, 24 February 2016, available in French at: <http://goo.gl/yXnTL7>.

<sup>176</sup> *Ibid.*

<sup>177</sup> Information provided by the Portuguese Refugee Council following communication with the Portuguese Aliens and Borders Service, 14 August 2016.

Poland, unless the person is younger than 13 years. Originally, security agencies had 14 days to answer the request and, where no answer was provided, the person was considered not to be a threat. Since 19 June 2016,<sup>178</sup> security agencies are obliged to answer the Head of the Office for Foreigners' request within 45 days, with the possibility of extension by a further 14 days. The aim of that change was to guarantee longer and more precise checking of persons to be relocated to Poland.<sup>179</sup>

### 3.2. Behind inefficiency: Challenges, delays and grounds for rejecting requests

The very slow pace of relocation is connected to a range of challenges in the implementation of the scheme. As far as receiving countries are concerned, these challenges have taken different forms. A number of countries including **Austria, Hungary** and **Poland** have not relocated people from Italy or Greece.<sup>180</sup> Other countries such as **Germany** or **Croatia** have issued requests but for an extremely limited number of persons compared to their respective share as set out in the Relocation Decisions.<sup>181</sup> In addition, the Commission has raised the problem of unjustified rejections as a key barrier to the implementation of the relocation scheme. Failure to justify rejections or reliance on reasons other than the permitted grounds for rejecting a request under the Relocation Decisions has been observed in **Estonia, Latvia, Lithuania, Bulgaria, Czech Republic** and **Slovakia**.<sup>182</sup> On the other hand, no rejections have been reported in **Germany, Switzerland, Malta** or **Cyprus**.<sup>183</sup>

Another impediment to the implementation of the relocation scheme, raised by the Head of the **Italian** Dublin Unit in a recent hearing before the Italian Parliament, concerns asylum seekers' lack of trust in destination countries they are not familiar with or that do not have developed reception systems.<sup>184</sup>

Finally, another key challenge has been the relocation of vulnerable asylum seekers. Though the transfer of persons with special needs is prioritised under the Relocation Decisions,<sup>185</sup> only a very limited number of vulnerable persons have effectively been relocated. This has namely been the case in relation to unaccompanied children, as "only a few Member States are willing to accept relocation transfers of unaccompanied minors."<sup>186</sup> Main destination countries such as **France** have focused on relocating vulnerable persons,<sup>187</sup> although **Portugal** has not prioritised specific caseloads in the relocation process.<sup>188</sup> **Switzerland** has not prioritised specific caseloads either.<sup>189</sup> As regards **Croatia**, the Ministry of Interior has explained that the authorities follow the prioritisation of caseloads set by Italy or Greece, which take vulnerabilities into account when making requests.<sup>190</sup> None of the four persons

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<sup>178</sup> Law of 20 May 2016 amending the Polish Law on Protection.

<sup>179</sup> Polish Ministry of the Interior and Administration, „Służby będą miały więcej czasu na sprawdzenie cudzoziemca” (“Agencies will have more time to check the foreigner”), 14 April 2016, available in Polish at: <https://goo.gl/u5ChM5>.

<sup>180</sup> European Commission, *Fifth report on relocation and resettlement*, COM(2016) 480, 13 July 2016, 5. On Poland's response, see AIDA, 'Poland: how opposition to the relocation scheme unfolded', 12 August 2016, available at: <http://goo.gl/1VXXtc>.

<sup>181</sup> *Ibid.*

<sup>182</sup> European Commission, *Fifth report on relocation and resettlement*, COM(2016) 480, 13 July 2016, 5.

<sup>183</sup> Information provided by Informationsverbund Asyl und Migration, 24 August 2016; Swiss Refugee Council, 19 August 2016; aditus foundation and JRS Malta, 22 August 2016; Future Worlds Center, 22 August 2016.

<sup>184</sup> Italian Chamber of Representatives, *Hearing of Simona Spinelli, Head of the Dublin Unit, before the Parliamentary Commission of Inquiry on reception, identification and expulsion*, 5 July 2016, available in Italian at: <http://goo.gl/Whzlv1>, cited in information provided by ASGI, 22 August 2016.

<sup>185</sup> Article 5(3) Relocation Decisions.

<sup>186</sup> European Commission, *Fifth report on relocation and resettlement*, COM(2016) 480, 13 July 2016, 5; *Fourth report on relocation and resettlement*, COM(2016) 416, 15 June 2016, 4; *Third report on relocation and resettlement*, COM(2016) 380, 18 May 2016, 3.

<sup>187</sup> Information provided by Forum Réfugiés-Cosi, 19 August 2016.

<sup>188</sup> Information provided by the Portuguese Refugee Council, 10 August 2016.

<sup>189</sup> Information provided by the Swiss Refugee Council, 19 August 2016.

<sup>190</sup> Information provided by the Croatian Law Centre, 26 July 2016.

relocated from Italy to Croatia on 1 July 2016 was a person with special needs, however.<sup>191</sup> Similarly, none of the 41 persons relocated to **Malta** until 13 July 2016 was reported to have special needs.<sup>192</sup>

On the other hand, **Spain's** pledges for relocation from Greece have included vulnerable cases. The first relocation pledge included 4 disabled persons, as well as pregnant women and families with children. Similar profiles, including unaccompanied children, are included in later relocation pledges.<sup>193</sup> At the time of writing, out of a total 46 relocated asylum seekers, **Cyprus** had relocated two victims of torture, one person with disabilities and one person later determined to be an unaccompanied child.<sup>194</sup> For its part, **Bulgaria** has prioritised families with children in practice, even though it has not issued an official list of criteria for the relocation procedure.<sup>195</sup> As far as **Italy** is concerned, however, there have been reports of women with children who, despite having been accepted for relocation by other Member States, are still waiting in reception centres to be transferred and unaware of the date of their relocation.<sup>196</sup>

### 3.3. *The treatment of relocated asylum seekers*

Applicants under the relocation scheme re-enter the asylum procedure in **Greece**, either if the relocation request is rejected or if the applicant is accepted by a country where he or she does not wish to be relocated. There are two ways for an applicant who does not want to be transferred to the country of relocation to re-enter the asylum procedure in Greece: he or she may submit an appeal against the inadmissibility decision, or a subsequent asylum claim.<sup>197</sup> *De facto*, the situation therefore resembles practice in **Italy**, where, if the person does not wish to be relocated to the country that has accepted the request, he or she continues the asylum procedure in Italy.<sup>198</sup>

Upon arrival in destination countries, asylum seekers may encounter different treatment depending on the Member State of relocation. **France** issued a Circular on 9 November 2015, detailing the reception process for persons relocated under the scheme.<sup>199</sup> According to the Circular, the procedure for asylum seekers relocated to France should be completed within 4 months, during which they are directly dispersed and registered at the Prefectures which have established specific single desks (*guichets uniques*) for relocation,<sup>200</sup> and have their eligibility interview conducted by “mobile hearing” sessions introduced by OFPRA.<sup>201</sup>

This process does not seem to be applied in a uniform manner throughout the country, however. While relocated applicants are directly registered in Nantes, they are required to enter the pre-reception process before accessing the single desk to complete registration in Lyon.<sup>202</sup> At the same time, social workers supporting relocated asylum seekers have indicated that applicants, mostly those coming from Greece, have not been interviewed by OFPRA in France before being granted refugee status. This

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<sup>191</sup> *Ibid.*

<sup>192</sup> Information provided by aditus foundation and JRS Malta, 22 August 2016.

<sup>193</sup> Information provided by the Spanish Office for Asylum and Refuge, 29 July 2016.

<sup>194</sup> This information is based on the assessment of all persons relocated to Cyprus conducted by the Future Worlds Center on behalf of UNHCR Cyprus. There is no such data available by the authorities as they do not conduct an identification procedure for vulnerable persons.

<sup>195</sup> Information provided by the Bulgarian Helsinki Committee, 5 August 2016.

<sup>196</sup> Information provided ASGI, 22 August 2016, citing LasciateCIEntrare, Visit to Cara di Castelnuovo di Porto, 22 June 2016.

<sup>197</sup> Information provided by the Greek Council for Refugees, 5 August 2016.

<sup>198</sup> Information provided by ASGI, 22 August 2016.

<sup>199</sup> Circular of the French Minister of Interior and French Minister of Housing NOR INTV1524992 of 9 November 2015 on “Implementation of the European programme of relocation”, available at: <http://goo.gl/VsYqMR>.

<sup>200</sup> This includes: Besançon, Nantes, Bordeaux, Lyon, Metz and Paris and its surroundings. Accordingly, asylum seekers would not have to go through the pre-reception phase before registration: see AIDA Country Report France: Fourth Update, December 2015, 21.

<sup>201</sup> Information provided by Forum Réfugiés-Cosi, 19 August 2016.

<sup>202</sup> *Ibid.*

could indicate that their protection needs have already been assessed in Greece. On the other hand, some reception centres have witnessed interviews conducted by OFPRA, for example during a “mobile hearing” session in Besançon on 8-12 August 2016 for Eritrean relocated asylum seekers.<sup>203</sup>

In **Portugal**, relocated asylum seekers are also directly dispersed across the country and receive support directly from local authorities and entities. NGOs such as the Portuguese Refugee Council have established cooperation protocols with municipalities in order to participate in the provision of support and integration plans concerning relocated persons.<sup>204</sup>

In **Malta**, relocated applicants have been placed in the Initial Reception Centre (IRC), in a state of deprivation of liberty, for two to three days before being transferred to open reception centres. All cases are channelled into the regular procedure and are concluded on average within two months.<sup>205</sup> To date, one relocated asylum seeker has received a negative decision in Malta and is awaiting the outcome of his appeal.<sup>206</sup>

As far as the procedural treatment of asylum claims by relocated persons is concerned, other countries such as the **Netherlands, Germany, Bulgaria and Switzerland** have applied the regular procedure.<sup>207</sup> In **Croatia**, the four persons relocated from Italy on 1 July 2016 have entered the regular procedure and their claims have been prioritised.<sup>208</sup> Similarly in **Cyprus**, the authorities have indicated that relocated persons entering the regular procedure will have their claims prioritised, though it is early to determine how this has been applied in practice.<sup>209</sup> One element of concern in Cyprus relates to the information received by asylum seekers prior to departure, as many reported to have been told that they would be awarded unrestricted access to the labour market, which is not the case for asylum seekers in the country.<sup>210</sup>

In order to effectively step up their efforts to honour the commitments set out in the Relocation Decisions, European countries could build on experience and practices developed by the main Member States implementing relocation to date. Swift procedures and direct access to decentralised accommodation in cooperation with local civil society actors are among the positive elements identified in the implementation of relocation.

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<sup>203</sup> *Ibid.*

<sup>204</sup> Information provided by the Portuguese Refugee Council, 10 August 2016.

<sup>205</sup> Information provided by aditus foundation and JRS Malta, 22 August 2016.

<sup>206</sup> *Ibid.*

<sup>207</sup> Information provided by the Dutch Refugee Council, 18 August 2016; Informationsverbund Asyl und Migration, 24 August 2016; Bulgarian Helsinki Committee, 5 August 2016; Swiss Refugee Council, 19 August 2016. In the **Netherlands**, relocated applicants' claims will be examined within 8 days and are excluded from the possibility to apply the extended procedure, lasting 9 months.

<sup>208</sup> Information provided by the Croatian Law Centre, 26 July 2016.

<sup>209</sup> Information provided by the Future Worlds Center, 22 August 2016.

<sup>210</sup> *Ibid.*

## CONCLUSIONS & RECOMMENDATIONS

This Thematic Report has provided an overview of European countries' recent practice in the interpretation and application of different asylum procedures and concepts relating to the transfer of responsibility to another country. Conclusions and recommendations on the main elements discussed are sketched out below:

### *Statistical practice*

An in-depth understanding of the relevance of the concepts of admissibility and third country responsibility in the Common European Asylum System cannot be achieved in the absence of data on their use in practice. However, both the legislative framework established by the Migration Statistics Regulation and Member State practice have had limited impact on improving statistical collection in this regard. The majority of European countries do not disaggregate figures on asylum decisions to indicate how many asylum applications are dismissed as inadmissible. Most national authorities also refrain from publishing data on the application of the Dublin Regulation in their statistical reports, while many fail to comply with the generous deadlines set by the Migration Statistics Regulation for the annual compilation of Dublin data.

European countries should proactively publish detailed statistics on key elements of their asylum procedures to promote evidence-based debates on the functioning of and challenges facing their asylum systems. Positive examples of statistical practice in relation to admissibility may be found in **Sweden**, where Dublin decisions are specifically disaggregated from negative decisions by the Migration Agency. The **UK**, on the other hand, proactively disaggregates figures for applications channelled into accelerated procedures, namely the Detained Fast-Track (DFT) and Non-Suspensive Appeal (NSA) processes. As regards the application of the Dublin system, the approach adopted by the State Secretariat for Migration in **Switzerland**, which publishes Dublin data on a monthly basis, should be followed by other countries. At the same time, the European Commission should ensure adequate monitoring of Member States' compliance with their statistical obligations under the Migration Statistics' Regulation.

### *“Safe third country” and “first country of asylum”*

Safe country concepts are a longstanding procedural tool, yet the recent political impetus for their application in Europe, following the EU-Turkey deal and the proposals for reform of the Common European Asylum System, has raised critical protection concerns. The recent introduction of lists of “safe third countries” in countries such as **Hungary**, as well as the pressure placed on **Greece** following the European Commission's wide interpretation of the “safe third country” and “first country of asylum” concepts in the context of the EU-Turkey deal, have often led to dubious decisions on the admissibility of asylum applications. Practice in countries with longer-entrenched safe country concepts in asylum procedures, such as **Germany** or **Switzerland**, indicates a geographically and materially limited use of the presumptions.

The requisite level of protection obtained by or available to an applicant in a third country has been rigorously interpreted by several countries where “first country of asylum” and “safe third country” notions are grounds for declaring an application inadmissible. To illustrate, **France**, **Spain**, **Hungary**, and **Croatia** require a person to have been recognised as a refugee in a third country in order to trigger the “first country of asylum” concept, whereas recent reforms in **Greece** and **Germany** have set lower thresholds for the concept. In the context of the “safe third country” concept, the European Commission's recent contention that a person can seek and enjoy protection in accordance with the Refugee Convention in a country that maintains geographical limitations thereon is espoused by **Hungary** and **Greece**, but contradicted by earlier jurisprudence in **Switzerland**.

In keeping with the commitment to a Common European Asylum System faithful to the Refugee Convention, the Convention should remain the yardstick for assessing the requisite level of protection in third countries that would enable a transfer of responsibility thereto. Accordingly, an asylum seeker should only have his or her claim dismissed as inadmissible if he or she has already been recognised as a refugee (“first country of asylum”) or may be recognised as a refugee in line with the Convention (“safe third country”), and may effectively benefit from such protection. These crucial legal principles should be clarified in the forthcoming Asylum Procedures Regulation, as they are regrettably disregarded in the Commission proposal.

As regards the requirement of a sufficient connection between the applicant and the “safe third country”, states in which asylum authorities have longer experience, and often judicial guidance, in the application of the “safe third country” concept have clarified that an asylum seeker cannot be considered to have a “sufficient connection” with a third country merely on the basis of transit or short stay, in line with UNHCR’s position. Diverging practice is seen in countries such as **Hungary** and **Serbia**.

Contrary to the position taken recently by the European Commission, European countries should rigorously interpret the “sufficient connection” criterion so as to refrain from declaring asylum applications inadmissible on the sole reason that an asylum seeker has transited through a country considered safe. Good practice witnessed in countries such as **Austria**, the **Netherlands** or **Bulgaria** is a welcome illustration of such an interpretation, and should inform the rules on the sufficient connection required for the “safe third country” concept under the Asylum Procedures Regulation, contrary to the interpretation adopted by the Commission proposal.

### *Dublin Regulation*

Limited available statistics on the application of the Dublin Regulation indicate a more efficient use of the Dublin procedure in 2016 compared to 2015, as far as main operating countries such as **Germany**, **Sweden** and **Switzerland** are concerned. However, several countries have continued to initiate procedures in respect of Member States where asylum seekers face risks of human rights abuses, disregarding guidance issued from their own courts or other national and European jurisprudence.

The implementation of the Dublin Regulation should be more closely scrutinised in order to avoid transfers of asylum seekers which would amount to *refoulement*. European countries should firmly suspend the use of the Dublin procedure in respect of countries demonstrating such risks, in line with national and European jurisprudence. Clear moratoria on Dublin procedures will ensure legal certainty to asylum seekers, but also more efficient administration and allocation of national authorities’ administrative and financial resources.

### *Relocation*

One year on, the implementation of the emergency relocation scheme remains extremely slow, as less than 3% of the agreed target has effectively been relocated from Italy and Greece. Nevertheless, countries such as **France** and **Portugal** have designed processes for the swift procedural treatment of persons relocated to their territory and dispersal to the different regions where applicants will be accommodated. In the case of France, this streamlined procedure is not applied in a uniform manner in all regions, however. At the same time, countries such as **Cyprus** and **Croatia** have indicated that relocated persons will be subject to a prioritised procedure.

European countries must step up their efforts to honour the commitments set out in the Relocation Decisions, building on experience and good practices developed by the Member States implementing relocation to date. Swift procedures and direct access to decentralised accommodation in cooperation

with local civil society actors are among the positive elements identified in the implementation of relocation.

The operation of the relocation scheme parallel to the Dublin Regulation has led to a situation whereby European countries receive asylum seekers from countries such as **Italy**, while transferring larger numbers of asylum seekers thereto under the Dublin system. This points to a fundamental contradiction at the heart of the Commission's approach to relocation, which regrettably persists in the corrective allocation mechanism introduced in the proposal for a reform of the Dublin system than it is in the relocation scheme.

European countries should refrain from initiating Dublin procedures regarding the countries benefitting from the relocation scheme, as the application of the Dublin Regulation is counter-intuitive to the aim of alleviating pressure on those countries' asylum systems.

## ANNEX I – LIST OF ASYLUM ACQUIS INSTRUMENTS AND REFORM PROPOSALS

### *Qualification*

- Directive 2004/83/EC of 29 April 2004; recast by
- Directive 2011/95/EU of 13 December 2011; proposed for repeal by
- Proposal for a Qualification Regulation, COM(2016) 466 of 13 July 2016

### *Asylum procedures*

- Directive 2005/85/EC of 1 December 2005; recast by
- Directive 2013/32/EU of 26 June 2013; proposed for repeal by
- Proposal for an Asylum Procedures Regulation, COM(2016) 467 of 13 July 2016

### *Reception conditions*

- Directive 2003/9/EC of 27 January 2003; recast by
- Directive 2013/33/EU of 26 June 2013; proposed for recast by
- Proposal for a recast Reception Conditions Directive, COM(2016) 465 of 13 July 2016

### *Dublin Regulation*

- Dublin Convention of 15 June 1990; repealed by
- Dublin II Regulation – Regulation (EC) No 343/2003 of 18 February 2003; recast by
- Dublin III Regulation – Regulation (EU) No 604/2013 of 26 June 2013; proposed for recast by
- Proposal for a Dublin IV Regulation, COM(2016) 270 of 4 May 2016

### *Eurodac*

- Regulation (EC) No 2725/2000 of 11 December 2000; recast by
- Regulation (EU) No 603/2013 of 26 June 2013; proposed for recast by
- Proposal for a recast Eurodac Regulation, COM(2016) 272 of 4 May 2016

### *European Asylum Support Office*

- Regulation (EU) No 439/2010 of 19 May 2010; proposed for repeal by
- Proposal for a European Union Agency on Asylum, COM(2016) 271 of 4 May 2016

### *Relocation*

- Council Decision (EU) 2015/1523 of 14 September 2015;
- Council Decision (EU) 2015/1601 of 22 September 2015

### *Resettlement*

- Proposal for a Union Resettlement Regulation, COM(2016) 468 of 13 July 2016

### *Temporary protection*

- Directive 2001/55/EC of 20 July 2001

## ANNEX II – STATISTICS ON ASYLUM APPLICATIONS & FIRST INSTANCE DECISIONS

*	Asylum applications and decisions: 1 January – 30 June 2016				
	Registered applicants	Refugee status	Subsidiary protection	Rejection	Total decisions
AT	25,691	11,640	1,820	4,910	31,510
BE	9,321	6,636	1,887	4,749	14,530
BG	7,845	280	214	321	4,915
CY	1,190	:	:	:	933
DE	396,947	148,815	23,302	70,437	283,236
ES	7,251	160	3,045	1,310	4,515
FR	40,120	9,070	4,485	28,295	41,850
GR	17,820	825	140	3,555	4,520
HR	639	10	0	70	377
HU	22,491	87	165	1,772	41,686
IE	994	185	30	605	1,486
IT	50,043	2,300	5,577	30,642	47,034
MT	786	108	625	48	1,044
NL	12,437	7,135	6,680	:	:
PL	6,997	45	60	1,095	7,228
SE	15,488	6,439	12,499	7,590	20,522
UK	19,978	4,408	46	10,444	15,680
CH	14,277	3,252	3,353	7,004	16,012
SR	365	8	14	54	364
TR	:	:	:	:	:

Source: Eurostat, migr\_asyappctzm and migr\_asydcfstq; Austrian Ministry of Interior; Belgian Commissioner-General for Refugees and Stateless Persons; Bulgarian State Agency for Refugees; Future Worlds Center; German BAMF; Hungarian Helsinki Committee; Irish ORAC; Dutch Immigration and Naturalisation Service; Swedish Migration Agency; UK Home Office; Swiss Secretariat for Migration; Belgrade Centre for Human Rights.

## ANNEX III – DUBLIN STATISTICS

### Outgoing requests and transfers: 1 January – 30 June 2016

MS	Total		Outgoing requests			Outgoing transfers		
	Requests	Transfers	1 <sup>st</sup> MS	2 <sup>nd</sup> MS	3 <sup>rd</sup> MS	1 <sup>st</sup> MS	2 <sup>nd</sup> MS	3 <sup>rd</sup> MS
AT	:	:	:	:	:	:	:	:
BE	:	:	:	:	:	:	:	:
BG	6	5	AT:	DE:	SE:	AT:	DE:	SE:
CY	90	15	UK: 31	DE: 16	SE: 12	UK: 7	DE: 3	SE: 3
DE	24,029	1,777	HU: 6,566	IT: 3,561	PL: 2,940	IT: 522	PL: 324	HU: 165
ES	:	:	:	:	:	:	:	:
FR	:	:	:	:	:	:	:	:
GR	:	:	:	:	:	:	:	:
HR	18	5	DE: 8	BG: 3	CZ: 3	BG: 3	DE: 2	-
HU	1,780	82	BG: 820	GR: 698		DE: 17	RO: 15	BG: 14
IE	:	:	:	:	:	:	:	:
IT	:	:	:	:	:	:	:	:
MT	46	8	FR: 13	PL: 7	DE: 5	IT: 5	FR: 2	DE: 1
NL	:	:	:	:	:	:	:	:
PL	96	44	DE: 37	AT: 13	HU: 10	DE: 26	HU: 7	BE: 3
SE	9,477	2,983	DE: 4,741	HU: 1,562	IT: 677	DE: 2,343	IT: 156	NO: 71
UK								
CH	9,047	2,215	IT: 3,147	DE: 2,235	HR: 891	DE: 962	IT: 730	AT: 100

### Incoming requests and transfers: 1 January – 30 June 2016

MS	Total		Incoming requests			Incoming transfers		
	Requests	Transfers	1 <sup>st</sup> MS	2 <sup>nd</sup> MS	3 <sup>rd</sup> MS	1 <sup>st</sup> MS	2 <sup>nd</sup> MS	3 <sup>rd</sup> MS
AT	:	:	:	:	:	:	:	:
BE	:	:	:	:	:	:	:	:
BG	5,982	356	AT:	DE:	NO:	AT: 91	DE: 61	NO: 31
CY	163	6	DE: 66	CH: 27	UK: 14	CH: 2	SE: 1	DE: 1
DE	19,017	6,644	SE: 4,146	NL: 3,653	FR: 2,586	SE: 2,198	CH: 962	NL: 802
ES	2,798	298	DE: 889	FR: 654	BE: 374	DE: 46	BE: 30	FR: 28
FR	:	:	:	:	:	:	:	:
GR	:	:	:	:	:	:	:	:
HR	3,047	134	AT: 1,754	CH: 672	DE: 442	CH: 58	AT: 56	HU: 5
HU	15,154	348	DE: 6,504	AT: 5,388	FR: 1,126	DE: 180	CH: 51	SK: 31
IE	:	:	:	:	:	:	:	:
IT	:	:	:	:	:	:	:	:
MT	184	29	SE: 49	DE: 45	FR: 24	DE: 8	SE: 6	UK: 3
NL	:	:	:	:	:	:	:	:
PL	4,102	558	DE: 2,621	FR: 412	AT: 330	DE: 330	AT: 85	SE: 33
SE	2,558	366	DE: 828	DK: 405	FR: 242	DK: 144	NO: 51	FI: 43
UK								
CH	1,639	235	DE: 754	FR: 281	AT: 167	DE: 65	AT: 34	BE: 25

Source: Bulgarian Helsinki Committee; Future Worlds Center; Federal Government of Germany, [Response to Information Request 18/9146](#), 17 August 2016; Spanish Office for Asylum and Refuge; Croatian Law Centre; Hungarian Helsinki Committee; Helsinki Foundation for Human Rights; FARR; Swiss Refugee Council.

## ANNEX IV – QUESTIONNAIRE FOR AIDA EXPERTS

The second Thematic Report focuses on asylum procedures, with emphasis on the workings of the Dublin system and the relocation procedure, the duration of the asylum process, admissibility procedures in relation to “safe third country” and “first country of asylum” concepts and accelerated procedures.

The following questionnaire is structured in two parts, the first covering statistical information to be requested from national authorities and/or other relevant actors. The second part contains a number of guiding questions for experts to provide updated information relating to asylum procedures and relocation in their respective countries. Bearing in mind the publication of updated AIDA country reports at the end of 2015, which will form the basis of desk research for this Thematic Report, the aim of this questionnaire is to provide additional and updated information on procedures which has not been included in the respective country reports. If the information requested has already been covered in the latest AIDA Country Report, you can refer to the report.

**Please submit your contribution to Minos Mouzourakis ([mmouzourakis@ecre.org](mailto:mmouzourakis@ecre.org)) and Ruben Fierens ([rfierens@ecre.org](mailto:rfierens@ecre.org)) by 19 August 2016 at the latest.**

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### 1. Requests for data

#### *Asylum procedure*

The reporting period for statistics should be the **first half of the year (1 January – 30 June 2016)**.

- ❖ Number of asylum applicants
- ❖ If applicable, number of asylum applications processed under the accelerated procedure<sup>211</sup>
- ❖ First instance decisions
  - Total number of decisions taken (in all types of procedures)
  - Breakdown of decisions by key nationalities (Syria, Afghanistan, Iraq)
  - If applicable, number and outcome of decisions in accelerated procedure
  - Out of rejection decisions, number of inadmissibility decisions
- ❖ Average duration of the asylum procedure in 2016 (1 January – 30 June)
  - Breakdown by key nationalities (Syria, Afghanistan, Iraq, “safe countries of origin” if applicable)
  - If applicable, average duration of admissibility procedure

#### *Dublin Regulation*

The reporting period for statistics should be the **first half of the year (1 January – 30 June 2016)**.

- ❖ Outgoing procedure
  - Number of outgoing requests and breakdown by top 3 Member States
  - Number of outgoing transfers and breakdown by top 3 Member States
- ❖ Incoming procedure
  - Number of incoming requests and breakdown by top 3 Member States
  - Number of incoming transfers and breakdown by top 3 Member States

#### *Relocation procedure*

The reporting period should be the **start of the relocation scheme (22 September 2015)** to present.

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<sup>211</sup> **Spain:** urgent procedure; **Sweden:** procedure for manifestly unfounded cases; **UK:** non-suspensive appeal procedure; **Switzerland:** 48-hour procedure and “Testphase”.

- ❖ Number of relocated persons (also made available by the [Commission](#))
  - Breakdown by nationality
  - Breakdown by Member State benefitting from relocation (Italy or Greece)
  - Out of those, number of persons with special needs (unaccompanied children, victims of torture, persons with disabilities etc.)
- ❖ Number of rejected relocation requests
  - Breakdown by nationality
  - Breakdown by ground for rejection
- ❖ If applicable, number of negative decisions on asylum applications from relocated applicants in the Member State of relocation
- ❖ Average duration of the relocation procedure (from the moment of registration in Greece or Italy until arrival in the Member State of relocation or, if applicable until the final decision on status)

## 2. Update on procedures in practice

### *Duration of the asylum procedure*

- ❖ What is the maximum time-limit for the completion of the regular procedure, including appeal?
- ❖ If applicable, what is the maximum time-limit for the completion of the accelerated procedure, including appeal?

### *Admissibility*

- ❖ Is the “safe third country” concept a ground for inadmissibility in your country? Is it applied in practice? If yes, is there a list of safe third countries or can the concept be invoked on a case-by-case basis?
- ❖ What forms of evidence are used for the designation of safe third countries in practice? Is ratification and application of the Refugee Convention without geographical limitation required for a country to be considered as “safe third country”?
- ❖ How is the requirement of a connection rendering the applicant’s transfer to a safe third country reasonable interpreted in practice? Does transit or stay in a third country satisfy as a sufficient connection?
- ❖ Are applicants whose claims are rejected as inadmissible on that ground given a document in the language of the safe third country stating that their claim was not examined on the merits in practice?
- ❖ Is the “first country of asylum” concept a ground for inadmissibility in your country? If yes, is the possibility of enjoying “sufficient protection” considered sufficient to apply the concept? If applicable, are the criteria listed Article 38(1) of the recast Asylum Procedures Directive with regard to “safe third country” also applied with regard to the first country of asylum concept?

### *Relocation*

#### *Questions for the Greek Council for Refugees and ASGI only:*

- ❖ What profiles and nationalities have been prioritised for requests to other countries?
- ❖ What happens if the applicant withdraws from the relocation procedure? If the relocation request is rejected? If the applicant does not go to the country of relocation?

#### *Questions for other experts as applicable only:*

- ❖ Which cases, if any, have been prioritised in relocation from Italy and Greece?
- ❖ How are relocated persons treated upon arrival in your country? Provide information as to the procedure applied to them (e.g. fast-track or prioritised procedure) and the type of status granted.



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