



# The implementation of the Dublin III Regulation in 2020

September 2021



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## Introduction\*

In September 2020, the European Commission launched its New Pact on Asylum and Migration. The Pact includes the proposal for a Regulation on Asylum and Migration Management (RAMM) which foresees a “common framework” for asylum and migration management at European Union (EU) level and aims to replace the Dublin III Regulation. Although it does introduce new corrective solidarity mechanisms, the new proposal preserves the same basic rules for the allocation of responsibility. These rules have been a significant source of conflict among Member States since the establishment of the Common European Asylum System (CEAS), and divisions are thus likely to persist in the future.

In the meantime, the Dublin III Regulation remains the applicable legal framework for determining which Member State is responsible for an application for international protection. This briefing aims to provide an update on developments in legislation, policy and practice relating to the application of the Dublin III Regulation in 2020. It draws on a series of other implementation assessments carried out by the European Council on Refugees and Exiles (ECRE) in recent years. It is based on information gathered through ECRE’s databases, namely the Asylum Information Database (AIDA) and the European Database of Asylum Law (EDAL), as well as other sources where relevant. Data for the year 2020 in this update are based on information made available by national authorities, civil society organisations, and Eurostat.

The year 2020 was marked by the suspension of transfers and fewer Dublin procedures as a result of COVID-19. Despite the pandemic, however, countries continued to send requests and to subject a relatively high number of applicants for international protection to Dublin procedures. Nonetheless, very few people reached the final stage in the procedure, i.e. the actual transfer of responsibility for an applicant from the requesting EU Member State to the Member State deemed responsible. The low number of transfers, the disregard for the family provisions, and other implementation gaps documented in 2020 in this update continue to call into question the operability of the current Dublin system – and of any new system based on the same principles.

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\* This report was written by Jean-David Ott at ECRE. We would like to thank the AIDA experts as well as Member State authorities for the provision of Dublin statistics and relevant information. All errors remain our own.

## Key Dublin statistics for 2020

In 2020, 471,300 individuals applied for international protection in the European Union (EU) Member States, down by 32.6 % compared with 2019. This significant decrease is mainly due to the outbreak of COVID-19, which resulted in travel restrictions and the closure of borders.

### Fluctuations in Dublin procedures in 2020

Comprehensive EU-wide statistics on the number of Dublin procedures in 2020 are lacking, but available information suggests that around 95,000 decisions were issued in response to outgoing Dublin requests, which represents a decrease by one-third compared to 2019.<sup>1</sup> The decrease in Dublin procedures is particularly visible when looking at the 10 Member States which send the majority of Dublin requests:



Source: AIDA. Figures on NL and SE were extracted from Eurostat.

With the exception of Greece, the number of outgoing Dublin requests decreased in all of the Member States represented above. By way of illustration, requests fell by around -39% in Germany, -35% in France and by more than half in Italy and Malta.

Only 6 out of 27 Member States recorded an increase in outgoing Dublin requests compared to 2019 - namely Bulgaria, Greece, Spain, Croatia, Poland, Slovenia and Slovakia. The increase in Dublin procedures was particularly significant in Spain as the country issued nearly 800 outgoing Dublin requests in 2020, while it had issued less than 10 outgoing Dublin requests in each of the last three years respectively.

A non-EU country where the number of Dublin procedures more than doubled is the United Kingdom (UK). Although it left the EU on 31 January 2020, the UK remained subject to the Dublin III Regulation during the transition period. In 2020, the United Kingdom sent a total of 8,502 outgoing requests and received 2,331 incoming requests, compared to 3,258 and 2,236 requests respectively in 2019.<sup>2</sup> In Greece, the Regional Asylum offices and the Greek Dublin Unit prioritised take charge requests of people who wished to be reunited with family members or relatives residing in the UK. A large number

<sup>1</sup> EASO, *EASO Asylum Report 2021*, available at: <https://bit.ly/2VNQ4Aq>, p.84.

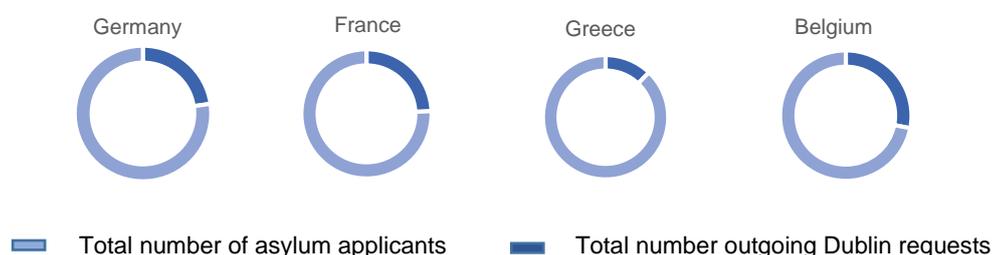
<sup>2</sup> AIDA, *Country report United Kingdom – Update on the year 2020*, March 2021, available at: <https://bit.ly/3mdXdVQ>, p.30.

of these asylum applications were submitted in December 2020, in order that the relevant outgoing requests could be sent before the end of the year.<sup>3</sup> In January 2021, the UK issued guidance explaining how to process cases for which a Dublin Regulation responsibility request had been made by a Dublin State to the UK prior to the end of the transition period on 31 December 2020 but where either no decision had been made on the request or a decision had been made but the transfer had not taken place before the end of the transition period.<sup>4</sup>

### Asylum applications and Dublin procedures

Despite the overall decrease in applicants and Dublin procedures in the EU, the number and proportion of applicants subject to Dublin procedures in 2020 should not be underestimated:

#### Share of Dublin procedures in the top 4 operators of the Dublin system: 2020



The charts above refer to the four countries (ordered left to right) which sent the majority of outgoing Dublin requests in 2020. They demonstrate that a high proportion of applicants for international protection were channelled into Dublin procedures; i.e. 29.4% of all applicants in Germany and 32% of all applicants in France were subject to a Dublin procedure in 2020. In Belgium, this figure was even higher as nearly 40% of all asylum seekers were channelled into a Dublin procedure. It should be further noted that Germany and France continue to be both the main destination countries of asylum seekers and the main users of the Dublin system. In 2020, these two Member States received 102,581 and 93,475 asylum applicants respectively and issued 30,135 and 30,054 outgoing Dublin requests.

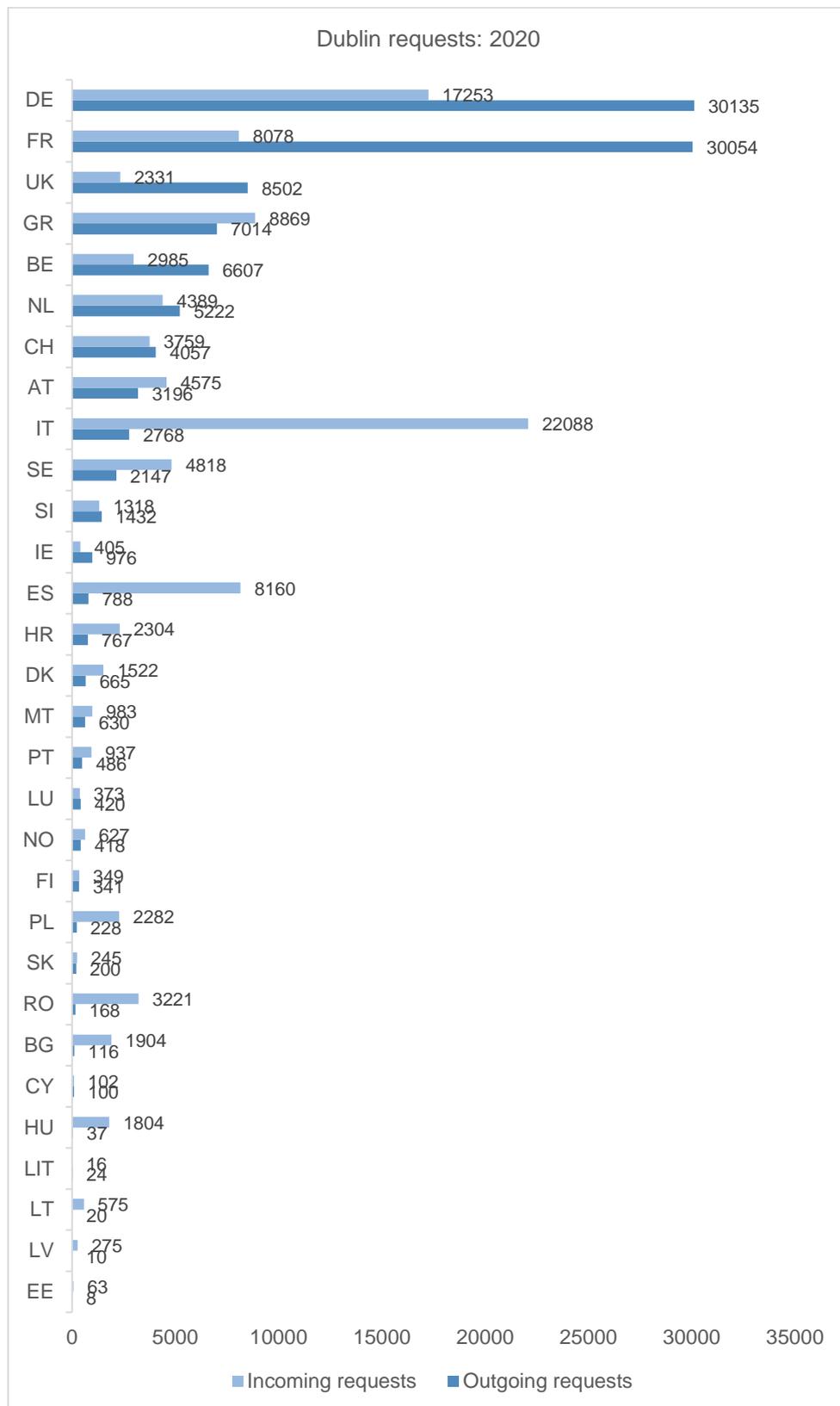
The high proportion of applicants being subjected to a Dublin procedure in 2020 raises questions as to the logic and feasibility of the Dublin system. On top of the numerous obstacles that have been documented in recent years regarding the lack of implementation of transfers, the outbreak of COVID-19 and the travel restrictions were an additional limitation which should have encouraged Member States to invest in regular procedures and to take responsibility for the applicants concerned. Instead, Member States continued to subject a high number of applicants to Dublin procedures which were unlikely to result in a transfer.

<sup>3</sup> AIDA, *Country report Greece – Update on the year 2020*, June 2021, available at: <https://bit.ly/3Da0KdV>, p.76.

<sup>4</sup> UK Home Office, *Requests made to the UK under the Dublin III Regulation prior to the end of the Transition Period*, 13 January 2021, available at: <https://bit.ly/3kyoDnV>.

## Outgoing and incoming procedures

In 2020, Member states received the following incoming and issued the following outgoing requests:



Source: AIDA. Figures on BE, ES, NL, IT, FI, LI, SK, LT, EE, LV, DK and NO are based on Eurostat.

Similarly to previous years, the majority of countries received more incoming requests than the number of outgoing requests sent. Exceptions include **Germany, France, Belgium, the Netherlands, the United Kingdom, Ireland, Switzerland, Luxembourg and Lichtenstein** which issued more outgoing requests than they received incoming requests.

**Italy** continued to be by far the country which receives most incoming requests. In 2020, Italy submitted 2,768 outgoing requests and received 22,088 requests from other countries, mainly from Germany and France. Other countries which received a significant number of requests include **Germany, Greece and Spain**. However, in comparison to 2019, the number of incoming requests decreased by -27% in Germany, -33% in Greece and -37% in Italy in 2020. On the contrary, in Spain they increased by +15% in 2020 and, more strikingly, a rise of incoming requests was reported in Romania (+132%) and Ireland (+102%).

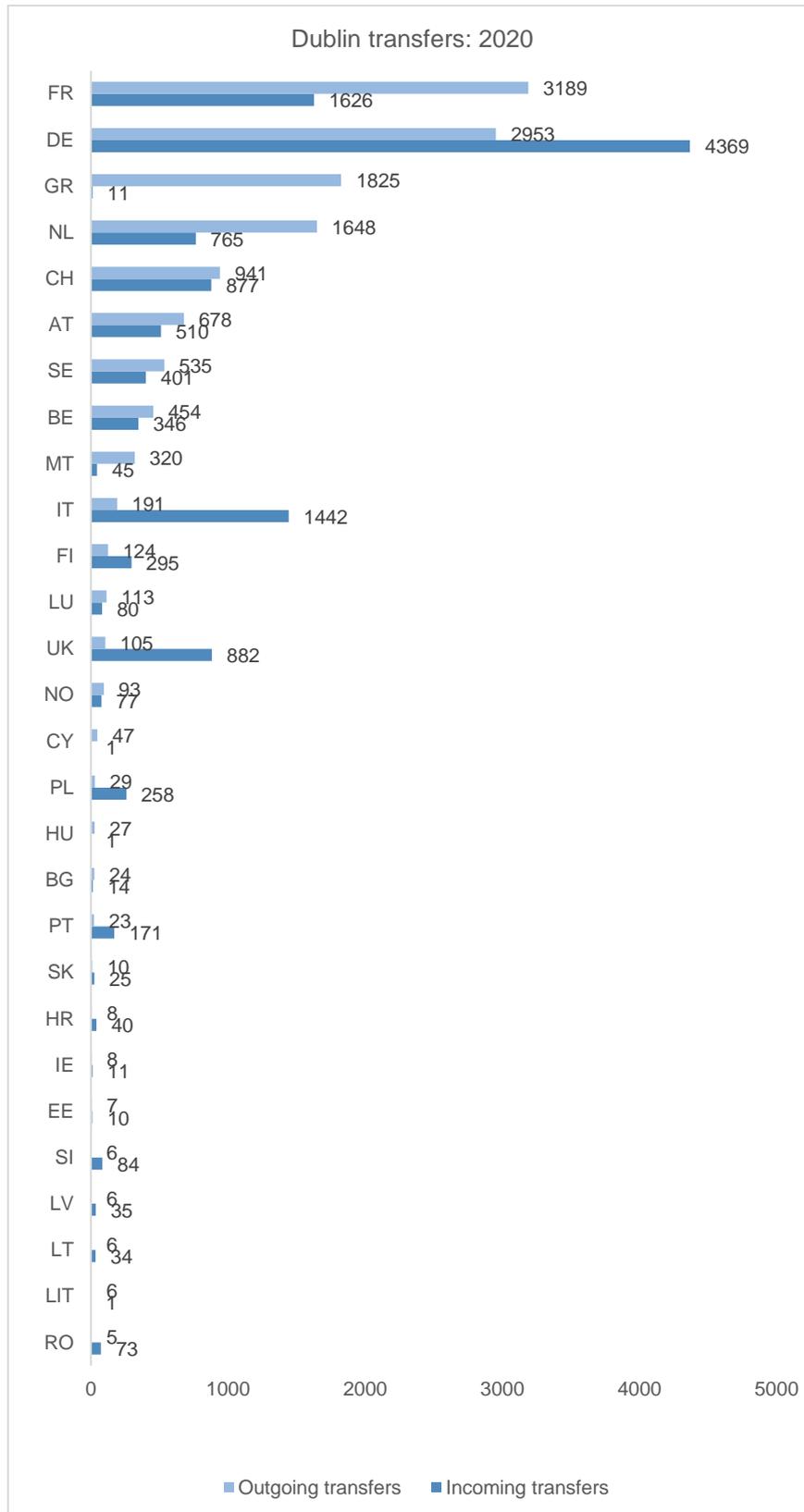
It is also important to note that **Hungary** continued to receive numerous requests from other countries, mainly from France, despite extensive evidence of the deficiencies in the Hungarian asylum system and new infringement proceedings launched by the European Commission in 2020.<sup>5</sup>

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<sup>5</sup> See for example: ECRE, 'Hungary: Facing Fifth Infringement Procedure Related to Asylum Since 2015', 6 November 2020, available at: <https://bit.ly/3zKyoE9>.

## Transfers

As regards actual transfers carried out under the Dublin Regulation, available figures for 2020 point to the following outgoing and incoming transfers:



Source: AIDA. Figures on FR, GR, NL, SE, BE, IT, FI, NO, SK, EE, LV and LT are based on Eurostat.

The figures above indicate that **France** and **Germany** continue to be the two main operators of the Dublin system as they received and carried out the majority of transfers in the EU. However, for the first time, France carried out more transfers than Germany. This is mainly due to COVID-19 and the fact that the German authorities announced an overall suspension of transfers in March 2020. Along with this announcement, Germany also stated that the deadline to carry out transfers would be suspended,<sup>6</sup> meaning that Germany would not become responsible for the asylum application despite not having complied with the six-month deadline in Article 29(1) Dublin III Regulation.

Germany's suspension of the time limit for transfers was criticised by NGOs as not compliant with the Dublin III Regulation. They argued that it would leave asylum seekers in a prolonged state of limbo and significantly extend the length of their asylum procedure.<sup>7</sup> In its guidance of 16 April 2020, the European Commission clarified that, "where a transfer to the responsible Member State is not carried out within the applicable time limit, responsibility shifts to the Member State that requested the transfer pursuant to Article 29(2) of the Dublin Regulation". It explicitly stated that "no provision of the Regulation allows to derogate from this rule in a situation such as the one resulting from the COVID-19 pandemic".<sup>8</sup>

Several Administrative Courts in Germany have also ruled against the suspension of the time limit for transfers during COVID-19.<sup>9</sup> In August 2020, for example, the Administrative Court of Greifswald ruled that the six-month time limit cannot be suspended if the suspension solely aims at preventing the expiration of the transfer period, and not at enabling effective legal protection for the applicant.<sup>10</sup> Nevertheless, divergent rulings on the matter were reported throughout the year, which led the German Federal Constitutional Court to lodge a request for a preliminary ruling on 19 April 2021. The Court of Justice of the European Union (CJEU) will have to clarify whether the suspension of the implementation of a transfer decision due to COVID-19 falls within the scope of Article 27(4) of the Dublin III Regulation.<sup>11</sup>

Other countries which received a significant number of transfers in 2020 include **Italy** (1,442), the **United Kingdom** (882) and **Switzerland** (877), but these numbers are much lower than in 2019. **Greece** only received 11 transfers but ranked third in implementing outgoing transfers. It is also important to note that, for the second consecutive year, Austria transferred one person to **Hungary**. No information was made available by the Hungarian and Austrian authorities on the case involved, however.

The low number of transfers effected (i.e. that end with the person actually being transferred) continues to call into question the efficiency and operability of the Dublin system. ECRE has consistently

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<sup>6</sup> The BAMF referred to Section 80 (4) of the German Administrative Court Regulations (VwGO) which foresees that an authority can suspend the execution of an administrative act that remains enforceable despite legal remedies. Accordingly, this would apply to Dublin procedures as appeals against such decisions have no suspensive effect. The BAMF further relied on Article 27 (4) of the Dublin III Regulation, which enables the Member States to suspend the implementation of the transfer decision pending the outcome of the appeal or review.

<sup>7</sup> PRO ASYL and Equal Rights Beyond Borders, *Praxishinweise zur aktuellen Aussetzung von Dublin-Überstellungen und Überstellungsfristen auf Grund der Corona-Pandemie*, 8 May 2021, available in German at: <https://bit.ly/3xWcoVU>.

<sup>8</sup> European Commission, *Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (2020/C 126/02)*, 16 April 2020, available at: <https://bit.ly/32J7csl>, para. 1.2.

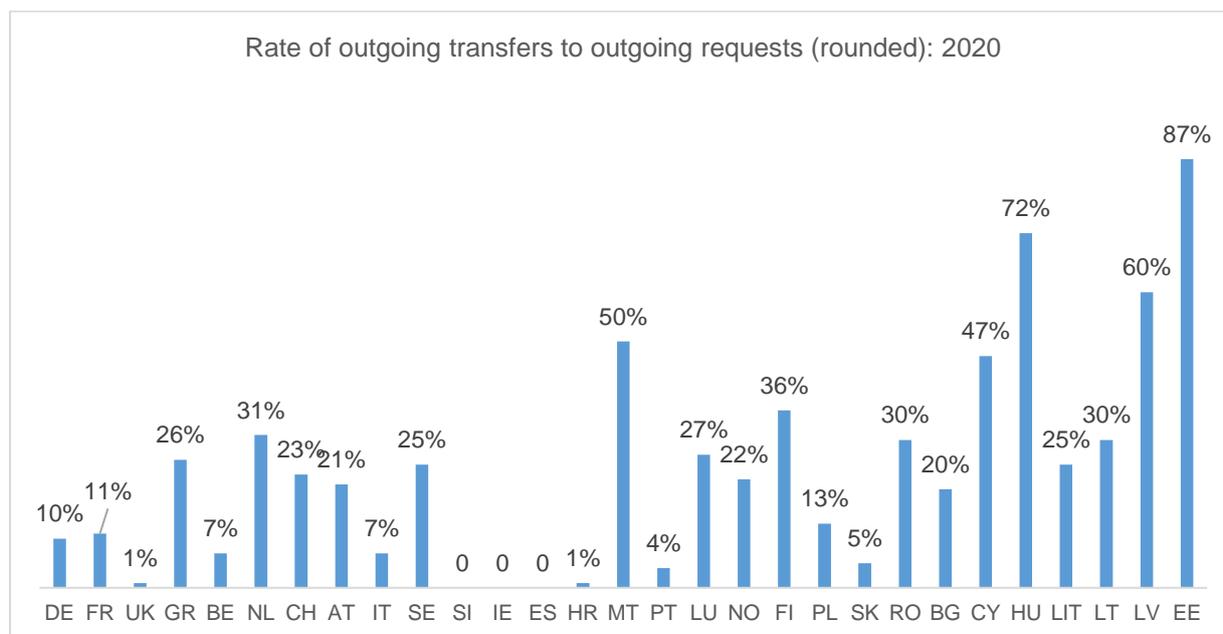
<sup>9</sup> (Germany) Administrative Court of Düsseldorf, Decision 15 L 776/20.A, 18 May 2020; Administrative Court of Potsdam, Decision 2 K 3425/18.A, 12 June 2020; Administrative Court of Berlin, Decision 25 L 123/20.A, 22 June 2020;; Administrative Court of Lüneburg, Decision 10 LA 193/20, 18 September 2020.

<sup>10</sup> (Germany) Administrative Court of Greifswald, Decision 3 A 1865/19 HGW, 28 August 2020; See EDAL summary at: <https://bit.ly/3AQTotz>.

<sup>11</sup> CJEU, Case C-245/21: *Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 19 April 2021 – Bundesrepublik Deutschland represented by the Bundesministerium des Innern, für Bau und Heimat v MA, PB*, available at: <https://bit.ly/3iW5wDJ>.

emphasised that Dublin transfers are not mandatory as the Dublin Regulation provides choices and discretion to Member States, which can examine asylum claims themselves to avoid unnecessary human, administrative and financial costs.<sup>12</sup> This was particularly relevant in 2020 which was marked by COVID-19, travel restrictions, and the suspension of Dublin transfers in nearly all European countries.

The rate of Dublin transfers effected compared to outgoing requests for different countries was as follows:



Source: AIDA. Figures on BE, IT, SE, HR, NO, FI, SK, LT, LV and EE are based on Eurostat. As there is a certain time that runs between a request being sent and the person being transferred, i.e. requests sent in a calendar year and transfers implemented in another calendar year — the figures above may not relate to the same group of people.

The countries presented in the graph above have been sorted from left to right according to the number of Dublin procedures initiated, i.e. the number of outgoing Dublin requests sent in 2020. It demonstrates that the transfer rates are significantly lower in countries with a higher number of Dublin procedures (on the left side of the graph), compared to those with fewer Dublin procedures (on the right side of the graph). Of the 29 countries represented, only three (Hungary, Latvia and Estonia) achieved Dublin transfers in more than half the procedures they initiated – although the figures in these three countries should be read with caution as they refer to only a handful of applicants, namely 27 people transferred from Hungary to another country, 6 from Latvia and 7 from Estonia.

More than half the countries have a transfer rate below 30%, varying from 26% in **Greece**, 21% in **Austria**, 13% in **Poland**, 7% in **Italy**, to as low as 4% in **Portugal**, 1% in **Croatia**; and less than 1% in **Slovenia**, **Ireland** and **Spain**. The very low transfer rate for the top three operators of the Dublin system in 2020, **Germany**, **France** and the **United Kingdom**, deserves particular attention:

- **Germany** implemented 2,953 transfers out of 30,135 requests, marking a transfer rate of only 10%. This means that on average only 1 in 10 applicants was effectively transferred after having been channelled into a Dublin procedure. A low transfer rate was also reported in previous years (17%

<sup>12</sup> See for example: ECRE, *The implementation of the Dublin III Regulation in 2018*, March 2019, available at: <https://bit.ly/3eRgKUj>; ECRE, *To Dublin or not to Dublin?*, November 2018, available at: <https://bit.ly/2EbDosN>. See also CJEU, Case C-56/17 *Fathi*, Judgment of 4 October 2018, EDAL, available at: <https://bit.ly/2TUdfap>, para 53.

in both 2018 and 2019) which suggests structural problems in the Dublin system, rather than obstacles resulting from COVID-19.

- Similar observations apply to **France**, where only 3,189 persons were transferred out of 30,054 requests, thus marking a transfer rate of 11%. In **the United Kingdom**, only 105 transfers were carried out of 8,502 requests, thus marking a transfer rate of approximately 1.2%

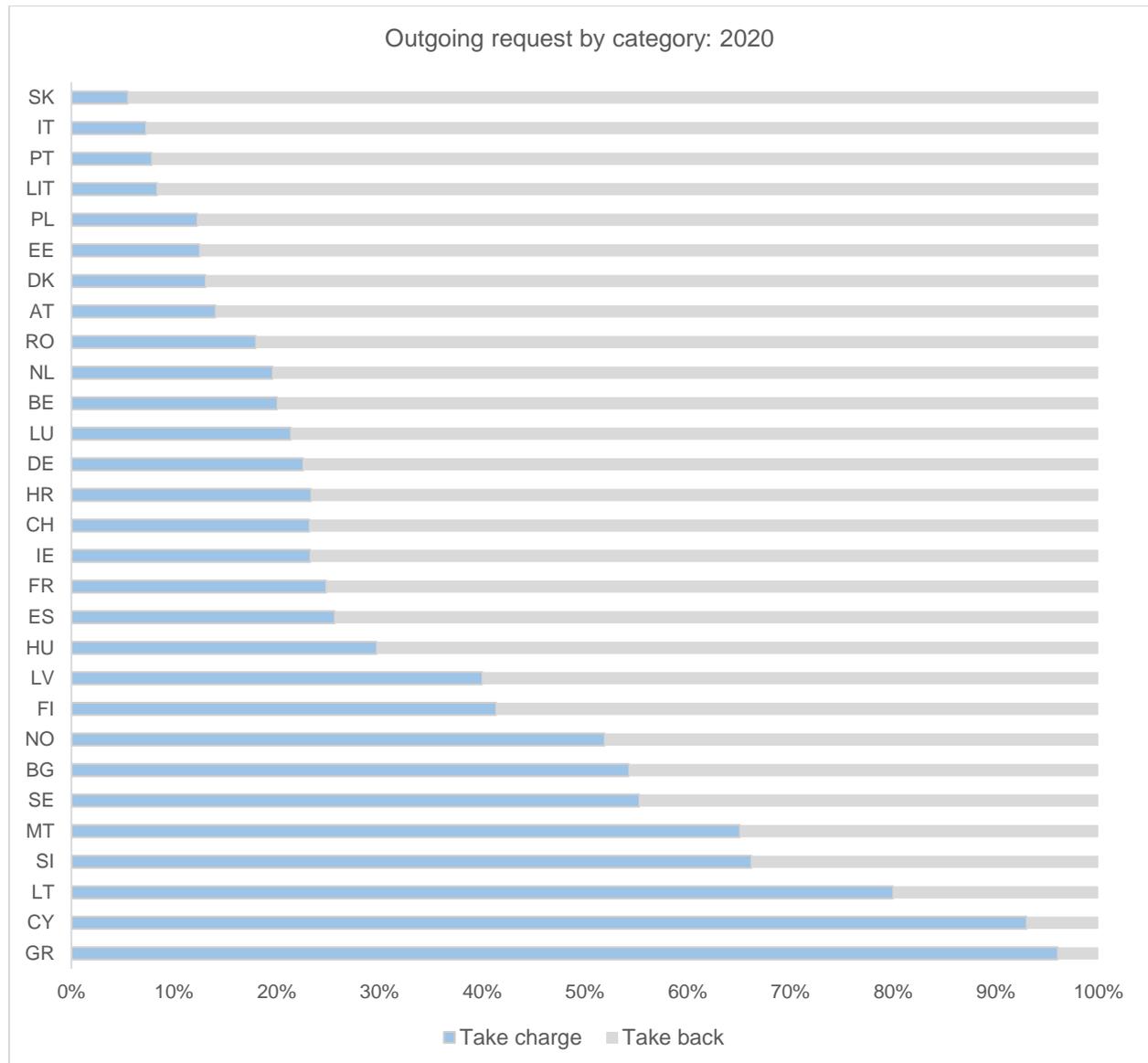
Overall, the comparison between outgoing requests and actual transfers demonstrates that only a small fraction of Dublin procedures led to a transfer in 2020. European countries channelled too many applicants into a Dublin procedure that would not reach its final stages. Moreover, monthly statistics show that countries started re-initiating Dublin procedures as of June 2021 and that the number did not decrease during the second wave of the pandemic despite new travel restrictions across Europe. This confirms ECRE's assessment that the majority of countries applying the Dublin Regulation make a conscious policy choice to subject both asylum seekers and their own administration to lengthy Dublin procedures even though they know in advance that these procedures will not end in a transfer. The consequences are damaging for applicants as they face a prolonged state of limbo, lengthy asylum procedures, and limited rights and guarantees.<sup>13</sup>

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<sup>13</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, p.62, available at: <https://bit.ly/2NJvdqp>, p.62. For an overview of procedural safeguards during the Dublin procedure in practice, see also: AIDA, *The implementation of the Dublin III Regulation in 2019 and during COVID-19*, August 2020, available at: <https://bit.ly/3gdh5V2>, p. 20-23.

## The responsibility criteria

Chapter III of the Dublin Regulation lays down a hierarchy of criteria for determining which country is responsible for examining the asylum application. Disaggregated statistics on outgoing and incoming requests by ground are available for 29 countries as follows:



Source: AIDA. Figures on GR, SE, FR, CH, DE, NL and DK are based on Eurostat.

The graph above demonstrates the prevalence of take back requests based on Articles 18 and 20(5) of the Regulation (represented in grey), i.e. cases where the applicant has already lodged one asylum application in a Member State and travels on to another Member State. The latter then initiates proceedings to see which Member State is responsible for "taking back" the applicant. "Take back" requests made up more than 70% of the total number of requests in 19 out of the 29 countries above.

Fewer countries, including **Greece, Cyprus, Lithuania, Slovenia** and **Malta** mainly sent "take charge" requests, i.e. cases where a first application is lodged and a Member State initiates the procedure to determine which Member State is responsible. A Member State can request another Member State take charge of an applicant, usually due to the presence of family members. Interestingly in **Italy** and

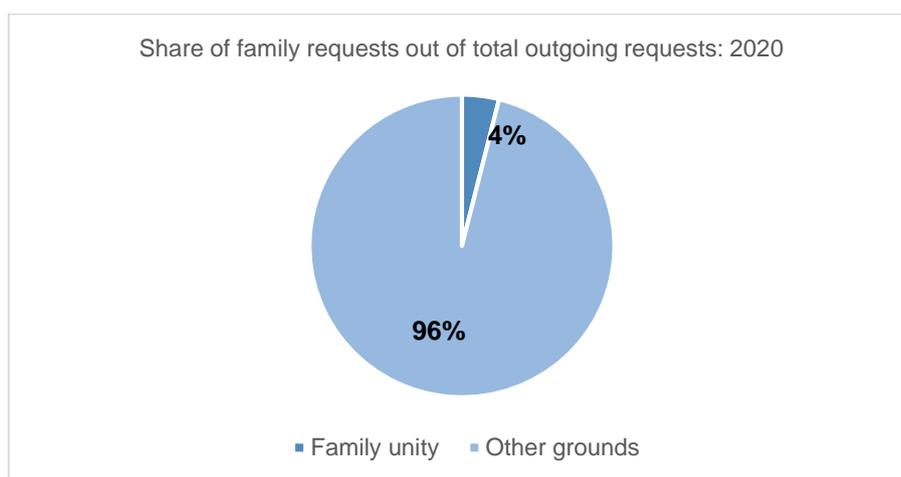
**Spain**, which are two frontal EU Member States where many applicants arrive from outside the EU, the majority of requests were take back requests.

The high number of take back requests indicates that the majority of people placed in a Dublin procedure in the above countries had already lodged an asylum application in another country. ECRE has already explained in previous research that onward movement may occur for many reasons related to the persons and to the situation in the country where they find themselves. The person's personal and socio-economic situation, their family status or the asylum and reception situation where they are located are all reasons why they may decide or be forced to depart from a Member State.<sup>14</sup>

### Family unity

The Dublin III Regulation lists family unity as the first in the hierarchy of responsibility criteria.<sup>15</sup> It should be noted that the concept of family unity under the Dublin regulation only applies to a limited number of family members in any case, namely the spouse/partner and underage children. For unaccompanied minors it can be extended to other family members as listed in the Regulation, and when in the best interests of the child.

The following chart illustrates the share of “take charge” requests for family reunification out of the total number of outgoing requests, based on available figures in 28 countries for 2020:



Source: Calculations based on Eurostat

Out of the total outgoing Dublin requests, only 4% were based on the family unity criteria, and 96% on other grounds. This indicates that Member States continue to ignore these criteria and are therefore not respecting the hierarchy, as the family provisions are rarely used in most countries, despite the likely presence of family members elsewhere in the EU for at least some applicants.<sup>16</sup>

At national level, the share of family unity requests out of the total outgoing requests in 2020 was as follows:

<sup>14</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqp>.

<sup>15</sup> Articles 8-11 Dublin III Regulation.

<sup>16</sup> See further, EPRS/ECRE, *Dublin Regulation on international protection applications*, February 2020, available at: <https://bit.ly/2NJvdqp>; ECRE, *The Dublin system in 2018*, March 2019, available at: <https://bit.ly/3dM61KL>; UNHCR, *Left in Limbo: Study on the implementation of the Dublin III Regulation*, August 2017, available at: <http://bit.ly/2kPx9SX>, 86 et seq.;



Source: Eurostat. Figures on MT, DE, UK, FR, AT, IE, SE, PL, GR and BG are based on AIDA.

Of the 28 countries represented above, only one country – **Bulgaria** – applied the family unity criteria in at least half of its outgoing Dublin requests. With the exception of **Greece**, the share of family unity requests out of the total of outgoing Dublin requests remained very low in all other countries – representing less than 10% of all requests in 24 countries.

The extremely low level of family unity requests in **Germany** (296 out of 30,125 requests), **France** (439 out of 30,054 requests) and **Belgium** (44 out of 6,563 requests) should be highlighted as these are countries frequently using the Dublin procedure. Similar observations can be made about the **Netherlands**, **Switzerland** or **Austria**. **Greece** remains one of the only countries frequently applying the family unity criteria, with around 40% of its outgoing requests in 2020 relating to family reunification – although it should be noted that this marks an important decrease compared to 60% in 2019 and 70% in 2018.

As worrying as the low numbers of requests based on the family unity criteria, was the persistence of obstacles to the implementation of transfers based on these criteria due to practices adopted by

receiving Member States. These include imposing excessive evidentiary requirements such as translation and authentication of documents proving family ties, DNA tests for children, and an overly strict interpretation of time limits.<sup>17</sup>

## Suspension of transfers

Litigation related to Dublin procedures continues to account for a large share of asylum-related cases before domestic and European Courts. By way of illustration, the Dutch Council of State lodged four different pre-judicial questions regarding the interpretation of provisions of the Dublin Regulation within a single month in May 2021.<sup>18</sup> The impact of COVID-19 also raised new questions. As mentioned above, the German Federal Constitutional Court lodged a request for a preliminary ruling on 19 April 2021 in order to clarify whether the suspension of the implementation of a transfer decision due to COVID-19 falls within the scope of Article 27(4) of the Dublin III Regulation.<sup>19</sup>

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

The duty of sending countries to obtain guarantees to ensure the legality of Dublin transfers in certain cases continues to be interpreted differently across Europe. Most countries do not have a formal policy in place which requires the provision of individual guarantees prior to a Dublin transfer. A few exceptions include **Cyprus** or **Greece** which require guarantees as a matter of general practice, while other countries request such guarantees only from specific destination countries, in particular from **Greece** or **Bulgaria**.

Transfers to **Italy** deserve particular attention as the country received by far the largest share of incoming requests in 2020 (over 22,000 requests). It also received the third highest number of transfers after Germany and France. Following the guarantees provided by the Italian Dublin Unit at the beginning of 2019 on access to accommodation, several countries, including **Austria** and **Belgium**, discontinued their previous policy of requesting guarantees for families with children. In the **Netherlands**, the Council of State confirmed in 2020 that no guarantees were necessary prior to the transfer of vulnerable asylum seekers to Italy,<sup>20</sup> in line with its previous case-law on the matter.<sup>21</sup>

However, diverging rulings on the need to obtain guarantees from Italy were reported in other countries. In **Portugal**, the dominant position in jurisprudence seems to be that the determining authority is not bound by a general duty to inquire into the situation in the responsible Member State, and that the situation in Italy does not amount to one of generalised risk of torture, inhuman or degrading treatment.<sup>22</sup> Nevertheless, the Portuguese Administrative Circle Court (TCA) South considered that in certain cases the determining authority failed in its obligation to seek guarantees from Italy<sup>23</sup> and that in another case there were “clear, obvious and proven indications of the existence of systemic flaws” in the Italian

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<sup>17</sup> AIDA, *Country report Greece – Update on the year 2020*, June 2021, available at: <https://bit.ly/3AhkFWq>, p.77-79.

<sup>18</sup> CJEU, Request for a preliminary ruling from the Dutch Council of State in the Case C-323/21, C-324/21 and C-325/21 of 25 May 2021, as well as in Case C-338/21 of 31 May 2021.

<sup>19</sup> CJEU, Case C-245/21: *Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 19 April 2021 – Bundesrepublik Deutschland represented by the Bundesministerium des Innern, für Bau und Heimat v MA, PB*, available at: <https://bit.ly/3iW5wDJ>.

<sup>20</sup> (Netherlands) Council of State, ECLI:NL:RVS:2020:987, 8 April 2020 and Council of State, ECLI:NL:RVS:2020:986, 8 April 2020.

<sup>21</sup> (Netherlands) Council of State, Decision No 201809552/1, 12 June 2019; See also: Council of State, Decision No 201901495/1/V3, 8 April 2019

<sup>22</sup> For a detailed list of cases, see: AIDA, *Country report Portugal – Update on the year 2020*, June available at: <https://bit.ly/39et8NX>, p.56-57.

<sup>23</sup> (Portugal) TCA South, Decision 2221/19.3BELSB, 18 June 2020, available at: <https://bit.ly/3fbGONR>.

system and that its malfunctioning was “endemic and deliberate”, reaching the threshold established in European jurisprudence.<sup>24</sup>

In **Switzerland**, the Federal Administrative Court stated in 2020 that the guarantees provided by the Italian authorities were not specific enough because families transferred from Switzerland to Italy no longer have access to the second-line reception centres under new legislation.<sup>25</sup> The Italian authorities were thus required to provide more specific guarantees concerning reception conditions in each individual case. The Court suspended several Dublin transfers throughout 2020 because the State Secretariat for Migration (SEM) had not sufficiently investigated access to healthcare and adequate accommodation in Italy.<sup>26</sup> The list of accommodation facilities for families circulated by Italian authorities in April 2020 was also considered insufficient by the Court.<sup>27</sup> It should be further noted that, in January 2020, the Swiss Refugee Council published a report on reception conditions in Italy for Dublin returnees, demonstrating obstacles to accessing adequate accommodation and health care.<sup>28</sup> The Swiss Refugee Council will continue to document transfers to Italy in 2021 within the framework of the Dublin Returnee Monitoring Project (DRMP).

As regards individual guarantees from **Greece**, no particular change was noted in 2020. According to the Greek Dublin Unit, in the context of return, some Member States such as **Germany** and the **Netherlands** have requested specific housing guarantees.<sup>29</sup>

### *The human rights threshold*

Domestic courts continued to scrutinise Dublin procedures to ensure the legality of Dublin transfers in certain cases. In accordance with well-established European jurisprudence, a Dublin transfer is considered to be unlawful if it exposes the individual to a real risk of a serious violation of the prohibition of inhuman or degrading treatment under Article 3 ECHR and Article 4 of the Charter in the destination country.<sup>30</sup> This requires assessing the situation in the destination country, *inter alia* regarding access to the asylum procedure and reception as well as the risk of chain *refoulement*, or more recently the impact of the health pandemic on national systems.

In **Belgium** for example, the Council of Alien Law Litigation (CALL) suspended a transfer decision to Italy because the Belgian Immigration Office did not take into consideration the risks resulting from COVID-19 on reception and sanitary conditions for applicants for international protection.<sup>31</sup> In two other cases, the CALL considered that the applicants did not demonstrate in their particular cases that the

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<sup>24</sup> (Portugal) TCA South, Decision 2364/18.0BELSB, 14 May 2020, available at: <https://bit.ly/3d3LrqC> (see EDAL case summary at <https://bit.ly/3t1EJZ5>). This decision was later reversed by the STA. TCA South, Decision 1301/19.0BELSB, 14 May 2020, available at: <https://bit.ly/3177qYm>).

<sup>25</sup> (Switzerland) Federal Administrative Court, *Press release on Stricter criteria for Dublin transfers to Italy*, 17 January 2020, available at: <https://bit.ly/3hDsn5X>.

<sup>26</sup> See for example: Swiss Federal Administrative Court, Decision F-2751/2019, 17 March 2020; Decision D-4067/2019, 14 January 2021; D-1869/2019, 22 January 2020, D-552/2020 of 5 February 2020, E-6810/2016 of 11 March 2020; D-5952/2020 of 4 December 2020.

<sup>27</sup> (Switzerland) Federal Administrative Court, Decision F-4872/2020, 5 November 2020, c. 4.4.

<sup>28</sup> Swiss Refugee Council, *Reception conditions in Italy: Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy, January 2020*, available at: <https://bit.ly/3cSzToZ>.

<sup>29</sup> Information provided by the Greek Dublin Unit on 12 March 2021. Note that, in the context of returns, several domestic courts have cancelled removals of international protection beneficiaries to Greece in 2021 due to a serious risk of inhuman or degrading treatment. See for ex: German Higher Administrative Court, Decision 11 A 1564/20.A, 21 January 2021, EDAL summary available at: <https://bit.ly/3zpqijT>.

<sup>30</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011, EDAL, available at: <https://bit.ly/2ErG9VZ>; CJEU, Case C-578/16 PPU C.K., Judgment of 16 February 2017, EDAL, available at: <https://bit.ly/2Wvgjqr>; CJEU, Case C-163/17 *Jawo*, Judgement of 19 March 2019, EDAL, available at: <https://bit.ly/2WS5PUC>.

<sup>31</sup> (Belgium) CALL, Decision No 238 756, 22 July 2020.

health pandemic in Italy would constitute a risk of inhuman or degrading treatment.<sup>32</sup> Similarly, in the **Netherlands**, the Council of State assessed the situation in Italy after the start of the COVID-19 pandemic and found that Italy remained responsible for examining the application, even though the transfer was temporarily impossible in practice.<sup>33</sup> In **Portugal**, the coronavirus pandemic did not impact the legality of Dublin transfers but rather the moment of their execution. The Portuguese Administrative Circle Court (TCA) South ruled in two different cases that the transfer to Italy should be carried out once the COVID-19 restrictions were lifted, provided that mobility and living conditions in Italy were ensured.<sup>34</sup>

- **Transfers to Italy:** In October 2020, a new decree reformed the Italian reception system, now called the “system of accommodation and integration (SAI)”, with the aim of improving access to reception and the type and level of services provided in first and second accommodation facilities. On 15 April 2021, the ECtHR noted that these amendments included an extension of the range of services to be provided in SAI facilities and, according to UNHCR, effective access to essential services was guaranteed as the right of applicants for international protection to register their residence had been restored. As a result, the Court issued an inadmissibility decision in which it refused to suspend the Dublin transfer of a single mother and her two minor children to Italy, considering that it would not pose a risk of treatment in violation of Article 3 ECHR.<sup>35</sup>

Three domestic judgements from the Netherlands have followed this recent jurisprudence, concluding that the applicants would not be at risk of violation of Article 3 ECHR and Article 4 of the Charter if they were transferred back to Italy under the Dublin III Regulation, even in case of individual vulnerabilities.<sup>36</sup> The impact of the ECtHR decision in *M. T. v Netherlands* on case-law in other countries is still unclear. It is important to note, however, that certain reports have indicated that the new SAI system is primarily designed for beneficiaries of international protection and unaccompanied children, thus raising concerns about the reception of other applicants, and that the level of services provided may vary significantly depending on where the applicant is accommodated.<sup>37</sup> Moreover, in answer to a request sent by ASGI, the Italian Dublin Unit indicated that there are no reserved places for Dublin returnees in the reception system”.

- **Transfers to Bulgaria:** While the Dutch Council of State still seems to apply the principle of mutual trust to Bulgaria,<sup>38</sup> Polish authorities systematically request that the Bulgarian authorities provide individual guarantees,<sup>39</sup> and Belgian authorities have halted transfers to Bulgaria.<sup>40</sup> In Switzerland the Federal Administrative Court ruled in one case that there were no systemic deficiencies in the asylum and reception systems that should lead to a general suspension of transfers.<sup>41</sup> Nevertheless, in another case concerning a family, the Swiss Federal administrative court ruled

<sup>32</sup> (Belgium) CALL, Decision No 239 671, 13 August 2020; No 239 854, 19 August 2020.

<sup>33</sup> (Netherlands) Council of State, Decision 201907322/1, 201907435/1, 202001915/1, 8 April 2020, available at: <https://bit.ly/3nGHjUp>.

<sup>34</sup> (Portugal) TCA South, Decision 61/20.6BELSB, 2 July 2020, available at <https://bit.ly/3f9Od0a>; TCA South, Decision 357/20.7BELSB, 29 October 2020, available at: <https://bit.ly/3setb4t>.

<sup>35</sup> European Court of Human Rights (ECtHR), *M.T. v the Netherlands*, 15 April 2021, available at: <https://bit.ly/3AjsgUp>.

<sup>36</sup> Court of The Hague [Rechtbank Den Haag], Applicants (Nigeria) vs State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid), 04/05/2021, ECLI:NL:RBDHA:2021:4688, available at: <https://bit.ly/3zeldLT>; Court of The Hague [Rechtbank Den Haag], Applicant vs State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), 07/07/2021, ECLI:NL:RBDHA:2021:6992, available at: <https://bit.ly/3DdyruX>; Court of The Hague [Rechtbank Den Haag], *Applicants (Nigeria) vs State Secretary for Security and Justice (Staatssecretaris van Justitie en Veiligheid)*, 04/05/2021, ECLI:NL:RBDHA:2021:4688, available at: <https://bit.ly/38cttAb>.

<sup>37</sup> AIDA, *Country report Italy – Update on the year 2020*, June 2021, available at: <https://bit.ly/3u0KXKh> (see Reception chapter)

<sup>38</sup> (Netherlands) Council of State, Decision No 201810397/1, 28 August 2019.

<sup>39</sup> Information provided by the Poliqh Office for Foreigners, 26 January 2021.

<sup>40</sup> (Belgium) Myria, Contact meeting, 20 January 2021, para 90, available at: <https://bit.ly/3qRv6ua>.

<sup>41</sup> (Switzerland) Federal Administrative Court, Decision F-7195/2018, 11 February 2020.

that the SEM had not sufficiently examined the reception conditions in Bulgaria.<sup>42</sup> In Italy, the Court of Turin cancelled a Dublin transfer to Bulgaria considering that there are serious systemic deficiencies in asylum procedures, such as the use of force by the police to prevent the entry of applicants into the national territory; restrictions on the freedom of movement of asylum seekers; shortcomings in reception and support services; and extremely low recognition rates.<sup>43</sup> In Germany, the Administrative Court of Magdeburg judged that Germany was responsible for the determination of the application of a person linked to the opposition in Turkey because in this particular case the Bulgarian asylum procedure had systemic flaws that would have entailed a risk of inhuman or degrading treatment. It considered that a proper examination of the application could not be expected from the Bulgarian authorities and that they would likely return the applicant to Turkey.<sup>44</sup>

- **Transfers to Croatia:** In 2019, the Swiss Federal Administrative Court issued a reference judgment ordering the determining authority to examine the existence of systemic deficiencies and the general situation in Croatia.<sup>45</sup> Since then, some cases were sent back to the determining authority for further clarification, e.g. regarding access to healthcare for single men, while other cases involving families with health issues were rejected. The Swiss Court generally takes into consideration reports of push-backs, in particular in the context of "take charge" cases because the applicant needs to have access to the asylum procedure.<sup>46</sup> In the context of "take back" requests, i.e. where an application for international protection has already been lodged, it is generally assumed that the applicant will not be pushed back.<sup>47</sup> Diverging opinions have also been reported in the Netherlands. While the Regional Court Den Bosch ruled in 2020 that the principle of mutual trust no longer stands with Croatia due to extensive evidence of push-backs,<sup>48</sup> the Council of State considered in July 2021 that the principle of mutual trust should apply to transfers to Croatia.<sup>49</sup>
- **Transfers to Spain:** The Spanish asylum system has been subject to particular pressure due to a significant increase in arrivals and applicants for international protection in recent years. Yet, in Portugal, the TCA South considered that the strong migratory pressure and poor reception conditions, were not sufficient to consider that there would be a serious risk of inhuman or degrading treatment.<sup>50</sup> Similarly, in Belgium, most transfers are upheld. However, in 2020 the CALL suspended a transfer decision to Spain, finding that the Immigration Office violated its duty of care because it did not assess the reception conditions for Dublin returnees in Spain, which could possibly violate Article 3 ECHR.<sup>51</sup>
- **Transfers to Poland:** In the Netherlands, the District Courts of Amsterdam and Groningen have ruled that the principle of mutual trust does not apply to Dublin transfers to Poland concerning applicants who are part of the LGBTIQI+ community.<sup>52</sup> The Council of State has not yet ruled on this matter.

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<sup>42</sup> (Switzerland) Federal Administrative Court, Decision D-5126/2018, 15 April 2020.

<sup>43</sup> (Italy) Civil Court of Turin, decree 29 September 2020, procedure no. 12340/2020, available in Italian at: <https://bit.ly/3DxlzA6>.

<sup>44</sup> (Germany) Administrative Court of Magdeburg (VG), Decision 2 B 92/20 MD, 24 March 2020, see EDAL summary at: <https://bit.ly/3EphRsz>.

<sup>45</sup> (Switzerland) Federal Administrative Court, Decision E-3078/2019, 12 July 2019.

<sup>46</sup> (Switzerland) Federal Administrative Court, Decision F-661/2020, 7 February 2020, in which the Court argued similarly to the reference judgement that SEM had not sufficiently taken into account the already well-documented push-back problems and systemic deficiencies of the asylum procedures in Croatia. See also E-5830/2019 of 30 December 2019, E-4211/2019 of 9 December 2019, F-48/2021 of 8 January 2021

<sup>47</sup> (Switzerland) Federal Administrative Court, Decisions F-4204/2020 of 2 September 2020, E-5910/2020 of 10 December 2020, and D-540/2020 of 3 March 2020.

<sup>48</sup> (Netherlands) Regional Court Den Bosch, ECLI:NL:RBDHA:2020:17088.

<sup>49</sup> (Netherlands) Dutch Council of State, 19 July 2021, ECLI:NL:RVS:2021:1563.

<sup>50</sup> (Portugal) TCA South, Decision 938/20.9BELSB, 15 October 2020, available at: <https://bit.ly/3vUViYC>.

<sup>51</sup> (Belgium) CALL Decision No. 231 762, 24 January 2020.

<sup>52</sup> (Netherlands) District Court Amsterdam, 29 July 2021, Case No. NL21.8894. 7; District Court Groningen, Case No. NL21.1431, 28 April 2021.

## THE ASYLUM INFORMATION DATABASE (AIDA)

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

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

- ❖ **Country reports:** AIDA contains [national reports](#) documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries.
- ❖ **Comparative report:** AIDA comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in [2013](#), [2014](#) and [2015](#). From 2016 onwards, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on [reception](#) (March 2016), [asylum procedures](#) (September 2016), [content of protection](#) (March 2017), [vulnerability](#) (September 2017), [detention](#) (March 2018), [access to the territory](#) and [registration](#) (October 2018), [reception](#) (May 2019) and [asylum authorities](#) (October 2019).
- ❖ **Fact-finding visits:** AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#), [Croatia](#), [France](#), Belgium and Germany.
- ❖ **Legal briefings:** Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. With the assistance of information gathered from country reports, these short papers identify and analyse key issues in EU asylum law and policy and identify potential protection gaps in the asylum *acquis*. Legal briefings so far cover: (1) [Dublin detention](#); (2) [asylum statistics](#); (3) [safe countries of origin](#); (4) [procedural rights in detention](#); (5) [age assessment](#) of unaccompanied children; (6) [residence permits](#) for beneficiaries of international protection; (7) the [length of asylum procedures](#); (8) [travel documents](#) for beneficiaries of international protection; (9) [accelerated procedures](#); (10) the [expansion of detention](#); (11) [relocation](#); and (12) [withdrawal of reception conditions](#).
- ❖ **Statistical updates** AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for [2016](#), the [first half of 2017](#), [2017](#), the [first half of 2018](#), [2018](#) and the [first half of 2019](#), [2019](#) and the [first half of 2020](#).

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