

April 2016

Regulation 604/2013 (Dublin Regulation) and asylum procedures in Europe

This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

EP committee responsible at time of adoption of the EU legislation:
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Committee on Civil Liberties, Justice and Home Affairs (LIBE)

Date of adoption of original legislation in plenary: 12 June 2013
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Entry into force of legislation: 19 July 2013 (Article 49, Regulation 604/2013)
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Planned date for review of legislation: By 21 July 2016 (Article 46, Regulation 604/2013)
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Timeline for new amending legislation: The European Commission, in its Commission Work Programme 2016 , noted that in 2016 it intends to overhaul the EU common asylum system to correct the gaps and weaknesses exposed in the Dublin system.

1. Background

In its May 2015 Communication on the [European Agenda on Migration](#), the European Commission set out its broad framework for a migration policy in four areas to 1) reduce incentives for irregular migration; 2) ensure an efficient border management; 3) strengthen the common asylum policy; and 4) update the policy on legal migration.¹ This briefing will focus on the area of common asylum policy and in particular on the [Dublin Regulation](#) which establishes the criteria for determining which Member State is responsible for examining an application for international protection. The war in Syria, along with other conflicts in countries such as Iraq or Afghanistan, has led the EU to face an unprecedented number of people seeking asylum. While numbers started to increase in 2011 after some years of relatively fewer asylum applications, 2015 saw a more drastic increase. While the situation has often been compared to the effects of World War II in terms of the scale of movements, it is important to note that the European Union has faced large-scale migration since then, notably in the 1990s linked to conflicts in the former Yugoslavia (See Figure 1).

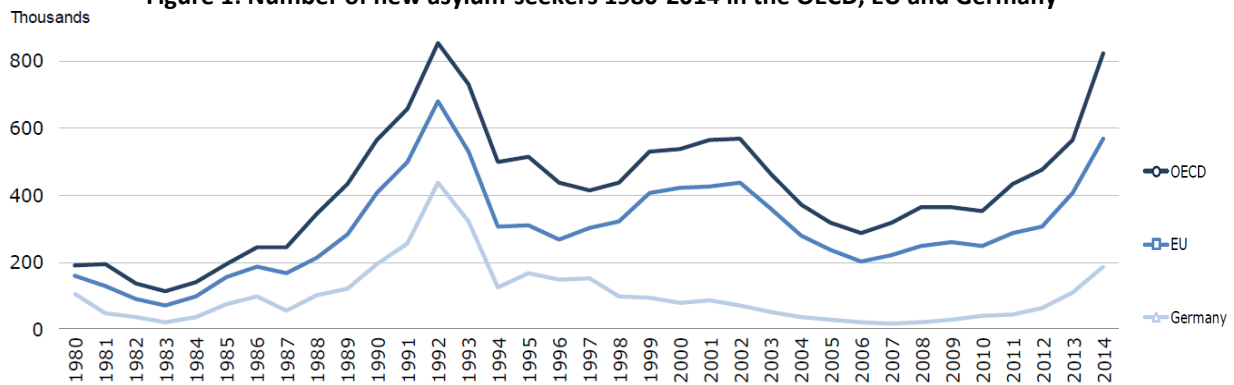
The situation in 2015 has in many ways been different to previous migratory movements. In particular, those now seeking asylum were more diverse, came from further away, used several different routes to access the EU, and their underlying motives for migration varied more.² This meant that the make-up of asylum-seekers in terms of country of origin often varied across Member States (MS). Additionally, the economic and demographic situation across the EU also varied more in 2015 than previously. However, as before, mainly a small number of countries in the EU are taking in most of those seeking asylum – Germany, Sweden, France, Belgium, Italy and

¹ See [Implementation Appraisal: The EU Blue Card Directive](#), European Parliament, DG EPRS, 2015.

² [Is this Humanitarian Migration Crisis Different?](#) OECD, September 2015.

the UK. Although this time some new countries, notably Hungary, have also received a large amount of asylum applications.

Figure 1: Number of new asylum-seekers 1980-2014 in the OECD, EU and Germany



Source: OECD: 'Is the Humanitarian Migration Crisis Different?' (Original data: UNCHR)

Definitions in the area of asylum and migration

Although various international organisations, such as the [International Organisation for Migration](#) (IOM) or the Office of the United Nations High Commissioner for Refugees ([UNHCR](#)), provide their own definitions of the term **migrant**, there is currently no binding legal definition of the term in international or in European law. This briefing uses the term migrant in the broadest possible sense, i.e. as a person moving from country X to one of the EU MS without distinguishing the reasons behind this move. The term migrant is not identical to the term asylum-seeker. An **asylum-seeker** is a person who has applied for asylum pursuant to national administrative procedures. European legislation defines 'asylum seeker' within a broader definition of a person seeking international protection in Article 2 (i), [Directive 2011/95](#). A person whose application for asylum is successful can be considered a **refugee** (Article 2 (e), Directive 2011/95). The term refugee means 'a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it' (Article 2 (d), Directive 2011/95). A person whose application for asylum was rejected is an **unsuccessful asylum-seeker**. This person is then illegally staying in a MS and should be returned to a country of origin. In certain cases, a person who does not qualify as a refugee might be eligible for **subsidiary protection** (Article 2 (f), Directive 2011/95).

Germany has emerged as the number one destination, taking in the largest number of asylum applicants in 2014 followed by Sweden and Italy.³ Eurostat figures from 2015 are not yet complete, but preliminary figures indicate that Germany saw over 475 000 asylum applications compared to 200 000 in 2014.⁴ Germany operates an internal redistribution system which means that those intending to apply for asylum register in a system called EASY which allocates them to a German state which will receive them and where they can apply for asylum. The EASY system records only country of origin of the applicant and no other information. The system recorded over a million registrations in 2015, but to date less than half a million of those registered actually applied for asylum. The discrepancy is likely to partly relate to double counting and to backlogs in the system, as exceptionally high numbers were registered in October and November.⁵ Therefore, while Germany has accepted the total highest number of asylum-seekers, Sweden has received more applications than any other country in the EU in relation to its population size at over 8 000 applications per million inhabitants. Again, countries like Hungary (over 4 000/million inhabitants) or Bulgaria (over 1 000/million inhabitants), which were not previously major migration destinations, also received high proportions of asylum applications in 2014, compared to their populations.⁶ Most asylum applications are not subject to the Dublin system. In 2014 around 15% of asylum applications were found to have been registered in more than one Member State.⁷

³ European Asylum Support Office (EASO), [Annual Report 2014](#).

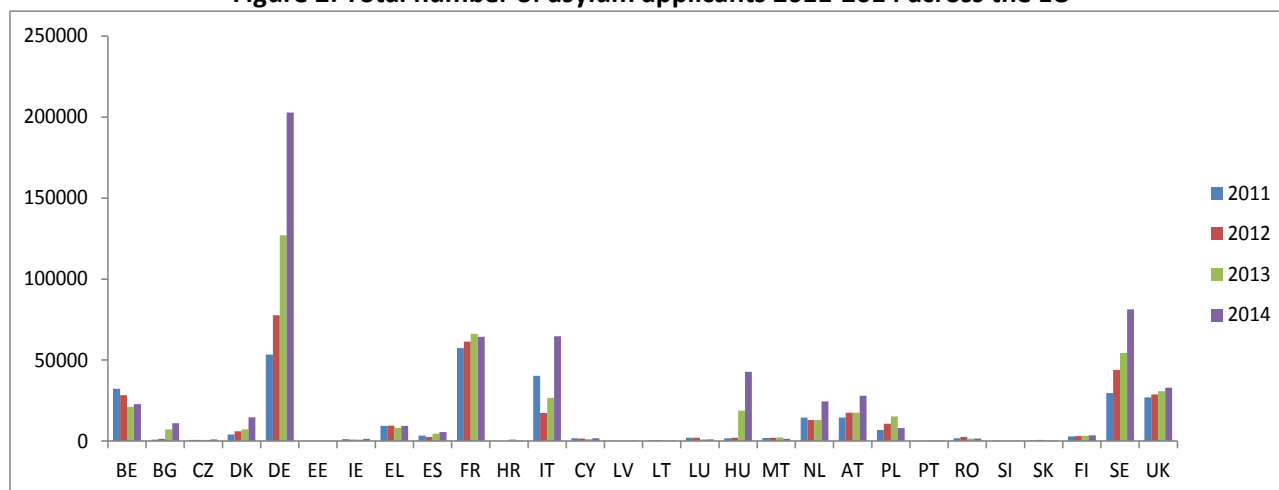
⁴ Source Eurostat, Asylum and first time asylum applicants, Annual aggregated data, February 2016.

⁵ See, GMDAC, Data Briefing, Issue No. 1, January 2016, [Migration, asylum and refugees in Germany: Understanding the data](#).

⁶ Source Eurostat, Asylum and first time asylum applicants and resident population data, February 2016.

⁷ [EASO Annual Report 2014](#).

Figure 2: Total number of asylum applicants 2011-2014 across the EU



Source: Eurostat

Even though the conflict in Syria has been ongoing since 2011, for many years the highest number of asylum applicants came from the Western Balkan states. It was only in 2014 that Syria became the top country of origin for asylum applicants in the EU.⁸

Table 1: Top three main countries of origin for asylum applications in the EU 2011-2014

2011	2012	2013	2014
Western Balkans	Western Balkans	Western Balkans	Syria
Afghanistan	Afghanistan	Syria	Western Balkans
Russia	Syria	Russia	Eritrea

Source: EASO Annual Report 2014

Looking at the global trends in migration for OECD countries for all types of migrant, including asylum-seekers, Germany has now become the second main destination for migrants after the USA. In terms of country of origin of migrants to or within the OECD countries, China leads, with Chinese migrants representing 10% of all migrants, while Romania and Poland come second and third, with 5.5% and 5.3% respectively, mainly due to intra-EU movements.⁹

2. EU asylum legislation

According to the [Charter of Fundamental Rights of the European Union](#), which has the same legal status as the Treaties today,¹⁰ the right to asylum is a fundamental right. The Charter requires that this right is guaranteed with due respect for the rules of the [Geneva Convention of 28 July 1951](#) (the 1951 Convention) and the [Protocol of 31 January 1967 relating to the status of refugees](#) (the 1967 Protocol), and in accordance with the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).¹¹ Based on Article 78 TFEU, the EU develops a common policy on asylum, subsidiary protection and temporary protection, with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.¹² This policy has to be in accordance with the 1951 Refugee Convention and the 1967 Protocol. The migration crisis has raised various questions about the functioning of existing European legislation linked with asylum procedures, and the 'Dublin system' in particular. The origins of what is known as the Dublin system are linked to the [Schengen agreement](#). The original document, the [Dublin Convention](#),¹³ an international agreement signed in Dublin in 1990, established a set of rules clarifying the EU country responsible for examining an asylum application. In 2003 the Convention was replaced by the Dublin

⁸ [EASO Annual Report 2014](#).

⁹ International Migration Outlook, OECD 2015.

¹⁰ Article 6 (1) TEU.

¹¹ Article 18, EU Charter.

¹² This principle requires that the signatory states do not expel or return a refugee to the frontiers of territories where his/her life or freedom is threatened (Article 33, the 1951 Convention).

¹³ Signed by Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and the UK.

Regulation 343/2003 ([Dublin II](#)) which further clarified these criteria. The regulation was complemented by the [EURODAC legislation](#).¹⁴ The Dublin II legislation has received some criticism over the years over its application in practice. In 2013, the Dublin II regulation was replaced by Regulation [604/2013](#) (Dublin III) which intends to further improve and clarify the Dublin system. It is worth noting that the Dublin system was agreed before the 2004 EU enlargement, and at a time when the number of asylum applications were falling.

1. The Dublin Regulation (604/2013)

The regulation lays down the hierarchy of the criteria and mechanisms for determining the MS responsible for examining an application for international protection. The regulation has to be applied by all the MS¹⁵ in accordance with the following hierarchy:

- (1) where an *unaccompanied minor's* family member or a sibling is legally present,
- (2) that has given international protection to a *family member* of an applicant,
- (3) which issued the visa or the residence document if an applicant possesses a *valid visa or valid residence document*,
- (4) where it can be established that the applicant first *entered the EU irregularly* within 12 months after the date on which the irregular border crossing took place,
- (5) where the person has been *living* for a continuous period of at least five months before lodging the application for international protection,
- (6) in which the need for an applicant to have a *visa is waived*,
- (7) where the application was made in the *transit area of an airport*.¹⁶

In addition, the regulation provides various discretionary clauses that allow the MS to examine an application for international protection, even if such examination is not its responsibility.¹⁷ The regulation also sets out two specific procedures based on which MS can appeal to another MS to deal with an application for international protection.

- Firstly, a MS can submit a request to another MS to '*take charge of an applicant*'. This procedure can occur when a MS, while applying the Dublin criteria, considers that another MS should take over responsibility for examining the asylum application. For example, the applicant has applied for asylum in country A but country B has already granted asylum to his/her family member, therefore country A can submit a 'take charge request' to country B.¹⁸
- Secondly, a MS can submit a request to *take back an applicant*. This procedure can occur when an applicant submitted an application in two different MS before finalisation of his/her first application, or the application was withdrawn prior to a decision, or the application was rejected. The second MS can then ask the first MS to take back responsibility for an applicant for the application procedure, i.e. when an applicant applies for protection first in country A and later also in country B, country B can ask country A to take back the applicant.¹⁹ Most Dublin requests are related to 'take back requests'.

Compared to Dublin II, the Dublin III Regulation provided some additional clarifications, particularly in the hierarchy of criteria to consider. It strengthened the family unity principle and gave all applicants subject to a Dublin transfer (take back or take charge) the right to a personal interview and to remain in the MS while appealing the decision. It also established a system of early warnings, preparedness and crisis management. This system is intended to deal with any problems in national asylum systems and to help EU countries facing high numbers of applicants for international protection at their borders. A fitness check of the Dublin system is currently underway.²⁰

¹⁴ The EURODAC system enables MS to help identify asylum applicants and persons who have been apprehended in connection with an irregular crossing of an external border of the Union.

¹⁵ The UK and Ireland, who originally opted out, are bound by the Dublin Regulation following their wish to take part in the regulation (See, [Protocol 21](#) to TFEU). Denmark applies the current Dublin Regulation on the basis of international [agreement](#) on the criteria and mechanisms for establishing the state responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention. [Switzerland](#), [Iceland](#), [Norway](#) and [Liechtenstein](#) concluded specific international agreements associating them with the Dublin system.

¹⁶ See, Articles 8-15, Regulation 604/2013.

¹⁷ Article 17.

¹⁸ Articles 21-22, Regulation 604/2013.

¹⁹ Articles 23-25, Regulation 604/2013.

²⁰ COD (2015)208, p. 4 and COM(2015)240 final p. 14.

On April 6 2016, the European Commission set out more [concrete options](#)²¹ for reforming the European Asylum System. In relation to the Dublin system, the European Commission's Communication included two options: 1) A corrective fairness mechanism supplementing the current system. This option would maintain the current allocation of responsibility, but in times of crisis, allocation adjustments would be made using specific distribution criteria. The mechanism could be based on the existing crisis relocation scheme proposal. 2) A new system allocating asylum application based on set distribution criteria. Under this proposal, the 'MS of first entry' would no longer be the sole criterion, but asylum applicants would instead be re-distributed across the EU using a formula based on population size, wealth and absorption capacities of MS.

Regardless of these options, the MS being the first point of entry would still fall under the obligation to register all migrants and return those not in need of international protection. In the longer term, the Communication envisages a move towards a more harmonised European Asylum System, ensuring for example that reception facilities were streamlined to discourage secondary movements, and increase the remit of EASO.

2. Regulation [603/2013](#) on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of the Dublin Regulation

The EURODAC system is intended to assist in determining which MS is responsible for an application under the Dublin Regulation. It consists of a central system operating a computerised central database of fingerprints and the communication infrastructure (i.e. transmissions) between the MS and the central system. The EURODAC Regulation requires the MS to 'promptly' take fingerprints of applicants for international protection of at least 14 years of age; persons apprehended irregularly crossing a border; or found staying illegally in a MS.²² The central system collecting fingerprints began operating in January 2003 with an empty database. Since then, the number of recorded asylum applicants and persons irregularly crossing external borders has steadily increased, from over 185 000 asylum applicants of at least 14 years of age in 2012, to over 500 000 in 2014.²³ As of July 2015, law enforcement agencies and Europol can, under certain circumstances, access EURODAC.²⁴

The Dublin Regulation and the EURODAC Regulation are not the only pieces of European legislation applicable to asylum procedures; the following legislation also forms part of the **Common European Asylum System**:

3. Directive [2013/32](#) on common procedures for granting and withdrawing international protection

This directive establishes procedures for granting and withdrawing international protection. In general, registration of a lodged application has to take place no later than three working days after it is made. The directive specifies the various rights and obligations of applicants. It also requires the MS to ensure that the examination procedure (at first instance) is concluded within *six months* of lodging the application.²⁵

4. Directive [2013/33](#) laying down standards for the reception of applicants for international protection

The directive lays down minimum standards applicable to the reception conditions of applicants for international protection. It specifies the rights and obligations of applicants, including residence and freedom of movement rights, employment and vocational training rights, health care or material reception conditions.²⁶ The MS can attach specific conditions to reception conditions, such as fixing the residence of an applicant to a specific place.²⁷ The directive allows the detention of applicants, for example, in order to determine or verify their identity or nationality, and also in order to decide, in the context of a procedure, on their right to enter the

²¹ COM (2016) 197.

²² Fingerprinting of this category of persons is not mandatory. See, Article 17, Regulation 603/2013.

²³ [Annual report on the 2014 activities of EURODAC](#), June 2015.

²⁴ Articles 20 and 21 Directive 2013/32.

²⁵ Article 31 (3) Directive 2013/32.

²⁶ According to Article 2(g) of the directive, material reception conditions include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance. The directive does not specify the amount of daily expenses allowance. The MS can in this context exercise their discretion. With regard to social and work welfare see: [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#), In-depth Analysis, European Parliament, 2015.

²⁷ Article 8 Directive 2013/33.

territory. Detention has to take place in specialised facilities. The applicants have to be provided with an adequate standard of living, which guarantees their subsistence and protects their physical and mental health.²⁸ The applicants can be asked to cover or contribute to their accommodation costs or to their health care. In duly justified cases, material reception conditions can be reduced or withdrawn. The MS may introduce more favourable standards than those included in this directive.²⁹

5. Directive [2011/95](#) on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

The directive lays down basic standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection. The facts and circumstances of each application have to be assessed on an individual basis. The directive clarifies the meaning of various terms, including acts of persecution, actors in persecution and reasons for persecution. The directive distinguishes between refugees and the persons eligible for subsidiary protection. This distinction is visible mainly with regard to their rights. These persons have, for example, a right to a residence permit valid for at least three years (refugees) or at least one year (subsidiary protection); a travel document (limited with regard to subsidiary protection); access to employment; access to education; access to procedures for recognition of qualifications; access to social welfare as provided to nationals of the MS (limited with regard to subsidiary protection); access to healthcare as provided to nationals of the MS; access to accommodation as other third-country nationals legally resident in the MS territory; and freedom of movement within the MS. MS are allowed to introduce more favourable standards than those under this directive for determining who qualifies as a refugee.³⁰

[Proposal for a regulation establishing a crisis relocation mechanism](#)³¹

In September 2015, the Commission addressed the current migration challenges with a proposal. The proposal intends to ensure that responsibilities are shared fairly between MS in cases of large numbers of applicants in clear need of international protection, and to ensure the proper application of the Dublin system. The proposal amends the Dublin regulation and introduces a crisis relocation mechanism as a *permanent framework for the implementation of the relocation measures*.³² It introduces a method for determining a temporary period during which a MS is responsible for the assessment of an application for international protection. The mechanism is intended for crisis situations only,

To date, MS have committed to relocate 160 000 persons in need of international protection in the EU. Although most of the relocations have yet to take place, the EU has some previous experience – between 2010 and 2013 two [EUREMA](#) (*Pilot Project on Intra-EU Relocation from Malta*) projects relocated a small number of asylum applicants to other EU countries. The 2012 EASO (European Asylum Support Office) [report](#) identified some challenges posed by these projects, such as MS imposing selection criteria too specific for those they wished to receive; and a lack of willingness to resettle among some participants, due to perceived unfavourable conditions in the new MS, or due to lack of information about that country.

i.e. situations that place an extreme pressure on the asylum system of a certain MS. The Commission will decide whether the conditions for relocation are fulfilled. Based on this decision, the Commission should adopt a delegated act for triggering the application of the mechanism.³³ However, the mechanism can be only triggered in respect of applicants who are in clear need of international protection; in which case, the MS of relocation should examine the applications. However, the mechanism can be only triggered in respect of applicants who are in clear need of international protection; in which case, the MS of relocation should examine the applications. The proposal also establishes a maximum threshold for persons to be relocated at 40% of the number of applications lodged with a MS within six months preceding the adoption of a delegated act. MS that are temporarily unable to take part in the relocation have to make a financial contribution to the EU budget of an amount of 0.002% their GDP.³⁴ In order to calculate the distribution of the applicants, the proposal takes into

²⁸ Article 17 Directive 2013/33.

²⁹ Article 4 Directive 2013/33.

³⁰ Article 3 Directive 2011/95.

³¹ COM(2015) 450 final.

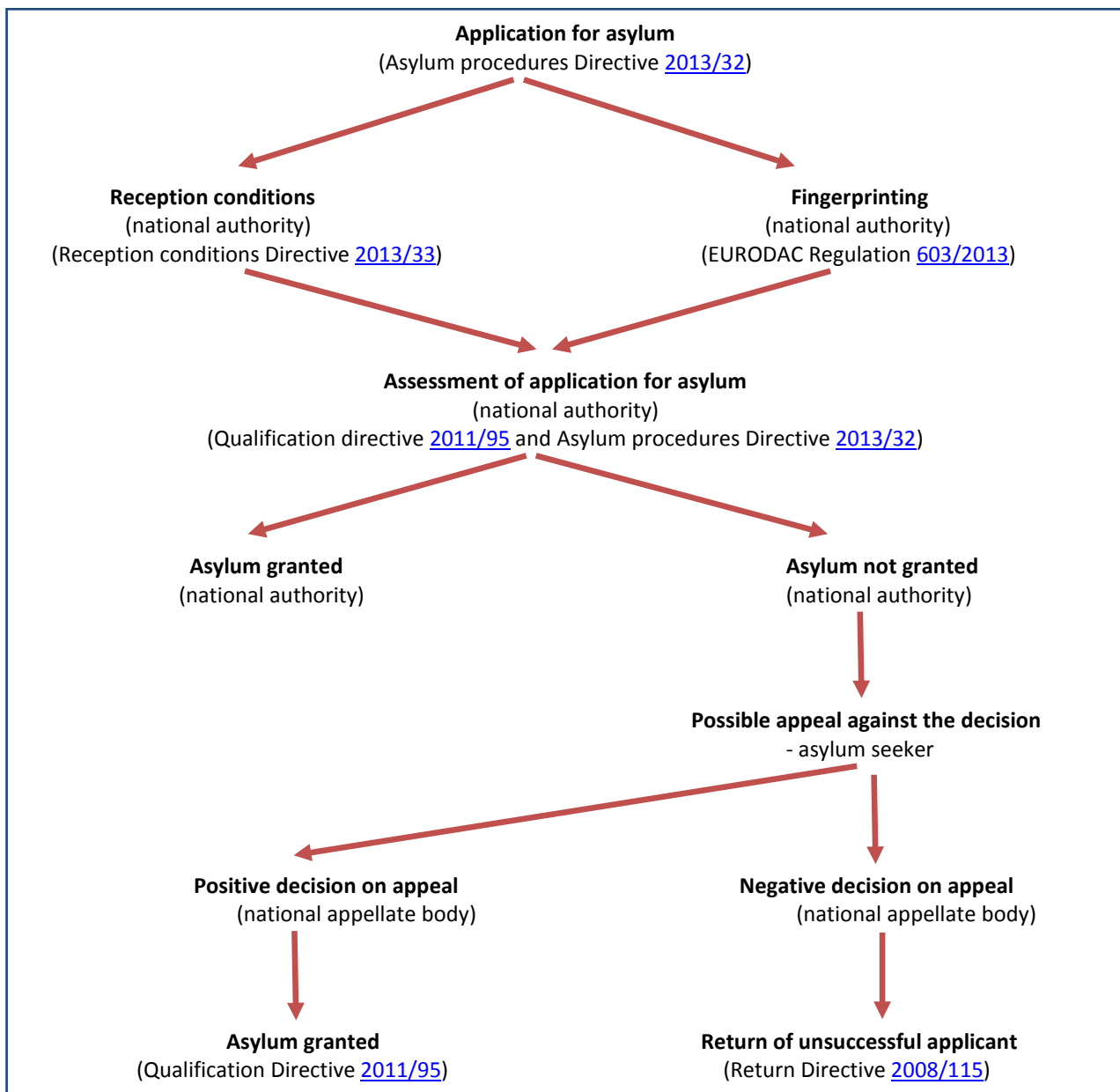
³² Ibid.

³³ See, the proposed Article 33a.

³⁴ The proposed Article 33b.

account the population, the total GDP, the average number of asylum applications over the five preceding years and the unemployment rate. The exact impact of this proposal on each MS is unclear as, so far, the Commission has not published an impact assessment on this measure.

Figure 3: Optimal asylum procedure based on applicable EU rules



3. EU-level reports, evaluations and studies

European Parliament Study [New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection \(October 2014\)](#)³⁵

This study looked at the application of the Dublin system. The report identified a number of issues, such as discrepancies in the way asylum applicants from the same country were assessed across the EU as well as the high cost of Dublin in economic and human terms, particularly when taking into account the low rate of actual transfers of applicants under Dublin. The report noted that only 12% of the total number of asylum applications was subject to the Dublin system and that about a quarter of agreed transfers under Dublin actually took place. The report argued that the system's effectiveness would increase if the interest of the asylum seeker was taken into account, if there were mutual recognition of positive asylum decisions and if the family unity criteria were

³⁵ Study by an external contractor commissioned by DG Internal Policies, Policy Department C, European Parliament, 2010.

better used. In addition, it recommended that the Parliament ensured that the Dublin legislation was applied alongside fundamental rights and that acceptable reception arrangements were in place and that funds allocated to first-line reception should be audited.

Study on the feasibility and legal and practical implications of establishing a mechanism for the joint processing of asylum applications on the territory of the EU, prepared for the European Commission, February 2013

This study looks at developing options for a joint asylum processing mechanism. The study is based on a literature review and interviews with national administrations, NGOs and local UNHCR representatives across the EU-28. Based on the research, four different options for joint processing were developed. The options ranged from more ad hoc solutions, such as simply assisting a MS in crisis with processing its asylum applications, to a fully harmonised and centralised application system. The report concluded that at present an ad hoc support system was the most feasible option that MS would accept.

Study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection, prepared for the European Commission, July 2010

This study looked at various relocation scheme options. The study included the 26 MS that participated in the European Refugee Fund (ERF), and consisted of interviews with the national administrations in MS, international organisations and national NGOs, as well as case studies and a literature review. In particular the study explored two options: 1) a relocation mechanism based on GDP and population density, with ERF used to compensate MS taking in asylum applicants; and 2) An ad hoc assessment of the situation, and relocation if necessary, with MS making a pledge on taking in a number of their choice. MS views on these options varied; in fact some suggested alternative options such as asylum policy harmonisation or financial assistance to struggling MS. However, when asked to choose, option 2 was preferred. There was general agreement that any allocation should only include recognised refugees. The form of financial support was not key, and most EU countries envisaged that funding via ERF would be feasible. MS should remain in control of the process but the EASO could have a coordinating role. Most MS agreed that those relocated needed to agree with the process for it to be viable.

Report on the evaluation of the Dublin system, European Commission, 2007

This is the main evaluation of the Dublin system³⁶ undertaken to date, and assesses the legislation from its entry into force in 2003 until the end of 2005, based on feedback from MS and statistical data. The report concluded that the application of the Dublin system was generally satisfactory and a workable way of determining responsibility for asylum applications. However, the report noted areas for improvement, pointing out that the number of actual transfers under the Dublin system was low, and that multiple asylum applications from one applicant still occurred. The report concluded that while the Dublin system did not have a disproportionate impact on some MS, some countries might experience a substantial increase in applications if all transfers were carried out. In terms of the cost of the Dublin system the report noted that a lack of data made it impossible to evaluate this aspect. However, while relatively resource-intensive, the individual MS tended to find that dealing with a Dublin transfer was still less expensive than processing the asylum application from start to finish. Finally, the political objective of the system was very important to MS, and this trumped any cost considerations.

An overview of the literature on the implementation of the Dublin system

It is important to note that Dublin III has only been operational since January 2014, and it is therefore too early to assess the impact of the changes in the legislation. Dublin III has strengthened asylum applicants' rights by ensuring a personal interview and the possibility to have a transfer decision suspended during appeal. While this addresses some of the criticisms around the treatment of asylum applicants subject to Dublin,³⁷ it is unclear to what extent it will address some of the underlying difficulties in the implementation of Dublin.

Dublin III retains the key features of Dublin II so it is still relevant to review its implementation. While actors such as the European Commission, NGOs or MS may have varying opinions on how successful the implementation of the Dublin system has been, they have generally agreed on what are the key weaknesses. This is mainly because the data has consistently shown that only a minority of Dublin transfer requests actually take place; that MS often transfer as many asylum applicants to another country as they themselves receive; that the hierarchy in deciding whether to

³⁶ COM (2007) 299 and SEC (2007) 742.

³⁷ See for example [‘The Dublin II Regulation’](#), a UNHCR discussion paper, UNHCR, April 2006.

issue a request under Dublin is not always adhered to (i.e. preserving family unity is more important than first entry state); and lastly, that the recording of fingerprints in EURODAC by MS is not consistent.

The issues identified appear to have been ongoing since the regulation came into force. The European Commission noted, both in its evaluation of the Dublin Regulation (2007)³⁸ and of the Dublin Convention (2001),³⁹ that the numbers of actual transfers under Dublin were consistently low. Subsequent reports have confirmed this pattern, showing that around a quarter of all agreed transfers actually take place.⁴⁰ Reasons for this low level, according to the European Commission's own evaluation, included asylum applicants absconding and the level of proof demanded by the Member State that had accepted the transfer. This included DNA proof for family unity claims and fingerprints for visa claims.

A frequent concern from MS relates to whether the Dublin system puts additional pressure on border states. However, data has consistently shown that the system has not led to southern European countries becoming the main asylum application processors. To the contrary, the major asylum destinations such as Germany, frequently lead among countries receiving and lodging transfer requests. This is likely due to asylum applications not being registered in the first country of entry and because, following the 2011 judgement by the European Court of Human Rights in [M.S.S. v Belgium and Greece](#), MS are reluctant⁴¹ to send asylum applicants back to Greece. If all requested transfers were executed, i.e. if the system worked as intended, the situation may change drastically. In 2013, Germany, Sweden, and France topped the list of countries requesting other countries to take back/charge, while Italy, Poland and Hungary topped the list of countries being asked to receive asylum-seekers.⁴²

The Dublin system is not a redistribution mechanism, but the issue of redistribution inevitably comes up in much of the related literature. As discussed previously, given the relatively low number of asylum applications subject to Dublin and the lack of implementation, the full impact of transfers under Dublin is unclear. The European Commission has, however, published a responsibility-sharing mechanism proposal which could impact on some countries. A 2010 European Commission [feasibility study](#)⁴³ nevertheless showed that there was limited interest in a permanent relocation system, and the current political debate also demonstrates that some MS are reluctant to participate in a sharing mechanism.

The literature shows that the Dublin system has so far not prevented secondary movement as intended, i.e. applicants moving on from the first MS of arrival to another MS. In general, the number of applications found to have been lodged more than once has remained around 10-15% (15% in 2014).⁴⁴ Many reports argue that the failure to take account of asylum-seekers' own wishes will always result in secondary movements. Likewise, many reports suggest that the differences in asylum processes coupled with the different socio-economic situations in the MS will mean that the Dublin system cannot prevent secondary movement. One of the issues often mentioned is the varying results of granted or refused applications between MS. EASO's 2014 [Annual Report](#)⁴⁵ for example shows relatively large differences in the recognition rates of asylum-seekers from countries such as Iraq or Afghanistan, while differences were smaller for Syrian and Eritrean citizens.⁴⁶ Recognition rates on appeal again varied substantially for some countries, such as Iran or Somalia, while decisions are rarely changed across the EU for Albanians or Kosovars.⁴⁷ The disparity does not necessarily indicate different approaches, as the profile of asylum seeker may be different across EU countries. There were also differences between MS in relation to the treatment of asylum-seekers during the application process. A recent [EPRS in-depth analysis](#)⁴⁸ compared the labour market access and social welfare for asylum-seekers in eight MS. The report concludes that there were some important differences between MS, particularly in the area of waiting time to access the labour market.

To what extent the factors discussed above act as 'pull factors', is debatable. A [quantitative analysis](#)⁴⁹ looking at pull and push factors suggested that policy makers may overestimate the level of detailed knowledge and choice an individual asylum seeker has. Nevertheless, the paper also concluded that economic considerations as well as historical ties to a country were important in an asylum seeker's choice. Not being allowed to work and granting asylum status to a smaller proportion of people than other countries were seen as deterrents.

³⁸ [SEC \(2007\) 742](#).

³⁹ [SEC \(2001\) 756](#).

⁴⁰ S. Fratzke, 'Not Adding Up, the fading promise of Europe's Dublin System', Migration Policy Institute, March 2015.

⁴¹ See, for example, [Finland](#).

⁴² S. Fratzke, 'Not Adding Up, the fading promise of Europe's Dublin System', Migration Policy Institute, March 2015.

⁴³ [Study on the feasibility of Establishing a Mechanism for the Relocation of Beneficiaries of International Protection](#).

⁴⁴ [Annual Report on the Situation of Asylum in the European Union](#) 2014, EASO, July 2015.

⁴⁵ [Annual Report on the Situation of Asylum in the European Union](#) 2014, EASO, July 2015.

⁴⁶ Variations for Iraqis generally varied from recognition rates of 80% to 40%, while recognition rates for Afghans was generally between 75% and 30%. Recognition rates across MS for Syrians was generally 90% and for Eritreans 80%.

⁴⁷ See Table 1 on page 33 of the [Annual Report on the Situation of Asylum in the European Union](#) 2014, EASO, July 2015.

⁴⁸ See [Work and social welfare for asylum-seekers and refugees: Selected EU Member States](#), European Parliament, 2015.

⁴⁹ E. Thielemann, 'Does Policy Matter? On Governments' Attempts to Control Unwanted Migration', Centre for Comparative Immigration Studies, University of California, San Diego, December 2004.

An important consideration in the evaluation of the Dublin system is cost effectiveness. However, MS have struggled to separate the cost of Dublin from other asylum-related costs. In fact, the European Commission's own evaluation concluded that there was insufficient data available to assess costs. The European Parliament called for the matter to be addressed in 2008.⁵⁰ However, [ad hoc queries](#) on the cost of the Dublin system are still the main instrument available to review costs. In general, the length of an application process and the use of detention will increase asylum-related costs. Another feature less easy to quantify is the human cost of the system. In its assessment of Dublin, UNHCR gave examples of failings leading to family separation and uncertainty.⁵¹ Dublin III should address this to some extent as it gives more prominence to the rights of the asylum applicant, while the early emergency system should flag any concerns to reception facilities in EU countries. However, some critics are likely to find this insufficient, advocating instead for free movement or positive asylum decisions to be recognised across the EU to stop secondary movement.⁵²

4. European Parliament position/MEP questions

The European Parliament has long called for a more holistic approach to asylum policy and for a better responsibility-sharing mechanism, via several resolutions.

European Parliament [Resolution](#) of 10 September 2015 on migration and refugees in Europe⁵³

In this resolution, Parliament welcomed the European Commission's initiatives on relocation and endorsed the Commission's announcement of a permanent relocation mechanism. In this regard it reminded the Council that Parliament strongly supported a binding relocation mechanism which takes into account the preferences of refugees. Parliament called on the Commission to amend the Dublin Regulation with the inclusion of a binding system of distribution of asylum-seekers among the 28 MS by using a fair and compulsory allocation key, while taking into account the prospects of integration and the needs of asylum-seekers. Furthermore, Parliament called for a rapid and full transposition and an effective implementation of the common European asylum system by all the MS. In this context, the Commission was urged to make sure that the MS properly implement this legislation.

At the time of drafting of this briefing, the European Commission has not reacted to this resolution with a follow-up document.

European Parliament [Resolution](#) of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies⁵⁴

Parliament called on the European Commission to establish a binding quota for the distribution of asylum-seekers among all the MS and stressed the need to encourage voluntary return policies, while guaranteeing the protection of rights for all migrants and ensuring safe and legal access to the EU asylum system, with due respect for the principle of non-refoulement. Furthermore, Parliament called for a rapid and full transposition and effective implementation of the Common European Asylum System by all participating MS. Parliament called for closer cooperation in this area, and furthermore called on the Commission to develop and a European agenda on migration.

Although the European Commission has not reacted on this resolution with a specific follow-up document, the [European Agenda on Migration](#) presenting the Commission's view on how to deal with the challenges in the area of migration was adopted in May 2015.

European Parliament [Resolution](#) of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration⁵⁵

Parliament noted the necessity to develop a holistic approach to migration, and pointed to the need for a fair sharing of responsibility and solidarity with MS receiving the highest numbers of refugees and asylum-seekers. Parliament furthermore asked for consideration of further avenues of legal migration. Parliament also pointed to a need to explore future initiatives that follow good examples of resettlement, including the voluntary resettlement programme.

⁵⁰ European Parliament [Resolution](#) of 2 September 2008 on the evaluation of Dublin.

⁵¹ L. Kok, 'The Dublin II Regulation, a UNHCR discussion paper', UNHCR, April 2006.

⁵² See, for example: E. Guild, C. Costello, M. Garlick and V. Moreno-Lax, 'Enhancing the Common European Asylum System and Alternatives to Dublin', No. 83/ September 2015, CEPS 2015.

⁵³ P8_TA-PROV(2015)0317.

⁵⁴ P8_TA-PROV(2015)0176.

⁵⁵ P8_TA-PROV(2014)0105.

In its follow-up⁵⁶ of March 2015, the European Commission noted that migration is one of its key priorities, expressing conviction that MS have to work together closely in a spirit of solidarity. With regard to irregular migration, the European Commission pointed to the need to intensify dialogue and cooperation with third countries, and to ensure consistency and coherence between migration policy and external policies. In order to set a comprehensive framework covering all aspects of migration policy, the Commission intended to present a European Agenda for Migration in the course of 2015.

MEP's Written Questions⁵⁷

[Written question by Jeppe Kofod, MEP](#), November 2014

This question relates to the perceived failure to comply with the Dublin regulation by some MS and what measures are put in place to ensure that asylum applicants register at external EU borders and whether EASO funding will increase given the exceptional number of applications.

[Answer given by Mr Avramopoulos on behalf of the Commission](#), January 2015

In its answer, the European Commission acknowledges the challenges fingerprinting all applicants faced by some MS, and that discussions are ongoing to define a common approach. It also points out that first point of entry is not the only criteria for processing asylum applications and confirms a small staff increase for EASO.

[Written question by Aldo Patriciello, MEP](#), March 2015

The question observes that there is a need to amend the Dublin system and seeks the European Commission's opinion on whether this should include granting refugees the same status as European citizens, creating an European asylum agency and a more comprehensive common asylum system

[Answer given by Mr Avramopoulos on behalf of the Commission](#), July 2015

The European Commission intends to launch a broad debate about what a common European asylum system could look like, including the mutual recognition of asylum decisions and more long-term whether a single asylum decision process could work. An evaluation of Dublin is planned for 2016 which will help determine 'whether a revision of the legal parameters of Dublin will be needed to achieve a fairer distribution of asylum-seekers in Europe'.

5. EU wide consultations and surveys and citizens' petitions

The Parliament's [Parlemeter 2015 survey](#) focused on EU citizens' responses to the migration crisis. Interviews were conducted in all 28 MS during September 2015. While unemployment remained the key challenge, immigration was now seen as the second biggest future challenge. This represented a drastic change in the EU average, from 14% in 2013 to 47% in 2015. It is important to note that the EU average⁵⁸ is in fact mainly a reflection of the six most populated countries in the EU (Germany, France, UK, Italy, Spain and Poland). The EU average 'hides' national variations. In particular there were still quite marked differences between countries receiving most of the asylum applicants such as Germany, Sweden, Italy or Greece, where around eight out of ten favoured a redistribution mechanism while only a third of respondents in Slovakia or the Czech Republic said the same. Similarly a majority of respondents (seven out of ten) in Sweden, Germany, Denmark and the UK tended to agree that legal migrants were needed in certain sectors of the economy, while this was not the case in Slovakia, Bulgaria, Hungary or Greece, where around a quarter agreed.

The results from the topic-focused survey should also be viewed in conjunction with the most recent [Eurobarometer survey](#) (Spring 2015) which is not topic focused and may therefore represent a more nuanced picture. Here the main personal concerns of EU citizens were the cost of living and unemployment, although immigration had risen as a personal concern (from 2% in 2012 to 6% in spring 2015). In 2015, citizens submitted numerous petitions to the **EP Committee on petitions**, where they expressed their concerns about migration. The petitions covered various aspects of migration including reception of refugees, ending migration to Europe, a balanced approach to migration, or even using the European Parliament building in Strasbourg to lodge people fleeing from war and oppression. Many of the petitions were declared admissible, and the Committee will process them and inform the Members of the results.

⁵⁶ SP(2015)102.

⁵⁷ For more examples of MEP questions in the area of asylum, see, for instance, [E-015091-1](#), [E-014083-15](#), [E-013220-15](#), [E-011503-15](#), [E-010423-15](#), [E-000112-15](#), [E-007746-14](#), [P-000927-16](#), [E-015105-15](#), [E-014932-15](#), [E-013085-15](#), [E-013009-15](#).

⁵⁸ The European average is weighted, the six most populous MS accounting for around 70%.

6. Court of Justice of European Union and European Court of Human Rights

Both the Luxembourg Court and the Strasbourg Court, have dealt with cases directly connected with the functioning of the Dublin system and the asylum procedures on several occasions. In its 2011 judgment [M.S.S. v. Belgium & Greece](#), the European Court of Human Rights (ECHR) dealt with a complaint by an asylum seeker against Belgium's decision to transfer them back to Greece based on the provisions of the Dublin Regulation on first entry. The ECHR found that Greece breached the provisions of the [European Convention of Human Rights](#) because of the conditions of the complainant's detention; the deficiencies in the asylum procedures and the risk of his expulsion to Afghanistan without a proper examination of his asylum application and without any access to an effective remedy. Furthermore, the Court found that Belgium also breached the complainant's rights by sending him back to Greece as it must have been aware of the deficiencies in the asylum procedure there. Belgium had assumed without verification that the complainant would be treated according to the Convention. In 2015, the ECHR ruled in a similar case [A.M.E. v. the Netherlands](#). Here the court dealt with an asylum seeker's complaint against the decision of the Netherlands to ask Italy to take them back based on the Dublin Regulation. The complainant had first applied for international protection in Italy and subsequently also in the Netherlands. In this case, the court decided that the situation for asylum-seekers in Italy could not be compared to the situation in Greece, and found the application inadmissible. Based on this decision, reception arrangements in Italy could not, by themselves, bar the return of an asylum seeker to Italy.⁵⁹

The Court of Justice of the European Union (CJEU) has also assessed several aspects of the Dublin system. For example, in 2011 judgment in Joined Cases C-411/10 and C-493/10 [N. S. and Others](#), it held that a MS may not transfer an asylum seeker to a 'Member State responsible' where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum-seekers means that the asylum-seeker could face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter. The Court also explained that the EU law does not allow a *conclusive presumption* that a MS observes the fundamental rights of the European Union.⁶⁰

7. Conclusions

The review of the implementation of the Dublin legislation shows that the weaknesses identified since its inception remain, i.e. most of the transfers agreed by MS under the Dublin system do not take place. It is also unclear whether the system has had any effect on secondary movement which has remained at around 15%. As long as differences between MS asylum processes and socio-economic conditions remain, and as long as MS continue to centre their concerns on the national impact of migration, the Dublin system on its own is unlikely to work. In the absence of more detailed information on how the re-distribution mechanism suggested by the European Commission would work in practice, it is difficult to assess whether the proposals would effectively address the shortcomings of the Dublin system.

8. Other sources of information

- [EASO reports](#)
- Eurostat – [Migration and citizenship data](#)
- [EU legal framework on asylum and irregular immigration 'on arrival'](#) European Parliament, 2015.
- [Fingerprinting migrants: EURODAC Regulation](#), European Parliament, 2015.
- [OECD Migration](#)
- UNCHR [Global Trends 2014](#)

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⁵⁹ Apart from these decisions of the European Court of Human Rights one can refer also to [Tarakhel v. Switzerland](#) (judgment of 04/11/14), [Mohammed Hussein v. the Netherlands and Italy](#) (decision of 2 April 2013), [Mohammed v. Austria](#) (judgment of 6 June 2013) or [Mohammadi v. Austria](#) (judgment of 3 July 2014).

⁶⁰ See also, for example, Case C-648/11 [MA and Others](#) (judgment of 6 June 2013), Case C-245/11 [K v Bundesasylamt](#) (judgment 6 November 2012) or Case C-394/12 [Shamso Abdullahi v Bundesasylamt](#) (judgment of 10 December 2013).