



Evaluation of the Dublin III Regulation

DG Migration and Home Affairs

Final report

EUROPEAN COMMISSION

DG Migration and Home Affairs

European Commission

B-1049 Brussels

Evaluation of the Dublin III Regulation

DG Migration and Home Affairs

Final report

Evaluation of the Dublin III Regulation
Final Report

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Evaluation of the Dublin III Regulation
Final Report

This study was prepared by ICF International for the European Commission.



Authors:

ICF International:

Sheila Maas, Elena Jurado, Mathieu Capdevila, Maylis Labayle, Laura Hayward

Contents

1	Introduction	1
1.1	Aim of the study and purpose of the report.....	1
1.2	Methodology.....	1
1.3	Structure of the report	1
2	Relevance of Dublin III Regulation	2
2.1	The relevance of establishing a method for determining the Member State responsible for examining an application for international protection.....	2
2.2	The relevance of a legal framework codifying the method for determining the responsible Member State.....	3
2.3	Relevance of Dublin III's building blocks to achieving its general and specific objectives	3
3	The effectiveness of the Dublin III Regulation	5
3.1	Objective 1: To establish a clear and workable method	6
3.2	Objective 2: To guarantee swift access to the asylum procedure (and prevent the phenomenon of asylum seekers in orbit)	7
3.3	Objective 3: To prevent applicants for international protection from pursuing multiple applications in different Member States (thereby reducing secondary movements of asylum seekers)	8
3.4	Objective 4: To ensure an equitable distribution of applicants for and beneficiaries of international protection between Member States	10
4	The efficiency of the Dublin III Regulation	11
4.1	The direct and indirect costs of implementing the Dublin III procedure	11
4.2	Are the costs justified?	13
5	Coherence and complementarity	14
5.1	Conformity of the Dublin III Regulation with fundamental rights	14
5.2	Conformity of the Dublin III Regulation with other treaty rules.....	16
5.3	Coherence and complementarity with the EU <i>acquis</i>	16
6	EU added value	17
Annex 1	Tables and figures.....	20
Annex 2	Methodological note on the efficiency of the Dublin III Regulation.....	24

1 Introduction

1.1 Aim of the study and purpose of the report

In line with the Terms of Reference, the aims of the Dublin III Evaluation are threefold:

- To study and provide an in-depth analysis (article-by-article) on the practical implementation of the 'Dublin III Regulation' in all Member States (**phase 1**);
- To evaluate the effectiveness, efficiency, relevance, consistency and EU added value of the Dublin III Regulation (**phase 2**); and,
- To identify potential elements in which the Dublin III Regulation could be amended (**phase 3**).

This report **feeds into phase 2 of the Study** and constitutes the '**Final Evaluation Report**'. It provides an overview of the answers to the evaluation questions included in the Terms of Reference of the Study based on the evidence collected from 19 Member States. The report should be read in conjunction with the Final Implementation Report.

1.2 Methodology

This Evaluation Report is based on desk research, quantitative analysis and consultations with legal/policy advisors in a total of **19 Member States** (BE, BG, CH, CY, EL, FR, HR, HU, IT, LT, LV, MT, NL, NO, PL, RO, SE, SI, SK). The report was discussed at two consultations held by the Commission with Member States and non-governmental organisations in early December 2015. Due to the timing of these consultations, information from the 12 other countries that participate in the Dublin III Regulation was not received in time to be included in this report. In addition, the Study Team has consulted key international and EU stakeholders in the field of asylum (e.g. UNHCR, EASO, ECRE, the LIBE Committee, ICMPD and, FRA). Some of these stakeholders (e.g. UNHCR, EASO, ECRE, and the LIBE Committee) came together in a workshop as well as being interviewed, whereas others were consulted via phone (ICMPD, FRA).

1.3 Structure of the report

The remainder of this document is structured as follows:

- Section 2 – Relevance;
- Section 3 – Effectiveness;
- Section 3 – Efficiency;
- Section 4 – Coherence and Complementarity
- Section 5 – EU added value.

2 Relevance of Dublin III Regulation

In order to assess the relevance of the Dublin III Regulation, the study has examined the extent to which its *actions* address *its objectives*, the *wider policy needs* of the EU and the *needs* of the *target audiences*.

2.1 The relevance of establishing a method for determining the Member State responsible for examining an application for international protection

There was common agreement amongst stakeholders that **there is a need for a method which determines the Member State responsible for the examination of an application for international protection**¹.

From the point of view of **applicants for international protection**, a method determining which Member State is responsible provides clarity as to which Member State to turn to for the examination of their claim (both from a practical as well as a legal perspective)². The existence of the Schengen area means that applicants can lodge an application in several Member States. Without a method to determine responsibility, ad hoc negotiations would take place between Member States, potentially resulting in no Member State taking responsibility. Indeed, in the 1990s prior to the Dublin Convention coming into effect in 1997, some applicants were, for this reason, 'left in orbit' (i.e. when no Member State accepts responsibility for an application, delaying access to protection³). From a fundamental rights point of view, FRA and other (Member) States⁴ therefore emphasise the importance of a method to determine responsibility to ensure that applicants have **effective access** to the asylum procedure and to prevent asylum seekers being in orbit⁵.

From the **Member States' perspective**, a method determining responsibility provides clarity as to who (which applicants) they are responsible for, based on what grounds, so that they can either accept responsibility for the substantive examination of a claim, or reject/shift responsibility to a different Member State. For example, EASO referred to the importance of Dublin III as 'a management tool' which is considered to be of significant (political) value to Member States and their citizens. More crucially, by consistently applying this method, Dublin should (in the medium-/long-term) **discourage multiple applications** and the extra human and financial resources associated with these⁶. By establishing the principle that one single Member State examines a claim, Dublin III should improve the efficiency of the asylum system by **preventing misuse** and **reducing costs**⁷.

At EU level, for the reasons set out above, a method to determine responsibility remains a necessity 'as long as separate national asylum systems exist within a European area that lacks internal border control'⁸. **Dublin's primary objectives** were therefore to establish a clear and workable method for determining which Member State is responsible for examining an application for international protection, to:

¹ EASO, EP (LIBE Committee), FRA, ECRE, ICMPD, FR, CH, regional UNHCR Office CZ, HR, HU, NL, NO, FR, SE, etc.

² e.g. NL, MT.

³ Fratzke, S. (2015). *Not adding up: The fading promise of Europe's Dublin System*. Brussels: Migration Policy Institute Europe, p. 4.

⁴ NL, MT.

⁵ Interview conducted with FRA in the context of ICF's stakeholder consultation for the Dublin Evaluation

⁶ As also emphasised by MT, NL, NO.

⁷ e.g. MT, NL, NO.

⁸ op.cit. 3, p. 4.

- Contribute to guaranteeing swift access to the asylum procedure in a (single) Member State (and to prevent the phenomenon of ‘asylum seekers in orbit’);
- Contribute to preventing applicants for international protection from pursuing multiple applications in different Member States (thereby reducing secondary movements of asylum seekers).

2.2 The relevance of a legal framework codifying the method for determining the responsible Member State

This subsection considers whether the **codification** of the **mechanism** in a **legislative instrument** is **relevant**.

Stakeholders agreed that a legislative instrument is relevant as it provides **legal certainty** and **legal redress** to both applicants as well as Member States.

The method needs to be enforceable as applicants for international protection are not indifferent to where in the EU they wish to apply for protection. Although the EU has, since 1999, been working towards the establishment of a Common European Asylum System (CEAS)⁹, in reality, differences in practice and standards remain. To avoid applicants applying in only a few selected Member States the method needs to be regulated/codified. Should applicants move on, Member States can enforce the Regulation and legally send them back to the responsible Member State.

The method also needs to be enforceable as Member States are not indifferent as to the number of applicants they receive or about whom they are responsible for when examining claims. The reception and protection of displaced persons is widely seen as a burden on receiving countries due to financial, administrative, social and political reasons¹⁰. The applicant should be able to hold the Member State responsible (and Member States should hold each other responsible) for the examination of a claim, which according to the criteria is their responsibility. A legal framework for determining responsibility thus also ensures that *all* Member States take on their share of responsibility, preventing Member States from shunning their responsibilities when pressured by public opinion or budget.

It follows that, at EU level, the codification of a clear and agreed upon method to determine responsibility is essential to ensure that **applicants have effective access to asylum**, whilst the **reception and protection is shared by all Member States**, reflecting the principles which the CEAS was built upon (e.g. solidarity, burden-sharing¹¹). These EU principles are also consistent with international law, in particular the Geneva Convention (upon which the CEAS is founded) which refers, in its preamble, to the principle of burden-sharing.

2.3 Relevance of Dublin III’s building blocks to achieving its general and specific objectives

This subsection considers whether **all of Dublin III’s building blocks (or the lack thereof) are relevant to achieving its objectives**.

Despite agreement on the relevance of a method determining responsibility, many stakeholders emphasised that **the design of Dublin III misses certain crucial elements**, which have reduced its overall relevance. Moreover, many stakeholders also emphasised that **some elements** in the design of Dublin III **are not conducive** to (and have even

⁹ Where, according to the Stockholm Programme, applicants should in principle receive similar treatment, similar processes and similar decisions (in similar cases).

¹⁰ ‘The implementation of Article 80 TFEU on the principle of solidarity and fair sharing of responsibility including its financial implications between Member States in the field of border checks, asylum and immigration’, European Parliament, Directorate General for internal policies, 2011.

¹¹ See Article 80 TFEU.

undermined) achieving certain specific objectives: swift access to the procedure and the prevention of secondary movement.

2.3.1 Missing elements in the blueprint which have reduced Dublin's overall relevance to achieve its objectives

Missing elements in the design of Dublin III which have reduced its overall relevance include the following.

Dublin III was **not designed to deal with situations of mass influx, which has severely reduced its relevance in the current context and has undermined achieving its objectives**¹². To prevent national asylum systems from clogging up, it is crucial, in mass influx situations, to ensure an efficient flow of applicants throughout the procedure. However, by its nature, Dublin III prevents this as Dublin procedures are (already in 'normal' circumstances) lengthy. In situations where Member States are confronted with large influxes, the application of Dublin can cause significant challenges. Indeed, some Member States (e.g. HU, IT) have experienced obstacles applying Dublin in the current context, with procedures being delayed and internal capacity insufficient to deal with all Dublin cases in a timely manner. As a result, some Member States (e.g. DE, HU, IT) de facto stopped applying it (correctly) in practice, thereby reducing its overall relevance.

Dublin III was **not designed to ensure fair sharing of responsibility and does not effectively address the disproportionate distribution of applications** for international protection¹³. The hierarchy of criteria does not take into account a Member State's capacity to process claims, nor does it aim for a balance of efforts in determining which Member State is responsible. Some stakeholders argued that the practical application of the hierarchy of criteria may have increased disparities even further: as explained in Section 3.1, the criteria most often used in practice are those related to the documentation and first country of entry (Articles 12 and 13). This places a substantial, unfair and sometime unsustainable share of responsibility on border Member States. Overburdened border Member States may not have the capacity to fulfil their obligations e.g. documenting arrivals under Eurodac and receiving applicants properly and processing their claims¹⁴. Consequently, applicants may have an incentive to travel on and to submit claims where they choose, which in turn places significant responsibility on more 'desirable' destinations. The result is a disproportionate distribution of applicants, which has also been clearly shown in the wake of the current influx.

2.3.2 Inherent weaknesses in the elements of Dublin III which reduce its relevance in achieving its specific objectives

Some elements in the Dublin III Regulation have proven particularly challenging to pursuing the goals set, including the following.

The **method** for allocating responsibility being **based on an intergovernmental approach, unavoidably delays access to the asylum procedure**¹⁵. The Regulation sets out a hierarchy of criteria and stipulates procedures, upon which Member States, on a bilateral basis, negotiate with each other who is to be responsible for a claim. The time frames for the procedures as stipulated in the Regulation, although deemed appropriate by Member State authorities¹⁶, are lengthy: even when authorities closely comply with stipulated deadlines,

¹² e.g. MT, PL, RO, SI, SE.

¹³ e.g. EL, SE and confirmed by S. Peers, E. Thielemann, S. Fratzke, M. Garlick and F. Maiani (external experts to ICF's Study Team).

¹⁴ See also ECtHR's decision in *M.S.S. v. Belgium and Greece*, and the subsequent decision of the CJEU in the joined cases of *N.S. v. United Kingdom* and *M.E. v. Ireland*, following which most Member States indicated they refrained from transferring cases that would normally be the responsibility of Greece due to concerns about systemic flaws in the asylum procedure.

¹⁵ S. Fratzke and M. Garlick (external experts to ICF's Study Team).

¹⁶ See Evaluation of the Implementation of the Dublin III Regulation, Final Report, 18 March 2016, Section 5.

applicants may still wait up to 10 months (take back requests) or 11 months (take charge requests) before the procedure for examining the claim for international protection starts¹⁷. Applicants are, during such time, kept in limbo as to where they will have their claim assessed, undermining Dublin's aim to prevent asylum seekers being in orbit¹⁸.

The **hierarchy of criteria do not sufficiently take into account the interests/needs of applicants**, which is partly why secondary movement and the lodging of multiple applications remain an issue¹⁹. As explained in Section 3.1.2 the family criteria have little effect in practice and the humanitarian and discretionary clauses are also infrequently applied. Instead, allocation of responsibility is usually based on which Member State the applicant first enters – an irrelevant and coincidental factor in relation to the person's needs/interests. If applicants feel that their needs/interests are not sufficiently taken into account, they have an incentive to move on in secondary movements²⁰.

2.3.3 Weaknesses that result from the interaction between Dublin and the broader context which reduce its relevance

In addition to the inherent weaknesses, several challenges, which result from the interaction of Dublin with the broader context, also render achievement of its objectives more difficult.

Despite harmonisation efforts of the CEAS, differences remain in the asylum procedures, reception conditions and integration capacity of EU Member States²¹. Several stakeholders²² emphasised that this undermines Dublin's core assumption that asylum applicants will receive equal consideration and treatment in whatever Member State they lodge their claim. The lack of a level playing field may further encourage **secondary movements**.

3 The effectiveness of the Dublin III Regulation

In order to assess the effectiveness of the Dublin III Regulation, and broader Dublin system the study examined the degree to which the primary objectives of the Dublin III Regulation have been achieved and the key factors underpinning this.

The primary objectives of the Dublin III Regulation are:

- To establish a clear and workable method for determining which Member State is responsible for examining an application for international protection;
- To contribute to guaranteeing swift access to the asylum procedure in a (single) Member State (and to prevent the phenomenon of asylum seekers in orbit);
- To contribute to preventing applicants for international protection from pursuing multiple applications in different Member States (thereby reducing secondary movements of asylum seekers).

¹⁷ op. cit. 3, p. 18.

¹⁸ Regional UNHCR office in CZ, NGO in FR.

¹⁹ e.g. HR, HU, legal informants in SE, and confirmed by M. Garlick, S. Fratzke and F. Maiani (external experts to ICF's Study Team).

²⁰ See e.g. Jesuit Refugee Service Europe. (2013). *Protection interrupted: The Dublin Regulation's impact on asylum seekers' protection*; Brekke, J. & Brochmann, G. (2014). Stuck in transit: Secondary migration of asylum seekers in Europe, national differences, and the Dublin Regulation. *Journal of Refugee Studies*, 28(2), p. 145–162.

²¹ Brekke, J. & Brochmann, G. (2014). Stuck in transit: Secondary migration of asylum seekers in Europe, national differences, and the Dublin Regulation. *Journal of Refugee Studies*, 28(2), p. 145–162.

²² e.g. ICMPD, FRA, EASO.

In addition, the Terms of Reference specify that the study should assess whether the responsibility criteria have been effective de facto in ensuring an equitable distribution of applicants for and beneficiaries of international protection between Member States.

In the following subsections, the degree to which the Dublin III Regulation attained, or contributed to the attainment of, these objectives is considered in turn.

3.1 Objective 1: To establish a clear and workable method

3.1.1 How well has this objective been achieved?

There is a clear need for a method to determine the Member State responsible for the examination of a claim and the Dublin III Regulation is addressing this need

In 2014, the total number of take charge and take back requests was 84,586, representing 13 % of the total number of asylum applications in the EU (See Table A1.1). Thus nearly one in every seven applications lodged in the EU is considered by at least one Member State as the responsibility of another Member State. The proportion has remained within the range of 11 % to 17 % for the period 2008–2014 during which the total number of asylum applications has increased from 257,000 to 663,000. The 2014 share is less than that of 2013 (17 %) but it is still a sizeable portion of the total number of asylum applications.

The decline in 2014 may reflect the increasing tendency (reported by several Member States e.g. FR, NL and NO) to accept responsibility for asylum claims ‘by default’ i.e. deliberately not submitting a request (even when it is considered that another Member State may be responsible) or not investigating whether another Member State may be responsible as a way of handling large amounts of work during periods of crisis.

There are important differences in how Member States interpret and apply the criteria for determining the responsible Member State

In 2014, 33 % of the total number of outgoing take back and take charge requests were rejected by the receiving Member States (see Table A1.2). The rejection rate of 33 % of Dublin requests in 2014 compares to 20 % in 2013 and was higher than every year since 2008. This may suggest that the entry into force of the Dublin III Regulation in 2014 made it harder for Member States to reach consensus on the responsible Member State. The Implementation Report shows that Member States do indeed interpret and apply the criteria differently. Moreover, some Member States also explained that the quality of transfer requests has reduced following the refugee crisis and highlighted the strain this has put on their asylum system. Consequently, transfer requests increasingly lack information, which has led to a higher rejection rate.

The Dublin III Regulation only rarely succeeds in implementing the last stage of the Dublin procedure, i.e. de facto and legally shifting the responsibility for an asylum applicant from one Member State to another

In 2014, only 8 % of the total number of accepted take back and take charge requests resulted in actual physical transfers. This is a very low proportion and suggests that there are problems with the feasibility of the Dublin III Regulation as Member States only rarely succeed in implementing the last stage of the Dublin procedure, i.e. the transfer which de facto and legally shifts the responsibility to another Member State (see Figure A1.1).

The low proportion of accepted requests resulting in actual transfers may be partly explained by delays in the transfers, since a transfer which takes place in a subsequent year is not captured in the annual data presented in Figure A1.1. Another explanatory factor may be the applicants appealing against transfer decisions, although high rates of appeals themselves cast doubt on the feasibility/clarity of the Dublin III Regulation’s method for determining the responsible Member State. Another important reason underpinning the low rate of transfers, as confirmed by many Member States, is the high rate of absconding of applicants during the Dublin procedure.

At the Member State level, out of the 18 Member States that provided data, Belgium has been the most effective in receiving incoming transfers (54 % of all accepted incoming requests resulted in transfers) while the Slovak Republic was the most effective in outgoing transfers (70 % of accepted outgoing requests resulted in transfers).

3.1.2 Factors affecting the clarity and feasibility of the method set up by the Dublin III Regulation to determine the responsible Member State

■ *Issues affecting the clarity of the hierarchy of criteria for determining who is responsible*

Although the majority of Member States (11 out of 19 consulted) found the criteria to be broadly clear as currently worded, some stated that as a whole they are not clear enough, leaving too much room for interpretation. Specific concerns were expressed in particular in relation to the family criteria (Articles 8–11)²³. The country of entry criteria (Articles 12 and 13), were found to be the easiest to interpret.

Member States reported being confronted not only with difficulties obtaining evidence but also with agreeing on evidence. Eurodac and Visa Information System data are the evidence most easily available and are also broadly accepted as proof by nearly all Member States. In contrast, evidence of family connections is more challenging to retrieve and not easily agreed upon. Thus, although Member States emphasise that as a policy they apply the criteria in the order laid out in the Regulation, the relative weight of the criteria de facto shifts in the implementation of the Dublin procedure, with the first country of entry preceding the family criterion.

■ *Issues affecting the clarity and feasibility of the procedures for submitting and replying to take charge and take back requests*

Member States reported that the procedures for submitting and replying to take charge and take back requests are generally clear. However, the current migration crisis has put increased pressure on asylum agencies, increasing the response times of border and refugee-receiving Member States, as well as some smaller Member States that lack capacity/staff. The high influx of asylum applicants into certain Member States has also led to an increase in incomplete requests, which may explain the increase in the number of rejections and disputes.

■ *Issues affecting the feasibility of implementing the method in practice*

Stakeholders emphasised that the hierarchy of criteria ignores applicants' needs and interests. Although family is theoretically taken into account under the hierarchy of criteria, its infrequent use – including the infrequent use of the discretionary and humanitarian clauses – has meant that these provisions have little effect in practice. Instead, allocation of responsibility is made based on the first country of entry. As a result, applicants often take matters into their own hands, seeking to avoid fingerprinting and/or burning their fingertips, appealing transfer decisions, absconding, travelling back after having been transferred, etc. In turn, Member States make widespread use of coercion to implement Dublin procedures (e.g. forcing applicants to be fingerprinted, use of detention, etc.). All this seems to suggest that the method is not as easily implemented in practice as initially envisaged and causes difficulties for Member States and hardship for individuals.

²³ For example, the Netherlands noted that interpretations about the responsibility of a minor without any family members differ across Member States following a June 2013 CJEU ruling that stipulates that the Member State responsible should be determined based on where the minor is present when no family connections exist.

3.2 Objective 2: To guarantee swift access to the asylum procedure (and prevent the phenomenon of asylum seekers in orbit)

3.2.1 How well has this objective been achieved?

Time limits stipulated in the Dublin III Regulation delay access to the asylum procedure but there is little scope for shortening them further

Member States report that the time limits for submitting and replying to take back and take charge requests are appropriate. Indeed the average time it takes for several Member States to undertake these procedures is significantly shorter than the maximum time frames stipulated in the Regulation (see Table A1.3). The time limit for the implementation of transfers appears to cause more difficulties: seven Member States claimed that transfers are often not carried out during the six-month time limit, and several Member States reported that the time limit extensions (permitted in Article 29(2)) occur 'very often'.

Member States consider that the Dublin III Regulation has sped up the process of determining the Member State responsible for examining asylum claims but only to some extent. On the one hand, they report that the introduction of time limits for submitting and replying to take back requests has led to a shortening of the duration for replies. On the other hand, the introduction of stronger procedural safeguards in the Dublin III Regulation (e.g. the suspensive effect of an appeal against a transfer decision) has extended the duration of the procedures for some Member States. As a result, stakeholders report that there is little scope for shortening the time limits further. Indeed, as also explained in Section 2.3.2, the method for allocating responsibility is based on an intergovernmental approach and within such a system procedures cannot realistically be shortened.

3.2.2 Factors affecting the Dublin III Regulation's ability to guarantee swift access to the asylum procedure (and prevent the phenomenon of asylum seekers in orbit)

- **The reasons which are most often cited by Member States for delays in submitting take charge and take back requests are:**
 - Capacity issues/staff shortages/backlogs during times of high influx (BE, EL, HU, SE, NL);
 - Coordination issues within the government (CY);
 - Administrative errors (NL);
 - New information coming to light (SE, CH); and
 - Current migration crisis/high influx of applicants (EL, HU).
- **The reasons which are most often cited by Member States for delays in replying to take charge and take back requests are (in addition to those cited above):**
 - Difficulties evidencing criteria which apply;
 - Incomplete transfer requests.
- **The reasons which are most often cited by Member States for delays in executing transfers are:**
 - Absconding (BE, CY, EL, HR, HU, MT, NL, RO, SE, SI, CH, NO);
 - Coordination difficulties within and between Member States (MT); and
 - Length of appeals (BG, CY, HU, LT, RO, SE).

3.3 Objective 3: To prevent applicants for international protection from pursuing multiple applications in different Member States (thereby reducing secondary movements of asylum seekers)

3.3.1 How well has this objective been achieved?

Multiple asylum applications remain common in the EU, notwithstanding Dublin III's aim to prevent secondary movements

In 2014, of the 550,221 asylum applications recorded in Eurodac, 24 % had already made a previous application in another Member State (see Category 1 against Category 1 data in Table A1.4). On the other hand, compared with previous years, the ratio of multiple asylum applications decreased from 35% in 2013 to 23% in 2014.

The Dublin III Regulation may have had a (minimal) deterrent effect on the incidence of multiple asylum applications, but it has done little to prevent other types of secondary movements

Stakeholders concur that the Dublin III Regulation may have helped to reduce the incidence of multiple asylum applications by introducing stronger provisions on the right to information for asylum applicants. However, the impact of this is slight and the Regulation may have also served inadvertently to increase the incidence of other types of secondary movements. In particular, the Dublin system is said to have had a negative impact on border management, as potential asylum seekers circumvent border checks in order to avoid fingerprinting and being registered as having entered a Member State where they do not wish to ask for asylum.

3.3.2 Factors affecting Dublin III's ability to prevent applicants from pursuing multiple applications

■ In practice, applicants are not always adequately informed about the application of Dublin and in particular the consequences of lodging multiple applications

Stakeholders report that in most Member States information provided consists of 'general information' and thus falls short of the list as stipulated in Article 4(1), which explicitly refers to several elements that applicants should be informed of 'in particular', e.g. the objectives of the Regulation, the criteria, the personal interview, the possibility to challenge a transfer decision, the fact that Member States can exchange data on him/her, and the right of access to data²⁴.

■ Member States' (frequent) deviations from the criteria and normal procedures to be followed when determining responsibility weakens the Regulation's ability to deter applicants from pursuing multiple applications

This is particularly the case when:

- A Member States's responsibility has ceased after applicants have left the territory of a Member State for at least three months, i.e. absconded, or in compliance with a return decision (Article 19); Switzerland and Norway indicated that their responsibility has 'often' ceased on these grounds;
- A Member State other than the one who was according to the hierarchy of criteria assumes responsibility by default because of delays in replying to take charge/take back requests and/or delays when implementing the transfer; this happens 'often' in Greece and 'sometimes' in France;
- Member States assume responsibility outside the normal hierarchy of criteria: under Article 3(2) nearly all Member States have assumed responsibility without

²⁴ Interviews with NGOs in Italy and Greece.

undertaking a formal Dublin evaluation²⁵ and nearly all Member States have also, since 2011, refrained from transfers to Greece due to concerns about systemic flaws in asylum procedures or reception conditions. In practice, this has given a carte blanche to applicants arriving in Greece to travel to the Member State of their choice to have their case tried²⁶.

The above situations, as foreseen in the Regulation, directly challenge Dublin's underlying principle (i.e. that all/most applications for international protection are examined by the Member State which, according to the hierarchy of criteria, is the Member State responsible) and undermines the deterrent effect on applicants to lodge multiple applications.

- **Even in the case of explicit knowledge about the Dublin Regulation and the possibility of being returned, applicants may still remain highly motivated to apply in a second Member State either because they have family, friends or existing networks in a different Member State, or because of the availability of more generous benefits elsewhere.**

National differences in the quality of the reception system, in welfare policies and in labour market opportunities continue to exist and encourage secondary movement.

3.4 Objective 4: To ensure an equitable distribution of applicants for and beneficiaries of international protection between Member States

3.4.1 How well has this objective been achieved?

In the absence of a burden-sharing mechanism, Dublin has some, albeit limited, impact on the distribution of applicants within the EU

Figure A1.2 provides information on the net Dublin transfer flows (i.e. the number of outgoing minus the number of incoming Dublin transfers) for 17 Member States²⁷. The data indicates that there is some redistributive effect, notably for those Member States which show a relatively positive or relatively negative net transfer. For example, France (1,354) and Belgium (1,227) receive relatively high numbers of Dublin applicants (more than they transferred to other Member States), whereas Sweden (910), Austria (803) and Norway (745) transferred relatively high numbers of applicants to other Member States (and more than they received).

However, for most Member States (e.g. EL, EE, HR, LU, LV, RO, SI) the net transfers are close to zero, which indicates that there is no or very little redistribution on the whole. These Member States thus receive and transfer similar number of applicants to other Member States, so that their incoming and outgoing requests cancel each other out.

Overall, the net transfers represent a very small proportion of the total number of asylum applications received by these countries each year. This again highlights the small redistributive effect of the Dublin III Regulation. For example, Sweden's net transfer to other countries amounts for only 1 %²⁸. Similarly, the proportion of net Dublin transfers amounts to 2 % in Denmark, France and Romania, 3 % in Austria and 4 % in Ireland²⁹.

These considerations are only a first step to understanding the redistributive effects of Dublin (or any other system), as this requires an understanding of the present capacity of Member States to receive asylum applicants, in general, and absorb Dublin transfers, specifically.

²⁵ BE, EL, FR, HR, HU, IT, LT, MT, PL, RO, SE, SI, CH, NO.

²⁶ op. cit. 21, p. 16.

²⁷ This figure does not include significant receivers of transfers such as Italy as data was not available.

²⁸ ²⁸ Absolute Dublin transfers (outgoing minus incoming transfers) out of the total number of applications.

²⁹ Ibid.

3.4.2 Factors affecting Dublin III's ability to contribute to an equitable distribution of applicants and beneficiaries

- **The hierarchy of criteria for the allocation of responsibility does not take into account the Member States' capacity to provide protection and was not designed to distribute responsibility evenly**

On the contrary, the criteria may even have exacerbated imbalances between Member States. As Section 3.1.2 indicates, despite family unity criteria being at the top of the hierarchy, the criteria most often used in practice are those related to documentation and entry reasons (Articles 12 and 13).

In circumstances where large numbers of applicants arrive via the EU's external borders (as in recent years) the Regulation has the potential to place disproportionate responsibility on border Member States. However, in practice, implementation gaps and low numbers of actual transfers have meant that applicants are also able to submit claims where they choose, placing greater responsibility on more 'desirable' destinations such as Germany and Sweden (the top two recipients of protection claims in 2014).

Indeed, certain Member States clearly carry more responsibility for processing asylum claims and providing protection than others. Together, the top five receiving Member States (Germany, Sweden, Italy, France and Hungary) took in close to 70 % of the absolute numbers of first-time asylum applications submitted in the European Union in 2014.

4 The efficiency of the Dublin III Regulation

This section examines the extent to which the effects of the Dublin III Regulation are achieved at a reasonable cost in terms of financial and human resources deployed. Building on the analysis presented in Section 3 (Effectiveness) regarding the speed with which Dublin III determines the Member State responsible for the examination of an application, this section looks at the costs of implementing the Dublin III Regulation. Finally, it considers evidence gathered from stakeholders as to whether the costs are proportionate to the outcomes.

4.1 The direct and indirect costs of implementing the Dublin III procedure

In assessing the cost of implementing the Dublin III procedure, there are two types of costs:

- Direct administrative costs comprising:
 - The staff costs of the Dublin unit and decentralised administration informing and notifying Dublin applicants;
 - The cost of operating IT systems (i.e. Eurodac and Dublinet);
 - Overheads (i.e. cost of facilities, training, management costs).
- Direct procedural costs comprising:
 - The cost of transferring Dublin applicants post transfer decisions;
 - Detention costs prior to and/or after the transfer decision has been made;
 - The cost of appealing the transfer decisions.
- Indirect procedural costs comprising:
 - Reception costs, including: accommodation, subsistence, a financial allowance, health costs and education costs;
 - Return and readmission costs of failed Dublin applicants;
 - Irregular migration costs of failed Dublin applicants not returned.

Overall, it is estimated that the direct and indirect costs of implementing Dublin represented approximately **€1 billion** in 2014 across the EU. The direct costs i.e. cost of processing

Dublin applications, Dublin requests and procedural costs were estimated at **€78.5 million** across the EU and European Economic Area (EEA). They are limited in comparison to the indirect costs of the Regulation, which are estimated to be in excess of **€931 million** in 2014. The estimated costs are highly dependent on assumptions which may be refined in view of the final report.

In relation to the first point, i.e. the administrative costs of implementing Dublin III, the Member State officials considered that the costs have remained broadly the same as under Dublin II. The size of the Dublin units did not increase significantly and the levels of investment in systems and training remained the same. Hence, the implementation of Dublin III did not lead to noticeable changes in staff costs or in the level of investment in operations.

Table 4.1 Direct administrative costs of implementing Dublin III in 2014

Direct administrative cost typology	Administrative costs in EU and EEA Member States
Dublin unit staff cost (central and decentralised costs)	est. €14 million ³⁰
System costs (Eurodac and Dublinet)	est. € 0.1 million ³¹
Cost of administrative facilities	est. € 28 million ³²
Total estimated administrative costs	est. € 42 million

The administrative costs are broadly equivalent to the direct procedural costs (see Table 4.2). Direct procedural costs are a function of the number of asylum seekers to whom the Dublin III regulation applies (e.g. costs of transfers and costs of appeals and judicial reviews).

Table 4.2 Direct procedural costs in 2014

Direct procedural cost typology	Direct procedural costs borne by EU and EEA States
Costs of transfers	est. €4 million ³³
Costs of appeals	est. €28 million ³⁴
Detention costs	est. €4.5 million ³⁵
Estimated total procedural costs	est. €36.5 million

Indirect costs (i.e. mainly reception, detention and return costs) represent the bulk of the costs related to Dublin III. The table below summarises the indirect costs incurred when implementing the Dublin III Regulation.

Table 4.3 Indirect costs: Reception costs and the cost of irregular migration in 2014

Indirect cost typology	Indirect costs borne by EU and EEA Member States
Reception costs incl.: accommodation costs, subsistence costs, financial allowance, health costs and education costs	est. € 864 million ³⁶
Cost of return	est. € 67 million ³⁷
Cost of irregular migration	Not estimated
Estimated total indirect costs	est. €931 million

The factors affecting the cost effectiveness of Dublin III Regulation relate to:

- The efficiency in processing Dublin applications (i.e. the swifter the process, the less costly);

³⁰ This is equivalent to spending 1.5 days per Dublin application @ public sector staff average wage.

³¹ This is equivalent to spending €1 per application on using Eurodac and Dublinet (this does not include cost of set-up and maintenance of those systems).

³² This assumes that staff costs represent 33 % of the total administrative costs of processing Dublin applications.

³³ This assumes that the cost of transferring a Dublin applicant is €259 per transfer.

³⁴ This assumes that the cost of a judicial review is €870 per applicant, and a rate of appeal of 54 % on average across the EU and EEA Member States. This does not include the cost of legal aid and legal assistance.

³⁵ This assumes a rate of Dublin applicants in detention while awaiting transfer of 6.4 % and an average detention duration of two weeks across the EU and EEA Member States.

³⁶ This assumes that the cost of receiving any asylum applicant following the procedure for a year is in excess of €10,700 and that the Dublin procedure lasts for about ten months on average.

³⁷ This assumes a cost of €2,000 per returnee for return costs; the cost of readmission is excluded from the calculations.

- The efficiency in effecting the transfer decisions in other Member States (i.e. the more actual transfers, the less costly); and,
- The efficiency in returning asylum applicants whose claims are unfounded (i.e. the more returning applicants, the less costly).

4.2 Are the costs justified?

Overall, Member State officials considered that the Regulation is an efficient system for determining the Member States responsible for the examination of an asylum application. The Dublin III Regulation is regarded as delivering benefits that are commensurate with the costs of implementing it.

Member State officials justified the costs of the Regulation either on the basis of its efficiency as a system (i.e. by design: relative clarity of the criteria determining the Member States responsible, and implementation of the provisions of the Regulation) or on the basis of the need for such a mechanism for allocating responsibility to examine asylum claims (regardless of its design).

- With regard to the efficiency of the design of the Dublin III Regulation, the majority of Member State stakeholders considered that the cost of implementing the Regulation is commensurate with the level of outcomes generated. In cases where Member States had to increase administrative capacity and investments, they recognised that the outcomes increased in the same proportion.
- With regard to the need for the Dublin III Regulation, some Member State officials argued that in the absence of such a mechanism, the costs borne by the EU and EEA States would be much higher. For instance, the absence of a mechanism for determining Member State responsibility would not deter some applicants from lodging multiple applications in several Member States, and probably lead to an even higher number of applicants doing so. In the absence of such a system, the processing of all asylum claims would also involve costs and Dublin applications often involve applicants who have already exhausted procedures in other Member States. Should their claim be again assessed by a different Member State, one could also argue that the Dublin III Regulation has significantly reduced costs from this perspective (i.e. by avoiding the adjudication of claims by multiple Member States).

However, stakeholders also pointed out that the Dublin III Regulation lacks efficiency in the following areas.

- The legally envisaged time to transfer an applicant is too long and the rate of actual transfers implemented is too small: it takes a maximum of six months to transfer an applicant and only 61 % of the requests for transfer were accepted by another Member State in 2014. In addition, the number of accepted transfer decisions actually resulting in transfers of the applicant was even lower (8 %). This has significant financial implications on indirect costs (i.e. reception costs and return or readmission costs).
- Some Member States transfer back and forth an equal number of asylum seekers with the same Member States and at least eight Member States have net numbers of Dublin transfers of less than 100 Dublin applicants. This arguably reduces the overall efficiency of the system.
- The Dublin III Regulation takes little account of the applicants' preferences. This sometimes results in secondary movements once international protection has been granted and/or absconding prior to or after a transfer decision has been made. The propensity of applicants to abscond is high, generates indirect costs and thus lessens the efficiency of the Dublin III Regulation.
- Detention rates in a few Member States are very high (e.g. 99 % in the case of HU) adding to the cost of the Dublin procedure in those Member States where it is common practice.

- The number of rejected asylum seekers not transferred and/or not returned to their country of origin also generates high social costs linked to irregular migration (i.e. policing costs, public health costs, costs to the economy and state budget, etc.). It is estimated that a maximum of 42 % of the Dublin applicants not effectively transferred may still be staying as irregular migrants either in the hosting Member State or in the EU.
- Non-Governmental Organisations particularly emphasise the unintended consequences of the Regulation for applicants. For instance, the longer the procedure, the longer the process of integration will take and the less chance migrants will have to effectively contribute to society while under the Dublin procedure. This lessens the economic benefits that could be derived from a faster and better social inclusion of Dublin applicants.

When prompted to comment on which alternative system would be more efficient, stakeholders commonly felt that the emergency relocation mechanisms³⁸ as adopted by the Council are complementary to the Dublin III Regulation rather than an alternative. Applicants' preferences should be taken into account when relocating asylum seekers to EU Member States. The implementation of the relocation system could be triggered in emergency situations and exempt EU Member States already overwhelmed by an increasing flow of asylum seekers from abiding by the first entry principle.

Some Member States also mentioned that Directives linked to the Dublin system should be properly implemented and enforced to increase the efficiency of the Dublin III Regulation. This mostly concerns the Qualification Directive, through the harmonisation of the application of similar criteria for examining and deciding on asylum claims, and the Return Directive to increase the number of rejected asylum applicants returned to their countries of origin. A better complementarity between the Directives would decrease the propensity of Dublin applicants to lodge multiple applications and/or abscond (and thus reduce associated procedural costs and indirect costs) as well as reduce the costs of the irregular migration of rejected asylum seekers.

5 Coherence and complementarity

This section examines the extent to which the Dublin III regulation and its application is coherent with and complementary to other instruments related to the EU asylum *acquis* and EU primary law.

5.1 Conformity of the Dublin III Regulation with fundamental rights

5.1.1 Legal conformity with fundamental rights

A review of international and national case-law and relevant literature shows that the **provisions** of the Regulation **are in full compliance** with the **fundamental rights** defined in the Charter. The **conformity of any EU instrument with EU primary law is checked** by the European Commission at proposal stage. The Dublin III Regulation **refers explicitly to the standards set in the Charter** on several occasions. For example, recital 39 of the Regulation makes a direct reference to the obligation for (Member) States to observe the rights defined in the Charter. In comparison to the Dublin II Regulation, the Dublin III Regulation also has a **more 'fundamental rights-oriented' logic** in the sense that it has strengthened individual guarantees for applicants such as the right to a personal interview or to an effective remedy, and enlarged the responsibility criterion based on family unity.

³⁸ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece; Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

5.1.2 Implementation issues affecting fundamental rights

The EU and international organisations, as well as legal experts consulted, indicated that the **implementation of the Dublin III Regulation** ‘frequently’ led to interferences with fundamental rights or even fundamental rights violations in some Member States.

5.1.2.1 Issues arising from the criteria defined in the Regulation

The hierarchy of criteria does not sufficiently take into account individuals’ preferences³⁹. This is not contrary to the *letter* of the Geneva Convention which defines the **right to asylum** for people having a well-founded fear of persecution in their country of origin, but **does not explicitly provide for a right to choose the country where the application for refugee status can be lodged**.

However, the practical application of the hierarchy of criteria has serious consequences. As applicants feel that their interests/needs are not sufficiently taken into account, potential harmful behaviour is fuelled such as attempts to evade the system, which in turn leads to the **use of coercive means** by the Member States in order to implement the Regulation, including detention or escorted transfers.

5.1.2.2 Issues arising from transfers

The **prohibition of *refoulement*** as well as **the impossibility for a Member State to return a person to a country where he or she is at risk of being exposed to inhuman or degrading treatment**, as guaranteed by Article 3 of the European Convention on Human Rights (ECHR), Article 4 of the Charter, and relevant case-law, are the primary concerns in any removal procedure.

To date, the main problem identified in relation with the implementation of the Dublin system concerns **transfers to Member States with problematic asylum or reception conditions**, as shown by the evolving case-law of the European Court of Human Rights (ECtHR) and the European Court of Justice (CJEU)⁴⁰. Specific references to this issue were incorporated into the Dublin III Regulation but uncertainties remain. The divergence in interpretations by the ECtHR and the CJEU creates a legal uncertainty for applicants, as several of the consulted Member States stated that they would not suspend transfers to a given Member State unless systemic deficiencies are notified by the European Commission or other international organisations, as was the case with Greece. Other issues include different standards in force in the Member States regarding the applicant’s fitness to travel in cases of serious illness or regarding the use of coercion which can put applicants at risk of seeing their rights breached⁴¹.

5.1.2.3 Issues arising from detention

Some concerning practices were identified during the drafting of the Implementation Report regarding detention. Some Member States (e.g. PL) indicated that detention could be automatically resorted to for applicants who entered the country irregularly. This practice appears to be in breach of the Dublin III Regulation which provides for a sole ground of

³⁹ Except for Articles 9 and 10 of the Dublin III Regulation.

⁴⁰ See ECtHR, 21 January 2011, *M.S.S. v. Belgium and Greece*, 30696/09; CJEU, 21 December 2011, *N.S. v. Secretary of State for the Home Department*, C-411/10, and ECtHR, 4 November 2014, *Tarakhel v. Switzerland*, 29217/12.

⁴¹ For instance, in 2011, Austria ordered the transfer to Poland of a mother and her three-month-old son who had a serious heart condition. Medical examinations emphasised that, because of the heart disease, even removal could be life threatening as the child does not get enough oxygen when he is upset. This could be fatal or lead to severe brain damage. The Austrian Asylum Court ruled that the transfer would amount to a breach of Article 3 ECHR. See Asylum Court, 28 December 2011, S7 423.367 to 370-1/2011/2E. Regarding the use of coercion means such as detention, examples include a 2013 ECtHR ruling on a case where the applicant was unable to get a court to decide rapidly on the legality of his detention and order his release if his detention was found to be illegal. Consequently, it found it was in violation of Article 5 para 4 of the ECHR. ECtHR – *Firoz Muneer v. Belgium*, Application no. 56005/10, 11 July 2013.

detention in the case of a 'significant risk of absconding ... to secure transfer procedures in accordance with this Regulation', as well as Article 31 of the Geneva Convention which prohibits the imposition of penalties on applicants 'on account of their illegal entry or presence' in the territory.

5.2 Conformity of the Dublin III Regulation with other treaty rules

5.2.1 Legal conformity with treaty provisions

- Article 78(e) of the Treaty on the Functioning of the European Union (TFEU): no conformity issue was identified regarding this provision.
- Article 67(2) TFEU and Article 80 TFEU: the principle of solidarity is binding for the EU legislator but leaves a **considerable margin of discretion**⁴².

The principle of solidarity is 'a nebulous concept'⁴³, and it is therefore **difficult to assess the legal conformity** of the Dublin Regulation with this provision. However, it is clear that the Dublin system is not a responsibility *sharing* instrument, but rather a 'responsibility *assigning* measure'⁴⁴. It was never intended to play a role in the fair reallocation of applicants for international protection across Member States. Nevertheless, in practice Dublin has led to an unfair burden and may, according to some, therefore arguably be in violation of Article 80 TFEU⁴⁵.

5.3 Coherence and complementarity with the EU *acquis*

The purpose of the CEAS is to ensure 'a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection'⁴⁶. The **coherence of the provisions and the consistent application** of all the instruments relating to the CEAS are essential to its good functioning.

5.3.1 Legal consistency with other CEAS instruments

The Dublin III Regulation was **introduced at the same time as the proposals for the recast Directives** on the asylum *acquis*. As a consequence, efforts were made to achieve coherence and complementarity with these instruments. Indeed, a number of cross-references to definitions and substantive norms in other existing instruments can be found in the Regulation.

However, some **discrepancies can be observed**, which may result in applicants subject to Dublin procedures not having their rights respected in the same way as those not/no longer subject to the Dublin procedure.

- The obligation for Member States to notify the applicant of the transfer decision **in a language he or she understands or is reasonably expected to understand** is only defined for cases where the applicant is not assisted or represented by a legal advisor or other counsellor⁴⁷. However, **limiting access to translations or an interpreter may not be in line with other standards set at EU level**. Indeed, according to recital 25 of Directive 2013/32/EU, it can be assumed that, in cases where the applicant is assisted or

⁴² European Parliament, LIBE Committee, The implementation of Article 80 TFEU on the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States in the field of border checks, asylum and immigration, 2011.

⁴³ House of Commons Scrutiny Committee assessment of COM (2011)835 on intra-EU solidarity in the field of asylum, 19 January 2012.

⁴⁴ European Parliament, op.cit. 40.

⁴⁵ Steve Peers, and Eiko Thielemann.

⁴⁶ See Article 78 TFEU.

⁴⁷ Article 26(3).

represented by a legal advisor or other counsellor, having access to an interpreter could be a challenge in practice⁴⁸.

- The alignment of the Dublin III Regulation definition of family members with the provisions of the Family Reunification Directive may not be in the best interests of applicants and national authorities alike, considering the **different purposes of the two instruments**⁴⁹. The Dublin III Regulation could be best implemented in circumstances where the applicant can be in a supportive and/or familiar environment as this facilitates the integration of applicants once granted international protection status.
- Another inconsistency would lie in the condition of a '**significant risk of absconding**' for placing an applicant in detention under the Dublin III Regulation, while the mere existence of a risk is enough under the Return Directive. While the Return Directive is not one of the CEAS instruments, and both the Dublin III Regulation and the Return Directive have different underlying objectives⁵⁰, they both define mechanisms to remove a third-country national from the territory of a Member State to either a different Member States in the EU (as under Dublin) or to a third country (as under the Return Directive). The **lack of uniformity** in these definitions, combined with the fact that the Dublin III Regulation does not need to be transposed, seems to lead some Member States to **apply the lower standard** set in their national law regarding the Return Directive.

5.3.2 Implementation issues affecting coherence and complementarity with the EU *acquis*

Divergences in interpretations when implementing the Dublin III Regulation as well as the asylum directives remain **a major obstacle** to the achievement of a CEAS. The lack of a sufficient level of convergence in standards and practices prevents the effective operation of the Dublin system. Current implementation practices **do not ensure that an asylum claim will be processed in the same way** in all Member States, and this lack of uniformity encourages **secondary movements and asylum shopping**⁵¹.

The number of infringement decisions adopted by the European Commission in September 2015 regarding the implementation of CEAS instruments is a step in the right direction in order to ensure a more uniform application of the relevant texts across Member States⁵². When it comes to the Dublin system, the fact that it is implemented through a Regulation makes it directly applicable and there is no transposition needed from Member States, which **potentially complicates the monitoring of its implementation** by the European Commission. In addition, the use of so-called may clauses (optional provisions) and undefined concepts in the Regulation leaves Member States **a wide margin of discretion**.

6 EU added value

The Dublin III Regulation, as an EU instrument, has specific EU characteristics which are additional to those offered by national or bilateral instruments. These are (and their value is) as follows:

- **Standardised criteria for determining the Member State responsible.** Having a standardised set of criteria for determining responsibility is useful. It would be

⁴⁸ Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection.

⁴⁹ The application of Dublin alone could never result in family reunification. The system only regulates temporary admission for the duration of the asylum procedure and leaves the decision on lasting admission in the hands of asylum authorities.

⁵⁰ See the *Arslan* case CJEU, 30 May 2013, C-534/11, and the *Kadzoev* case CJEU, 10 November 2009, C-357/09 PPU.

⁵¹ See also op. cit. 21.

⁵² http://europa.eu/rapid/press-release_IP-15-5699_en.htm

challenging to harmonise criteria without an EU instrument; instead Member States would have to apply criteria on a case-by-case basis or otherwise define criteria within bilateral/multi-lateral agreements. Where an applicant had travelled through and/or had ties to multiple Member States it would be complicated to determine responsibility. It is possible that Member States could agree upon a set – or a hierarchy – of criteria developed through mutual cooperation and defined in soft law, but this would be less powerful than a Regulation. However, given that evidence from the implementation report suggests that – in practice – these are not always applied consistently or correctly across Member States, the extent to which having the harmonised criteria adds value is reduced.

- **Lists of evidentiary requirements as laid down in the implementing Regulation.** These lists indicate the relevant proof and circumstantial evidence necessary to satisfy the various criteria, harmonising the content and format of evidence to be provided. In the absence of such a list, it is likely that it would be difficult for Member States to agree on the evidence required, with the possibility that the evidence on which the requesting Member State asks another Member State to take back or take charge of an applicant for international protection being disputed. This would result in lengthy procedures during which applicants would be held in orbit. However, evidence from the Implementation Report suggests that in practice Member States have varied interpretations of the evidence needed to satisfy the criteria which reduces the extent to which a harmonised list of evidence adds value.
- **DubliNet.** This mechanism, which was introduced through the Dublin Regulation, is an EU specific system for protected and secure exchange of data. Member States report that they use and find this useful and secure. In the absence of Dublin, it is unlikely that this system would exist.

Policymakers interviewed for this evaluation considered that Dublin is a ‘cornerstone’ of the EU asylum *acquis* and several considered that the CEAS ‘would collapse’ if Dublin were to be removed⁵³. The Dublin Regulation aims to prevent asylum applicants from applying for asylum in more than one Member State. No national or bilateral instrument could have the same prohibitive effect, as *all* Member States in the CEAS need to agree to have only one Member State responsible for this to have an effect. By having only one Member State responsible for the asylum claim, and by having a standard set of criteria for determining this responsibility, the applicant should – in theory – also have swifter access to the asylum procedure than a situation in which Member States have to negotiate responsibility based upon a national or bilateral protocol. As mentioned in Section 2.1, following the introduction of Schengen but prior to the introduction of the Dublin system (in the 1990s), Member States could dispute who should take responsibility, which delayed applicants’ access to the asylum system. However, many national policymakers consulted for this evaluation *did not* consider that currently swifter access to the asylum procedure is guaranteed than under a ‘non-Dublin’ situation. This is mainly because they compared the situation to applicants who are not subject to the Dublin procedure and who are immediately accepted as the responsibility of the Member State in which the applicant is located. Moreover, as also discussed in Section 3.2, Dublin III is not providing access to the procedure as swiftly as it could. In sum then, while it is unlikely that Member States would be able to determine the Member State responsible as quickly as with the Dublin III Regulation, the Regulation could do better at providing swift access to the asylum procedure.

As discussed in Section 2, the Dublin Regulation provides – in theory – a method to determine responsibility that is clear, transparent and known to applicants (since the Regulation requires Member States to inform applicants about the Dublin Regulation and its implications in a transparent way). Following this, applicants (should) know that – under Dublin – their claim will be assessed in the first EU Member State they entered unless they have reasons (e.g. family unity, rights related to being a minor or humanitarian reasons) for

⁵³ This does not preclude that Dublin could not be replaced.

their claim to be assessed elsewhere. This knowledge should – in theory – prevent secondary movements, i.e. asylum seekers moving on from the Member State in which they first arrived, to seek protection elsewhere⁵⁴. National policymakers had mixed views on whether Dublin did deter secondary movements or not: several mentioned that since secondary movements are driven by multiple factors including many outside of the EU's area of control (e.g. location of diaspora, location of family, national legislation on citizenship), the value that Dublin III can add as an instrument for reducing secondary movements is limited. Furthermore, the fact that due to implementation issues (see the Implementation Report) Dublin transfers rarely take place, the deterrent effect of Dublin on secondary movements is somewhat undermined.

⁵⁴ EMN Glossary v 3.0.

Annex 1 Tables and figures

This Annex includes relevant tables and figures which should be reviewed in conjunction with Section 3 on effectiveness.

Table A1.1 Outgoing requests as a share of the total number of asylum applications, 2008–2014

Year	Total no. of asylum applicants, (thousands)	No. of outgoing requests			Outgoing requests as a % of total asylum applicants		
		Total	Take charge requests	Take back requests	Total	Take charge requests	Take back requests
2008	257,500	28,690	8,653	20,037	11 %	3 %	8 %
2009	300,000	50,245	15,595	34,650	17 %	5 %	12 %
2010	286,600	46,856	12,357	34,499	16 %	4 %	12 %
2011	342,900	42,913	10,442	32,471	13 %	3 %	9 %
2012	374,600	51,952	12,919	39,033	14 %	3 %	10 %
2013	465,800	78,612	17,740	60,872	17 %	4 %	13 %
2014	663,300	84,586	33,683	50,903	13 %	5 %	8 %

Source: Eurostat data tps00191 (data extracted on the 11th November 2015) and migr_dubro (data extracted the second week of October 2015)

Table A1.2 Number of accepted incoming and outgoing requests as a share of the total number of incoming and outgoing decisions made, 2008-2014, thousands

Year	Total incoming	Of those		Total outgoing	Of those		% of total incoming decisions		% of total outgoing decisions	
		Accepted	Rejected		Accepted	Rejected	Accepted	Rejected	Accepted	Rejected
2008	18	13	5	20	17	4	72 %	28 %	82 %	18 %
2009	37	28	9	40	33	7	76 %	24 %	82 %	18 %
2010	39	30	9	42	34	8	78 %	22 %	81 %	19 %
2011	40	30	10	42	32	10	75 %	25 %	77 %	23 %
2012	42	31	12	49	37	12	72 %	28 %	75 %	25 %
2013	63	50	13	73	58	15	80 %	20 %	80 %	20 %
2014	81	54	27	77	51	26	66 %	34 %	67 %	33 %

Source: Eurostat data migr_dubri, migr_dubro and migr_dubdi, migr_dubdo and ICF estimates for IT, ES and PL in 2014. Data were extracted between the 12th and 18th October 2015

Note: the total number of requests is equal to number of decisions made and pending decisions

Evaluation of the Dublin III Regulation Final Report

Figure A1.1 Number of transfers as a share of the number of accepted incoming and outgoing requests, 2014

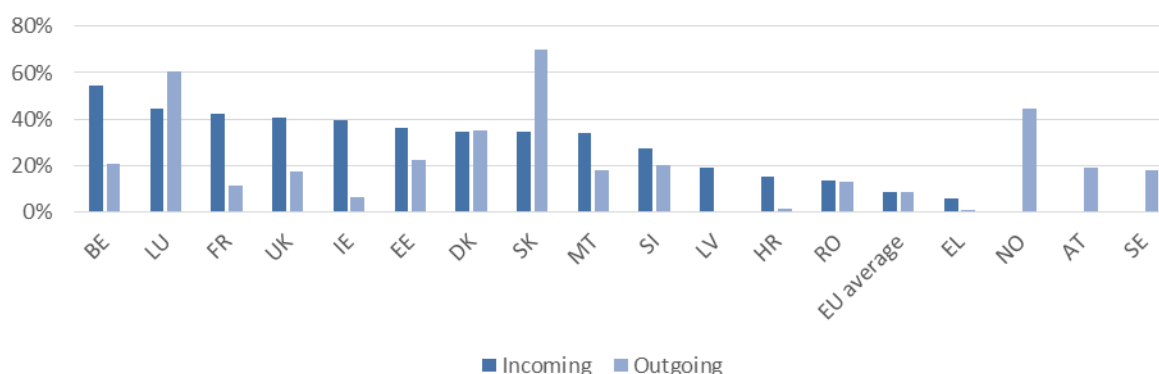


Table A1.3 Time limits and time taken for 16 Member States to apply Dublin III procedures (BE, NO, HR, MT, SI, HU, LV, RO, CH, LT, CY, NL, BG, EL, FR, PL)

Procedure	Time frames stipulated in Dublin III Regulation	Average time taken by 16 Member States	Highest average among the 16 Member States	Shortest average among the 16 Member States
Submitting take charge requests (Article 21)	Three months from receiving an asylum application or within two months of a Eurodac hit	5.5 weeks	12 weeks (CH, FR, MT, PL, SE)	1 week (BE, HR, NL, SI, NO)
Replying to take charge requests (Article 22)	Two months after receiving request	4.2 weeks	8 weeks (BG, EL, FR, PL)	1 week (BE, NO)
Submitting take back requests (Article 23 and Article 24(4))	Three months from receiving an asylum application or within two months of a Eurodac hit	5.1 weeks	12 weeks (EL, FR, NL, PL, SE)	1 week (BE, CH, LT, NO, SI)
Replying to take back requests (Article 25)	One month after receiving request, two weeks if based on Eurodac hit	1.7 weeks	3 weeks (FR)	1 week (CH, HR, NO, PL, RO, SI)
Transferring applicants (Article 29)	Within six months	Not available	Not available	Not available

Source: Data are estimates provided by the asylum authorities in 16 Member States: BE, NO, HR, MT, SI, HU, LV, RO, CH, LT, CY, NL, BG, EL, FR, PL.

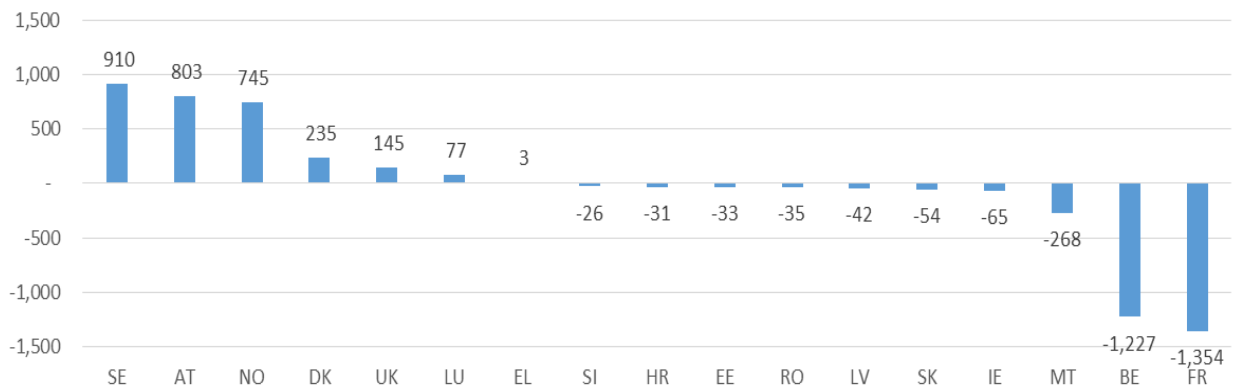
Evaluation of the Dublin III Regulation Final Report

Table A1.4 Total Eurodac hits by category, 2009–2014

Year	Total no. of successful transactions to the Eurodac Central Unit ⁵⁵			Subsequent application (CAT 1 to 1, Foreign)		Irregular entry (CAT 1 to 2, Foreign) ⁵⁶		Illegal residence (CAT 3 to 1, Foreign) ⁵⁷	
	Total	CAT1	CAT3	Total	Share of total CAT 1 transactions (%)	Total	Share of total CAT 1 transactions (%)	Total	Share of total CAT 3 transactions (%)
2009	353,561	237,257	85,655	53,620	23 %	20,363	9 %	22,356	26 %
2010	299,459	215,637	72,934	57,575	27 %	11,939	6 %	22,099	30 %
2011	412,303	276,204	78,831	63,527	23 %	7,384	3 %	24,280	31 %
2012	411,235	286,328	85,914	86,471	30 %	17,319	6 %	32,046	37 %
2013	508,565	354,276	106,013	124,943	35 %	26,145	7 %	43,900	41 %
2014	756,368	505,221	144,167	121,358	24 %	52,391	10 %	52,607	36 %

Source: EU-Lisa Annual reports and Eurodac Central Units Annual Reports

Figure A1.2 Net Dublin transfers (outgoing minus incoming transfers) per Member States, 2014



Source: Eurostat migr_dubto migr_dubdo and migr_dubro. Member States that are not represented in this chart are Member States where data was not provided. Data was extracted between the 12th and 18th October 2015.

⁵⁵ A successful transaction is a transaction which has been correctly processed by the Eurodac Central Unit, without rejection due to a data validation issue, fingerprint error or insufficient quality.

⁵⁶ Category 1 hits against Category 2: flows of persons apprehended in connection with the irregular border crossing who later decided to lodge an asylum claim.

⁵⁷ Category 3 against Category 1: flows of persons apprehended when illegally present in another Member State from the one in which they claimed asylum.

Evaluation of the Dublin III Regulation
Final Report

Table A1.5 Share of net Dublin transfers out of the total number of asylum applications, 2014

	Outgoing transfers	Incoming transfers	Net (outgoing - incoming)	Total number of asylum applications	Proportion of net Dublin transfers out of total number of applications
FR	371	1,725	-1,354	64,310	2 %
BE	446	1,673	-1,227	22,850	5 %
MT	3	271	-268	1,350	20 %
IE	2	67	-65	1,450	4 %
SK	44	98	-54	330	16 %
LV	-	42	-42	375	11 %
RO	6	41	-35	1,545	2 %
EE	4	37	-33	155	21 %
HR	1	32	-31	450	7 %
SI	12	38	-26	385	7 %
EL	5	2	3	9,435	0 %
LU	140	63	77	1,150	7 %
UK	214	69	145	33,010	0 %
DK	527	292	235	14,715	2 %
NO	745	-	745	11,480	6 %
AT	803	-	803	28,065	3 %
SE	910	-	910	81,325	1 %

Source: Eurostat migr_dubto migr_dubdo and migr_dubro. Member States that are not represented in this table are Member States where data was not provided. Data was extracted between the 12th and 18th October 2015.

Annex 2 Methodological note on the efficiency of the Dublin III Regulation

This section summarises the approach to derive costs estimates used to assess the efficiency of the Dublin III Regulation. Three types of costs were considered:

- Direct administrative costs – this comprises:
 - The staff costs of the Dublin Unit and decentralised administration informing and notifying Dublin applicants.
 - The cost of operating IT systems (i.e. Eurodac and Dublinet)
 - Overheads (i.e. cost of facilities, training, management costs)

- Direct procedural costs – this comprises:
 - Costs of transfers of Dublin applicants following transfer decisions
 - Detention costs prior to and/or after the transfer decision has been made
 - Costs of appeals to the transfer decisions

- Indirect procedural costs – this comprises:
 - Reception costs – including accommodation costs, subsistence costs, financial allowance, health costs and education costs
 - Cost of return and readmission of rejected Dublin applicants
 - Cost of irregular migration of rejected Dublin applicants not returned

Table A2.1, Table A2.2 and Table A2.3 overleaf, details the assumptions on which basis the different costs of the Dublin III Regulation were estimated.

Evaluation of the Dublin III Regulation
Final Report

The direct administrative costs of Dublin III are estimated to €42 million in 2014. They are a function of the cost of employing Dublin Unit staff in ministries and in regional / local governments.

Table A2.1 Estimated direct administrative costs of Dublin III in 2014

Direct administrative cost typology	Assumptions	Administrative costs in EU & EEA Member States
Dublin unit staff cost (central and decentralised cost)	Dublin Unit staff costs reflects the cost of employing a number of Full Time Equivalent (FTE) staff by Member States multiplied by yearly labour costs Public administration and defence in each Member State. Decentralised staff working on Dublin (non-Dublin Unit) are also considered and estimated. The formula therefore is: Dublin unit FTE X yearly cost of public official + non-Dublin Unit FTE working on Dublin X yearly cost of public official = total Dublin staff costs The resulting cost estimate is equivalent to spending 1.5 days per Dublin application at public sector staff average wage.	Est. €14 million
System costs (Eurodac and Dublinet)	The system costs supporting the administration of Dublin III have been estimated based on qualitative statements in stakeholder interviews. The cost of checking the application against Eurodac and using Dublinet has been assumed to cost €1 per application. The cost of setting-up and maintaining these systems are excluded from the scope of the estimates.	Est. € 0.1 million
Cost of administrative facilities (include facilities, equipment, training, management).	The costs of administrative facilities hosting Dublin III unit staff and related systems have been estimated as a percentage of Dublin Unit staff costs. It has been assumed that staff costs represents at 33% of total direct administrative costs. The cost of administrative facilities hence represent twice as much as staff costs (or 67% of the direct administrative costs). The formula is therefore: Total cost of administrative facilities = Dublin unit staff costs X 2	Est. € 28 million
Estimated total direct administrative costs	The total estimated administrative costs include Dublin staff costs, system costs and cost of administrative facilities.	Est. € 42 million

Evaluation of the Dublin III Regulation
Final Report

Direct procedural costs are a function of the number of asylum seekers to whom the Dublin III regulation applies (e.g. costs of transfers and costs of appeals and judicial reviews).

Table A2.2 Estimated direct procedural costs in 2014

Direct procedural cost typology	Assumptions	Direct procedural costs borne by EU & EEA States
Costs of transfers	<p>The cost of transfers is calculated by taking the cost of travel multiplied by the number of transfers actually carried out by Member States.</p> <p>As limited cost data has been received on the transfer cost typology (cost of voluntary transfer, cost of monitored transfer and cost of escorted transfer), EU per diem costs have been considered as representative of the minimum costs incurred by Member States in transferring Dublin applicants: actual costs could be higher given the variations in costs of flights and security around the transfers. The formula therefore is: Costs of transfer = Number of transfers X per diem rate in the Member State.</p> <p>The resulting cost estimate is €259 per transfer on average throughout the EU.</p>	Est. €4 million
Costs of appeals	<p>For the cost of appeal it has been considered that an appeal costs the equivalent of EUR 750 as a lump sum for the entire appeal procedure. The number of appeals has been estimated as the total number of positive Dublin decisions multiplied by the rate of appeals, which has been assumed to be 50% unless data for a Member State were provided by Member States' administrations.</p> <p>The formula therefore is: Total cost of appeals = Number of positive Dublin decisions X rate of appeal X EUR 750</p> <p>The resulting estimate of the cost of a judicial review is €870 per applicant with a rate of appeal of 54% on average across the EU and EEA Member States. This estimate does not include the cost of legal aid and legal assistance.</p>	Est. €28 million
Detention costs	<p>The overall detention costs have been estimated by taking the number of applicants awaiting transfer in detention multiplied by the cost of detention for one applicant for a week. The number of applicants awaiting transfer in detention is based on the number of Dublin positive transfers decisions on outgoing requests multiplied by the rate of detention. The rate of detention has been estimated at 5% for Member States which use detention and actual ratio from Member States whenever available. The resulting estimate of Dublin applicants in detention while awaiting transfer is 6.4%. The cost of detention for one applicant per week has been based on the proxy of the cost of the Member State penitentiary system. That is the total cost of running penitentiary institutions (Eurostat data) divided by the actual number of persons in prison, divided by 52 to derive the cost per week. Figures derived were for the year 2012 and have been corrected (inflation) for 2014. Weekly detention costs have been calculated in</p>	Est. €4.5 million

Direct procedural cost typology	Assumptions	Direct procedural costs borne by EU & EEA States
	<p>order to account for the average length of detention, estimated to two weeks.</p> <p>The formula therefore is: Total detention cost =The number of Dublin positive transfers decisions on outgoing requests X the rate of detention = number of applicants waiting transfer in detention X detention costs for one applicant per week ((total cost of running penitentiary institutions / actual number of persons in prison)/52) X 2 (average length of detention in weeks)</p>	
<p>Estimated total procedural costs</p>	<p>The estimated total procedural costs are the costs of transfers multiplied by the costs of appeals and the costs of detention.</p>	<p>Est. €36.5 million</p>

Evaluation of the Dublin III Regulation
Final Report

Indirect costs (i.e. mainly reception, detention and return costs) represent the bulk of the costs related to Dublin III. The table below summarises the indirect costs incurred when implementing the Dublin III Regulation:

Table A2.3 Indirect costs: Reception costs and cost of irregular migration in 2014

Indirect cost typology	Assumptions	Indirect costs borne by EU & EEA Member States
<p>Reception costs – incl. accommodation costs, subsistence costs, financial allowance, health costs and education costs</p>	<p>Reception costs have been based on total reception costs, which are presumed to take into account accommodation costs, subsistence costs, financial allowance, health costs and education costs.</p> <p>These costs have been estimated in a number of different ways</p> <ul style="list-style-type: none"> ■ National budget data related to asylum the proportion of reception costs in such budgets; ■ Individual budgetary data directly on the specific reception systems whenever available; <p>Where data applied to earlier years than 2014 the yearly inflation rate (Harmonised Indices of Consumer Prices (HICP)) has been applied to estimate an equivalent increase in costs. The formula therefore is: Estimated reception costs = (monthly accommodation costs + monthly subsistence costs + monthly financial allowances + monthly health costs + monthly education costs) X duration of reception in months</p> <p>The resulting estimate for the cost of receiving any asylum applicant following the procedure for a year is in excess €10,700. For the purpose of the calculations a Dublin procedure has been estimated to last for about ten months on average.</p>	<p>€ 864 million</p>
<p>Cost of return</p>	<p>The total return cost is based on the number of rejected Dublin applicants returned or readmitted. The cost of return has been estimated at EUR 2,000 per returnee. The cost of return is assumed to be in line with the number of absconding Dublin applicants subject to a positive transfer decision (understood as the maximum number of persons staying), multiplied by the rate of return. The rate of return is based on the 2014 Eurostat total number of third country nationals ordered to leave minus the persons returned in the same year. This figure is approximate as return decisions in one year can show up in statistics in the following year, but provides a good indication of return rates.</p> <p>The number of absconding Dublin applicants in itself is based on the number of outgoing Dublin requests in 2014 minus the number of outgoing transfers by sending country in 2014 minus number of pending outgoing Dublin transfers by sending countries (2014).</p> <p>The cost of readmission has not been estimated.</p> <p>The formula is therefore: Total cost of return = absconding Dublin applicants (i.e. Outgoing Dublin requests –</p>	<p>€ 67 million</p>

Indirect cost typology	Assumptions	Indirect costs borne by EU & EEA Member States
	<p>outgoing transfers – pending outgoing transfers) X rate of return (third country nationals ordered to leave – persons returned) X cost per returnee. The cost of return excludes the cost readmission which has not been estimated.</p>	
<p>Cost of irregular migration</p>	<p>The costs of irregular migration have not been estimated as no exact share of irregular stay could be derived from the information collected</p>	<p>Not estimated</p>
<p>Estimated total indirect costs</p>	<p>The total is the reception costs, plus the cost of return, excluding the cost of irregular migration.</p>	<p>€931 million</p>