

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

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Petitions

Implementation of the 2015 Council Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece

STUDY FOR THE LIBE COMMITTEE



DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

Implementation of the 2015 Council Decisions establishing provisional measures in the area of international protection for the benefit of Italy and of Greece

STUDY

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, examines the EU's mechanism of relocation of asylum seekers from Greece and Italy to other Member States. It examines the scheme in the context of the Dublin System, the hotspot approach, and the EU-Turkey Statement, recommending that asylum seekers' interests, and rights be duly taken into account, as it is only through their full engagement that relocation will be successful. Relocation can become a system that provides flexibility for Member States and local host communities, as well as accommodating the agency and dignity of asylum seekers. This requires greater cooperation from receiving States, and a clearer role for a single EU legal and institutional framework to organise preference matching and rationalise efforts and resources overall.

ABOUT THE PUBLICATION

This research paper was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs and commissioned, overseen and published by the Policy Department for Citizen's Rights and Constitutional Affairs.

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LINGUISTIC VERSIONS

Original: EN

Manuscript completed in (March 2017)

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LIST OF ABBREVIATIONS

CEAS	Common European Asylum System
CIR	Consiglio Italiano per i Refugiati (Italian Refugee Council)
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
EBCG	European Border and Coast Guards
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUROSTAT	European Commission Directorate-General in charge of providing statistical information
GDP	Gross Domestic Product
IO	International Organisation
LIBE	Civil Liberties, Justice and Home Affairs Committee
MEDU	Medici per i diritti umani (Doctors for Human Rights, Italian NGO)
NGO	Non-Governmental Organisation
SOLID	Solidarity and Management of Migration Flows (General Programme)
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

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EXECUTIVE SUMMARY

Background

In September 2015 the Council adopted two Decisions regarding the relocation of asylum seekers from Greece and Italy to other Member States ('the Relocation Decisions'). In total, the number of asylum seekers to be relocated was 160,000, to take place over 24 months from the adoption of the decisions. By 2 February 2017, 18 months into the relocation period, a total of 11,966 asylum seekers had been relocated from the two countries. The largest number of people relocated from Greece went to France (2,414) and from Italy to Germany (700). By any measure, this failure to make relocation work effectively and swiftly from the outset is striking.

The second Relocation Decision included a distribution key based on the following elements: (a) The size of the population (40%), as it reflects the capacity to absorb a certain number of refugees; (b) total GDP (40%), as it reflects the absolute wealth of a country and is thus indicative for the capacity of an economy to absorb and integrate refugees; (c) average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 (10%), as it reflects the international protection efforts made by Member States in the recent past; and (d) unemployment rate (10%), as an indicator reflecting the capacity to integrate refugees. Member States allocation under this distribution key was supposed to be mandatory with only the possibility for Member States to refuse an applicant on the basis of national security.

Aims

On this basis, the study pursues the following objectives:

- To describe the development of the relocation scheme in the context of the Common European Asylum System and the movement of third-country national asylum seekers in 2015;
- To investigate the operation of the relocation scheme(s) established in September 2015, the successes, failures, and practical modalities;
- To examine the reasons for resistance from several Member States to the relocation scheme;
- To understand the practices in the relocation schemes that have contributed to satisfactory outcomes for asylum seekers, States and the EU, and those practices that have resulted in unsatisfactory outcomes for all involved;
- To review the links between relocation and the 'hotspots approach' as well as action under the EU-Turkey Statement of 18 March 2016 and their impact on the ground;
- To unpack the implications of the incorporation of the relocation scheme in the Dublin IV reform through a permanent mechanism of corrective allocation;
- To formulate concrete proposals to improve and rationalise the workings of relocation within the EU as a stable element of the Common European Asylum System.

Issues and Recommendations

In the **Introduction**, the research methodology, general orientation, and limitations to this study are explained.

Chapter 1 reviews the central features of relocation in the EU and how this relates to the Dublin allocation of responsibility system. As the active participation of asylum seekers is critical to the success of relocation, it is recommended that the obligation under the Dublin Regulation to ensure family unity is complied with in a prompt and effective manner. This Dublin rule reflects asylum seekers' human right to family life and the obligation to protect

the 'best interests' of the child, as per EU fundamental rights standards. Ensuring swift family reunion also greatly aids integration into host societies.

The study, therefore, **recommends** in particular the following steps should be taken:

- The class of family members eligible to join already present family members in a host Member State be enlarged;
- The class of family members eligible to 'sponsor' a take-charge application be widened to include more than first-degree relations;
- Take-charge applications based on family unity should be prioritised and dealt with as quickly as possible;
- Take-charge applications should be admissible even where the Member State where the asylum seeker trying to be taken charge of has been unable to register his or her asylum application, or where return to a third country might be understood to render an application inadmissible. Family ties must take priority over admissibility criteria.

It is further suggested that the EU should have regard to other areas of law and practice where preference matching is working successfully, such as in allocation of university places, ERASMUS programmes, and other EU student mobility schemes. The study identifies the key principles of institutional design for preference matching systems that could make relocation work better.

Chapter 2 examines relocation in practice, from the perspective of the receiving States, and on the ground in Greece and Italy. It found that, although the Relocation Decisions are legally binding, some Member States have refused or failed to comply with them. These include the Member States that voted against their adoption in the Council (Hungary, Czech Republic, and Slovakia), and a number of others, where practical and political challenges against relocation have emerged. While a few States are on track to meet their relocation commitments, most are not. The most common form of non-compliance has been the failure to pledge or provide sufficient (or in some cases any) relocation places. Even if they have pledged places, States reject relocation requests in a legally questionable manner. The explanations for varying degrees of compliance with the Relocation Decisions lie in varying degrees of 1) political support; 2) reception and processing capacity, in particular for vulnerable applicants; and 3) perceptions regarding security threats posed by applications for relocation. In both Italy and Greece, various practical obstacles have emerged on the ground, but the main problem is the lack of cooperation from receiving States. The result is that asylum seekers lack information on relocation, and are often left waiting, frustrated, and anxious.

The study accordingly **recommends** that the failure of Member States to pledge relocation places be taken seriously as a threat to the rule of law at the EU level, which may warrant exploration, as well as formal enforcement action. The European Asylum Support Office (EASO) should develop robust systems for external monitoring of the workings of reception and processing systems, and help Member States develop more efficient chain management of the asylum process, to avoid blockages in reception centres. Overall a better package of penalties and incentives should be developed to encourage greater relocation pledges. The administrative and reception challenges in both Italy and Greece demand better coordination of all relevant agencies; greater personnel on the ground with the appropriate communication skills; and a swifter response to requests for relocation. On national security screening, EASO should develop clear guidelines on this matter, both substantively and institutionally. The European Police Office (EUROPOL)'s role should be clarified, in particular in ensuring proper communication across pertinent authorities when there are genuine national security concerns. Finally, many of the practical problems with the workings of relocation would be alleviated if Member States were pledging places simultaneously, which would enable effective preference matching. The voice and agency of asylum seekers must be taken into account if the relocation system is to respect and protect their human rights, and work effectively.

Chapter 3 analyses the role of the ‘hotspot approach’ in relocation, finding that both are operationally linked. Hotspots were conceived to work as ‘enablers’ to the relocation scheme. When first designed, its key function was to support the identification of candidates for relocation. Yet, the practical focus has shifted over time to migration control, giving rise to an emphasis on pre-emption of onward movement that has led to instances of serious fundamental rights violations in both Italy and Greece - in the latter, particularly after the adoption of the EU-Turkey Statement. In addition, this investigation has found that, overall, hotspots have not helped in alleviating pressure on the Italian and Greek systems. On the contrary, they increase burdens, because of structural shortcomings in their design and implementation and due to continuing applications, exacerbating the flaws of the Dublin system that the relocation scheme intended to repair.

The study, therefore, **recommends** a return to the original purpose of the Relocation Decisions, with the ‘hotspot approach’ regaining its international protection rationale, recognising the needs and rights of the forced migrants concerned.

Chapter 4 investigates the role of EASO and other institutions in the relocation scheme, concluding that, together with EASO, several other EU agencies, international bodies, and other loosely coordinated actors contribute to the implementation of the ‘hotspot approach’ and relocation schemes. Their roles vary, and there is a lack of coordination, due to the absence of a clear definition of roles and responsibilities. In this setup, this research establishes that the European Border and Coast Guard Agency (Frontex) plays a key role, in some respects even more prominent than that of EASO, as it is charged with assistance to nationality determination – which constitutes the gateway to relocation. Yet, both agencies assume tasks and powers beyond the explicit terms of their founding Regulations, acting without a clear EU legal mandate. Also, the lack of a proper operational hierarchy in existing coordination structures between contributing agencies and other stakeholders on the ground creates barriers to the translation of legal priorities into practical action. This generates real risks of fundamental rights violations and the degradation of international protection guarantees.

Accordingly, the study **recommends** reinforcement of the legal and organisational framework, through the adoption of a dedicated EU instrument detailing arrangements and responsibilities of each individual actor, and advocate the introduction of independent monitoring mechanisms and channels of democratic and judicial oversight to ensure respect for fundamental rights.

Chapter 5 analyses the Commission’s proposal on Dublin IV regarding relocation. The current coexistence of the relocation scheme with Dublin transfers, in light of statistical evidence, is revealed as internally inconsistent and structurally flawed. It leads to perverse outcomes, with incoming Dublin transfers outnumbering relocation figures, wasting resources and compounding strain on beneficiary Member States. Therefore, it is concluded that the resumption of Dublin transfers to Greece, as suggested by the European Commission, is premature and, given current reception conditions in Greece, likely to still be incompatible with ECHR and EU Charter human rights standards. By contrast, the consolidation of the relocation scheme as part of the Dublin IV reform is to be welcomed, as it will provide continuity to the system on a permanent basis. Yet, the fundamental shortcomings of the Dublin system should first be addressed. Maintaining the key features of Dublin will only perpetuate deficiencies and consolidate the unfairness inbuilt into the system, contradicting the spirit of Article 80 TFEU. In fact, the new corrective allocation scheme, if adopted as is, will play a very small role in relieving pressure from beneficiary Member States, because most cases will not qualify for transfer due to the new admissibility and security tests pre-phased to Dublin rules. That Member States may choose not to participate in the scheme through payment of a financial contribution is also ethically and empirically at odds with Article 80 TFEU.

For these reasons, the study **recommends** that a centralised system, doing away with Dublin deficiencies, be adopted instead. It would reduce bureaucratisation, break the unfairness

inherent in the 'first-country-of-entry' rule, maximise fair distribution potential, and allocate resources more effectively. In any event, whatever the course finally taken, the rights and preferences of asylum seekers ought to be taken into account in line with EU fundamental rights obligations and for purely practical reasons, to diminish onward movements and recourse to coercion. Short of a system of free choice, the 'preference matching tool' developed by EASO within the relocation scheme should be further developed.

In **Chapter 6**, the study identifies the key elements necessary for the Dublin IV provisions on relocation to be effective and finds that there are real opportunities to make relocation a viable and useful part of the CEAS. It puts forward that, to fulfil their potential, the measures need to be based on cooperation with asylum seekers and the recognition that their acceptance of relocation is key to the success of the system.

The study, thus, **recommends** that asylum seekers be fully involved in the relocation process, be provided with ample reliable information on the range of options available to them, and have their preferences taken into account. Family unity must be granted priority (over and above relocation), in line with fundamental rights obligations and also due to its practical potential to facilitate integration in the host community. Asylum-seekers with family members in the EU should not have their claims deemed inadmissible. Legally, the human rights principles of family unity and best interests of the child take priority over any admissibility criteria.

Relocation under the distribution key should only be pursued when reunion on the basis of family links has been fully exhausted. Within the Dublin system, the take-charge provisions should have priority over relocation; asylum seekers need reliable and accurate information about the living conditions and integration possibilities for them in the proposed relocation State. The engagement of civil society is key in making relocation work properly in this regard; the active participation of asylum seekers is an essential part of making relocation effective and durable; The establishment of a clearing-house system, as many Member States have for young people seeking university places, for asylum seekers relocation; key tenets of the 'Dublin without coercion' model, taking full account of asylum seekers agency and dignity, should be incorporated into any replacements of the Dublin III Regulation and Relocation Decisions.

It is critical that the EU genuinely acknowledges that refugees are an opportunity, not a burden, and so helping them to achieve their potential is also in the interests of the EU as a whole. In line with the 'Dublin without coercion' model – expounded in two previous studies for the European Parliament on this matter.¹ The study finds that this can best be achieved through cooperation, rather than coercion.

In the **conclusions** the study revisits key findings from each Chapter and summarises the recommendations highlighted above.

¹Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Study PE 519.234 (European Parliament, 2015); Guild et al., *New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International*, Study PE 509.989 (European Parliament, 2014).

INTRODUCTION

KEY FINDINGS

- The arrival of asylum seekers in 2014-15 in larger numbers than many Member States had anticipated led to substantial **friction among Member States regarding their individual responsibilities**;
- The **Commission** responded in May 2015 with **proposals** to revise the system of responsibility for asylum applications from first country of arrival (Dublin III) to include a **corrective allocation mechanism**;
- To bring the corrective allocation mechanism into force quickly the Commission proposed the **two Relocation Decisions adopted in September 2015** after consultation with the European Parliament;
- The first Relocation Decision proposed the relocation of 40,000 asylum seekers from Italy and Greece, the second 120,000, which, by December 2016, according to the Commission (2 February 2017), have resulted in a mere **11,966 actual relocations out of the total of 160,000 foreseen**.

The European Parliament's Policy Department on Citizens' Rights and Constitutional Affairs has published a number of key studies on the CEAS, at the request of the LIBE Committee. Among these are 'Enhancing the Common European Asylum System and Alternatives to Dublin' (PE 519.234) and 'The Implementation of the Common European Asylum System' (PE 556.953).² At the request of the LIBE Committee, the Policy Department now seeks an analysis of the 2015 Council Decisions on Relocation of Asylum Seekers ('the Relocation Decisions') and the possible changes to the Dublin system that may result. It is this aspect of the CEAS that we address in this study.

This study has drawn on a comprehensive review of official, NGO and scholarly works on relocation, as well as the Commission's reports on the progress of relocation and resettlement,³ the most recent of which (the Ninth Report) has been published on 8 February 2017.⁴ This study also draws on an ECRE study on the implementation of hotspots in Italy and Greece (including relocation),⁵ as well as its earlier report on admissibility, that also

² Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Study PE 519.234 (European Parliament, 2015); Guild et al., *New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International*, Study PE 509.989 (European Parliament, 2014).

³ European Commission, Communication from the Commission to European Parliament, the European Council and the Council. First Report on Relocation and Resettlement, COM(2016) 165, 16 March 2016; Second Report on Relocation and Resettlement, COM(2016) 222, 12 April 2016; Commission, Communication from the Commission to European Parliament, the European Council and the Council. Third Report on Relocation and Resettlement, COM(2016)360, 18 May 2016; European Commission, Communication from the Commission to European Parliament, the European Council and the Council. Fourth Report on Relocation and Resettlement, COM(2016) 416, 15 June 2016; Communication from the Commission to European Parliament, the European Council and the Council. Fifth Report on Relocation and Resettlement, COM(2016) 480, 13 July 2016; European Commission, Communication from the Commission to European Parliament, the European Council and the Council. Sixth Report on Relocation and Resettlement, COM(2016)636, 28 September 2016; European Commission, Communication from the Commission to European Parliament, the European Council and the Council. Seventh Report on Relocation and Resettlement, COM(2016) 720, 9 November 2016; European Commission, Communication from the Commission to European Parliament, the European Council and the Council. Eighth Report on Relocation and Resettlement, COM(2016) 791, 8 December 2016; European Commission, Report from the Commission to European Parliament, the European Council and the Council. Ninth report on relocation and resettlement, COM (2017) 74 final, 8 February 2017.

⁴ European Commission Ninth report on relocation and resettlement.

⁵ ECRE, *The implementation of the hotspots in Italy and Greece*, (5 December 2016).

includes an assessment of the workings of relocation.⁶ These sources have been complemented by surveys, interviews and informal consultations with key stakeholders, as explained in **Appendices I and II**.

The arrival of a significant number of asylum seekers into the EU in 2014 and 2015 had many drivers. These include the range of drivers for Syrian refugees (worsening conflict and atrocities in Syria as the conflict entered its fourth year; insecurity, precarity and lack of prospects for refugees in countries neighbouring Syria). For those fleeing other countries, the drivers were also acute - conflict and insecurity in Iraq, Afghanistan (and insecurity for Afghans in neighbouring countries), and on-going repression in countries such as Eritrea. Already by the spring of 2015, Member States of destination of asylum seekers were seeking a revision of the system of responsibility of reception and asylum determination for those seeking international protection. Sweden and Germany were among the leaders in this regard. As the movement of asylum-seekers in Europe has always defied the rules in the Dublin System,⁷ following this trend, most asylum-seekers who arrived in Greece and Italy made their way to Northern European States. While refugees can be a huge benefit for host societies,⁸ irregular and unplanned arrivals place a strain on reception systems and risk political backlashes.

The absence of safe and legal means to claim asylum from outside the EU was a key contributing factor to the crisis – it created a massive market for the services of smugglers, and a 'now or never' mass influx. We share the conclusion of many scholars that 'a policy of prohibiting refugee movement [from outside the EU into the EU], the absence of a credible resettlement policy, and the lack of acceptable reception and living conditions and prospects in the region combined to bring about the increase'.⁹ Unfortunately, in spite of a small increase in the resettlement of some refugees by European States, there has been no concerted development of safe and legal routes to seek asylum in the EU. Indeed recent restrictions on family reunification for refugees and subsidiary protection beneficiaries already in Europe are likely to create further demand for irregular passage to Europe.¹⁰

The issue of what became known as 'secondary movement' of asylum seekers took centre stage in many EU discussions. This term captures the phenomenon of movement of asylum seekers from one Member State where they do not want to apply for asylum to another Member State where they do want to do so. The issue of secondary movement is difficult to resolve without the active participation of asylum seekers in the decision making regarding where they should live. Throughout the 20 years of operation of the Dublin system,¹¹ designed (*inter alia*) to prevent secondary movement, one thing has become evident – it is virtually impossible to oblige asylum seekers to stay in a Member State where they do not want to be, particularly if that Member State does not offer effective protection.

⁶ ECRE, *Admissibility, responsibility and safety in European asylum procedures* (7 September 2016).

⁷ See the discussion in Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Study PE 519.234 (European Parliament, 2015).

⁸ Refugees are not necessarily a burden on host states but more commonly an opportunity. See Türk, Volker, and Madeline Garlick. "From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees." *International Journal of Refugee Law* 28.4 (2016): 656-678.

⁹ H Battjes, E Brouwer, L Slingenberg, & T Spijkerboer 'The Crisis of European Refugee Law: Lessons from Lake Success' CMLRev; C Costello & M Mouzourakis 'The CEAS – Where did it all go wrong?' in M Fletcher, E Herlin Karnell and C Matera (eds) *The European Union as an Area of Freedom, Security and Justice* (Routledge 2016).

¹⁰ C Costello, K Groenendijk, L Halleskov Storgaard, *Realizing Refugees' Rights to Family Reunification in Europe*, (Council of Europe Commissioner for Human Rights Issue Paper 2017, *forthcoming*).

¹¹ From the entry into force of the Dublin Convention in 1997, its incorporation into the EU Treaty in 1999 and the adoption of the first Dublin Regulation until now.

Curiously, the EU was never seriously tempted to open a temporary protection scheme in accordance with the Directive of that name adopted in 2001¹² for Syrian (and possibly other) asylum seekers in this period of substantial arrivals. This Directive was designed to deal with the event of a mass influx into the EU of displaced persons from third countries who are unable to return to their country of origin,¹³ but it regulates the rights and conditions of residence of persons in need of international protection in mass influx situations, not their allocation among Member States (at least, not in detail). Nonetheless, it remains a question why there was no political will to open such a scheme when the problem of secondary movement was and is so closely connected with the differences among Member States in the treatment of asylum seekers and the operation of the mechanisms for determining their claims. Instead, the Commission first proposed substantial changes to the Dublin III Regulation, which would introduce a system of relocation of asylum seekers in the form of a 'corrective allocation mechanism' to distribute asylum seekers among the Member States in a 'fair' manner (fair to whom is not expressly clarified, but implicitly 'fair' applies to Member States' vision of what is fair to themselves, not what asylum seekers may consider fair). The distribution is proposed to take place through a reference key according to which Member States' 'capacity' is determined.¹⁴ As changes to the Dublin III Regulation were going to take a lot of time and include co-decision with the European Parliament, the Commission and Council agreed to proceed rapidly with a relocation system of sorts through the mechanism of the Relocation Decisions. This had the effect of including the European Parliament only in a consultative capacity (rather than as co-decider).

The Commission announced in its *European Agenda on Migration* of 13 May 2015,¹⁵ it would, 1) by the end of May, propose triggering the emergency response system envisaged under Article 78(3) TFEU and 2) and table by the end of 2015 a legislative proposal to provide for a mandatory and automatically-triggered relocation system to distribute those in clear need of international protection within the EU when a mass influx emerges. However, instead, this was followed by the proposal for the Relocation Decision – a decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece.¹⁶ The Council adopted the two Relocation Decisions in September 2015 and an amending Decision in September 2016. First was the Decision of 14 September 2015, establishing provisional measures for the benefit of Italy and Greece (proposing the relocation of 40,000 asylum seekers from those two countries),¹⁷ then the Decision of 22 September 2015, with the same title (proposing the relocation of 120,000 asylum seekers from those countries),¹⁸ and a third Decision a year later on 29 September 2016 amending the second one (to provide for Member States to admit refugees from Turkey to fill their obligations).¹⁹ The contents and impact of the Relocation Decisions will be examined in the next Chapter and their operation in practice in Chapters 2 and 3. Denmark and the UK exercised their opt outs not to participate in the

¹² Council of the European Union, *Council Directive 20 01/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof*, 7 August 2001, OJ L 212/12-212/23; 7.8.2001, 2001/55/EC, available at: <http://www.refworld.org/docid/3ddcee2e4.html> [accessed 5 March 2017].

¹³ *Ibid*, Temporary Protection Directive, Article 1.

¹⁴ This proposal has run into very heavy weather in the Council, including outright rejection by some Member States – the issue will be examined in Chapter 5.

¹⁵ COM(2015) 240 13 May 2015.

¹⁶ COM(2015) 286 27 May 2015.

¹⁷ European Union: Council of the European Union, *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*, 14 September 2015, available at: <http://www.refworld.org/docid/5604094a4.html> [accessed 21 January 2017]

¹⁸ 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.

¹⁹ Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

Decisions on the relocation schemes, although Ireland did opt in to the relocation system, as did the Dublin Associated States of Norway, Switzerland, and Liechtenstein.

The next major consequence of refugee arrivals in 2015, commenced by the German Government in September 2015, was a series of closures of intra-Schengen border-crossing points designed to slow down the movement of asylum seekers across the EU.²⁰ The perspective of some Member States receiving large numbers of asylum seekers was that there should be a more equal distribution of asylum seekers across the Union and, until this was achieved, they would act unilaterally by closing some of their intra-EU borders to deter arrivals. Some also orchestrated the closure of the so-called 'Balkan Route' through which asylum seekers had transited from Greece in their way mainly to Germany. Notably Austria facilitated the conference leading Macedonia to close its land border with Greece (until that time the main entry way to countries of asylum for those who fled via Greece).²¹ This profoundly altered the predicament of asylum-seekers in Greece, who prior to that (at least at some points in the time period under discussion) had the option of onward movement from Greece across the Balkans by land. While there have also been intermittent land border closures between Italy and France, the closure of the Greek-Macedonian border (being a non-Schengen border) has been durable.²²

The issue of reception and registration became a central theme of Member States' concern in 2015. In the discussions around the re-introduction of intra-Schengen border controls in a small number of Member States, a constant reason given for the necessity of this rather drastic measure by those Member States closing some of their border crossing points was that asylum seekers had to be registered and documented as soon as possible and this was not happening at the places of first entry into the EU. Further, the Dublin system which is often portrayed politically as allocating responsibility for reception and procedural determination of asylum seekers to the first Member State through which the asylum seeker entered the EU (in spite of the legal primacy of the family unity criterion) was inoperable in respect of Greece, as a result of CJEU and ECtHR judgments,²³ and only partially operable in respect of Italy.²⁴ In respect of the rest of the EU, the application of the Dublin allocation rules was and continues to be haphazard.²⁵ This was recognised by the decision of the German asylum authorities to make public its position regarding the non-implementation of Dublin returns, in particular for Syrian protection seekers.²⁶

The challenges to the Schengen border control-free area, prompted by the arrival of asylum seekers in 2014/2015, have been the subject of very different actions by the EU institutions

²⁰ The European Parliament published a study on this aspect of the arrival of asylum seekers *Internal border controls in the Schengen area: is Schengen crisis-proof?* June 2016 PE 571 356

²¹ AIDA Reception report on Summit of 24 February 2016, (March 2016), p. 20, available at: http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_wrong_counts_and_closing_doors.pdf

²² See Guild et al 'What is happening at Schengen Borders?' Ref; C Costello & M Mouzourakis 'The CEAS – Where did it all go wrong?' in M Fletcher, E Herlin Karnell and C Matera (eds) *The European Union as an Area of Freedom, Security and Justice* (Routledge 2016).

²³ *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011, available at: <http://www.refworld.org/docid/4ef1ed702.html> [accessed 21 January 2017]; *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.refworld.org/docid/4d39bc7f2.html> [accessed 21 January 2017]

²⁴ *Tarakhel v. Switzerland*, Application no. 29217/12, Council of Europe: European Court of Human Rights, 4 November 2014, available at: <http://www.refworld.org/docid/5458abfd4.html> [accessed 21 January 2017]

²⁵ See EASO's Annual Report on the Situation of Asylum in Europe 2015 https://www.easo.europa.eu/sites/default/files/public/EN_%20Annual%20Report%202015_1.pdf accessed 21 January 2017.

²⁶ Complete citations: <https://www.wsj.com/articles/obscure-german-tweet-help-spur-migrant-march-from-hungary-1441901563> <https://www.theguardian.com/world/2016/aug/25/it-took-on-a-life-of-its-own-how-rogue-tweet-led-syrians-to-germany>

beyond the scope of this study. However, it must be borne in mind that the political discussions reveal that national governments remain concerned about secondary movement, which is also framed as a Schengen challenge. The compromise solution proposed is relocation of a relatively small number of asylum seekers from the Member State of first arrival to a host Member State. The level of responsibility is determined on the basis of a set of factors contained in a relocation key and is ultimately dependent on the willingness of a Member State to receive the relocated asylum seeker. The operation of this relocation system is the subject of the following chapters.

The significance of relocation for the credibility of the EU as an international and regional actor should not be underestimated. Agreeing to use the distribution key in the Relocation Decisions is thus of profound symbolic, political, and practical importance. Although, the numbers envisaged for relocation are relatively paltry, the practice of working across borders to share responsibility for persons (rather than shifting that responsibility elsewhere) is crucial. It is a crucial corrective to two unsustainable models – one where all asylum-seekers are cordoned in countries of first arrival (Dublin with coercion), the other where they make their own way en masse to a small number of Member States that are perceived to offer protection (as exemplified by the self-distribution that prevailed in 2014). Many EU Member States experienced no significant increase in numbers of asylum-seekers in 2015, during the so-called ‘refugee crisis’. The sustainability of refugee protection in Europe depends in part on ensuring that all Member States do their fair share.

Relocation under the distribution key should only be pursued when reunion on the basis of family links has been fully exhausted. Within the Dublin system, the **take-charge provisions should have priority over relocation**; asylum seekers need **reliable and accurate information about the living conditions and integration possibilities** for them in the proposed relocation State. The **engagement of civil society is key** in making relocation work properly in this regard; the **active participation of asylum seekers is an essential part of making relocation effective and durable**; The establishment of a **clearing-house system**, as many Member States have for young people seeking university places, for asylum seekers relocation; **key tenets of the ‘Dublin without coercion’ model**, taking full account of asylum seekers agency and dignity, **should be incorporated into any replacements of the Dublin III Regulation and Relocation Decisions.**

Textbox 1: Refugees from Hungary (1956) – Sharing Responsibility

In a speech to the European Parliament on 15 September 2015, António Guterres, then United Nations High Commissioner for Refugees, made the following remarks:

‘59 years ago we had the first large European and the first large UNHCR refugee crisis after the end of the cycle of displacement caused by the Second World War. It was the Hungarian crisis of 1956. At that time, 200,000 Hungarians fled - 180,000 to Austria and 20,000 to Yugoslavia. There was no Schengen regime then, but the borders were open and they came to Austria and Yugoslavia. And it was possible to launch a programme of relocation and resettlement from Austria in which 140,000 Hungarians were moved from Austria to several European countries and out of Europe. The relocation to other European countries took less than three months. At that time, European integration was only starting, there was no European Union, but at least the part of it that could be united was united, to protect the Hungarian victims of oppression and dictatorship.

*Today, unfortunately, we may have a European Union, but Europe is no longer united; Europe is divided.*²⁷

In 1956, the Austrian delegate to UN urged states to 'accept the largest possible number of refugees without imposing any formalities.' His plea was met with swift and effective action. UNHCR referred to the very heavy burden on Austria where one person in every hundred was now a refugee. UNREF (United Nations Refugee Fund) Executive Committee Resolution on the problem of Hungarian refugees (1956), noting that 'the care of refugees is a burden to be shared by the whole world in accordance with the capacities of the respective countries.' Within months, only 410 refugees were left in Austria, with the others having relocated to 36 other states: Argentina (1,020), Australia (11,680), Belgium (5,850), Brazil (1,660), Canada (27,280), Chile (270), Colombia (220), Costa Rica (30), Cuba (5), Cyprus (2), Denmark (1,380), Dominican Republic (580), Ecuador (1), Federation of Rhodesia and Nyasaland (60), France (12,690), Germany (15,470), Iceland (50), Ireland (540), Israel (2,060), Italy (4,090), Luxembourg (240), Netherlands (3,650), 135 New Zealand (1,090), Nicaragua (4), Norway (1,590), Paraguay (7), Portugal (4), Spain (19), Sweden (7,290), Switzerland (12,870), Turkey (510), Uruguay (37), Venezuela (780), Union of South Africa (1,330), United Kingdom (20,990), and the United States (40,650).

Sources: M Zieck 'The 1956 Hungarian Refugee Emergency, an Early and Instructive Case of Resettlement' (2013) Amsterdam Law Forum 45, available at <http://amsterdamlawforum.org/article/viewFile/314/487>; Colville 'The Hungarian Refugees – 50 Years On' (2006) *Refugees* <http://www.unhcr.org/4523cb392.pdf>

²⁷ António Guterres, United Nations High Commissioner for Refugees, Remarks at European Parliament AFET/DROI/LIBE committees – Joint Event on Migration "Respecting Human Rights in the Context of Migration Flows in the Mediterranean". Brussels, 15 September 2015, available at <http://www.unhcr.org/uk/admin/hcspeeches/55fbbdbf9/european-parliament-afetdroilibe-committees-joint-event-migration-respecting.html>

CHAPTER 1: THE COUNCIL'S RELOCATION DECISIONS

KEY FINDINGS

- **The 14 September 2015 Council Decision provided for relocation of 40,000 asylum seekers, but did not indicate the obligations on Member States; the 22 September 2015 Decision added an objective of a further 120,000 relocations and set out how many asylum seekers each Member State would be responsible for relocating;**
- **Relocating** asylum seekers from Greece and Italy to other Member States would happen **by way of a derogation from the Dublin III allocation scheme;**
- The **only ground** on which Member States may **refuse to relocate** asylum seekers is that **the individual is a danger** to public security or public order **or excludable** under the Qualification Directive;
- **Eligibility** for relocation is **based primarily on nationality**. Certain nationalities are deemed eligible for relocation if the past average recognition rate for that nationality in the EU is 75% or more. **This criterion is legally and ethically problematic**, and has meant that even in its short time span, the nationalities eligible for relocation have changed considerably. For examples, Iraqis were initially eligible for relocation, but later became ineligible.
- **Disputed identification of nationality** and continuing substantial **differences among Member States in recognition rates** of beneficiaries of international protection **raise questions about the legitimacy** of this criterion.

1.1. Examining Relocation according to the Council Decisions and Dublin III Take Charge Provisions

The Relocation Decisions of September 2015 sought to address the arrival of asylum seekers in Greece and Italy. (The Commission had initially proposed relocation from Hungary too, although this ceased to be relevant when Hungary requested that it no longer be included). The apparent inability of those two Member States to deal with arrivals, and the fact that at the time the decisions were adopted, the mass arrivals in Greece were travelling onwards of their own accord, mainly to seek asylum in Germany and Sweden. Figures are an important part of this story as set out in each of the Decisions. According to the Decision of 14 September, 170,000 asylum seekers had arrived (irregularly) in Italy in 2014 and 50,000 in Greece in 2014. By September 2015, the rate of arrivals in Greece had increased significantly, with several thousand people arriving irregularly on the Greek islands from Turkey each day, most of whom had strong international protection needs.

However, the numbers and percentages must be understood in context. The population of the EU is over 500 million of which 59 million live in Italy and 11 million in Greece. According to the UN's World Tourism Organisation the EU 28 received over 455 million tourists in 2014, of which 214 million visited the Southern Mediterranean countries.²⁸ These figures are provided not to trivialise the difference between voluntary tourist arrivals and people fleeing conflict and persecution, but rather to place the arrivals of asylum seekers into a scale. The challenge to Italy and Greece in respect of numbers of asylum seekers is tiny in comparison with what is presented as the opportunity of tourist arrivals. The availability of reception conditions for tourists is based on the ability of tourists to pay for them, while asylum seekers are generally required to stay in publicly funded reception centres.

The tragedies taking place in the Mediterranean, with loss of life in shipwrecks of unseaworthy boats headed towards EU destinations, were a focus of attention in 2015. The European Parliament passed a Resolution on 29 April 2015, reiterating the need for an EU response to these tragedies on the basis of solidarity and fair sharing of responsibility.²⁹ It called for more efforts to assist States receiving large numbers of asylum seekers. A few days before the Parliament's Resolution, the European Council, in its statement of 23 April 2015, had called for increased emergency assistance to 'frontline' States and for the consideration of emergency relocation between Member States on a voluntary basis.³⁰ This was followed by the European Council conclusions of 24 – 25 June 2015, which underlined that three elements had to be dealt with in parallel: (1) relocation/resettlement; (2) return/readmission and reintegration; and (3) cooperation with countries of origin and transit. In these conclusions it called for the relocation of 40,000 asylum seekers from Italy and Greece to other Member States. This kick-started the process leading to the Relocation Decisions.

Italy and Greece had already received substantial emergency assistance from the EU to assist with the reception and processing of asylum seekers. In particular, EASO was providing extensive practical support. These two Member States were the second and third largest beneficiaries of the SOLID funds in the 2007 – 2013 period, but with perhaps disappointing outcomes. On the basis of Article 78(3) TFEU, the Council adopted the first Relocation Decision, providing for a relocation scheme for a limited period of 24 months, commencing on 15 September 2015. At the time of writing in February 2017, 18 months have already passed, and unless renewed, the relocation scheme will end on 14 September 2017. The choice of framework for the relocation scheme was very specific – it is a temporary derogation from the Dublin III provisions on allocation of responsibility for reception and determining asylum applications. This choice is not self-evident. Article 78 TFEU (ex-Article 63 TEC) is also the legal basis of the Temporary Protection Directive and could have been the legal basis for relocation as a flanking measure to temporary protection or otherwise. The derogation from the Dublin III system fits well, however, with the Commission's proposal to amend the system to include a permanent relocation element into it and may work as an incentive to accelerate negotiations.

While the relocation scheme is stated to be a derogation from the Dublin system, this derogation is only partial. According to preamble (19) of the First Relocation Decision, relocation measures do not absolve Member States from applying Dublin III in full as regards family reunification, special protection of unaccompanied minors, and the discretionary clause on humanitarian grounds. Article 10 Dublin III (proposed Article 12 Dublin IV) provides that, if an asylum seeker has a family member (spouse, minor children, father, mother or another adult responsible for a child, proposed to be widened to include siblings in Dublin IV) who has an immigration/asylum status or whose application for international protection is pending

<http://www.e-unwto.org/doi/pdf/10.18111/9789284416899> accessed 22 January 2017.

²⁹ European Parliament resolution on the latest tragedies in the Mediterranean and EU migration and asylum policies (2015/2660(RSP))

³⁰ Special meeting of the European Council, 23 April 2015 – statement.

in a Member State, that State is responsible for the asylum seeker, assuming the asylum seeker agrees (the take charge provision). As many families suffer separation in the process of flight, often with some family members arriving later than others, this part of the allocation system is very important.

It became a focus of attention in February and July 2015 when British courts determined that there was an obligation on the UK authorities to bring family members to the UK of asylum seekers, beneficiaries of international protection or persons otherwise permitted to remain in the UK. The judgments were specifically about the informal camp in Calais (France), but of wider application, and were motivated in accordance with Dublin III take-charge duty and the obligation to respect family life in Article 8 ECHR. The ruling acknowledged that given the dysfunction of the Dublin family unity process, the UK was nonetheless obliged to ensure swift family reunification in order to meet its obligations under Article 8 ECHR.³¹ This ruling reflects the primacy of the duty to ensure family unity.

A common problem in Member States with dysfunctional or overburdened asylum systems is that it is very difficult for asylum seekers to register their claims at all. But if they do not manage to register their asylum claims the take-charge provisions of Dublin III are not triggered. So, in the cases brought before the British courts, family members, including unaccompanied minors, were languishing in Calais while their families in the UK were unable to trigger the Dublin take-charge clause for them to be reunited, because an asylum application had not been registered in France. The British courts found that this created a tension between Dublin III and Article 8 ECHR (respect for family life), which could be resolved by disregarding the requirement of Dublin III that an asylum application had to be registered in the Member State of current presence of the asylum seeker before a take-charge claim could be made to another Member State. So long as the asylum seeker had made some effort to register the claim, the UK must commence the take-charge procedure and bring the family members to the UK, notwithstanding the lack of response by the host Member State.

This requirement to achieve family reunification as quickly as possible as contained in the take charge system of Dublin III and IV is critical to the well being and integration of refugees and must be applied rapidly and without obstacles by all Member States as acknowledged in the Relocation Decisions.

1.2. Relocation outside Dublin III Take Charge Provisions and within the Relocation Decisions

According to the first Relocation Decision, only asylum seekers who have successfully lodged an application in Italy or Greece (and for whom those States would normally be Dublin responsible) are eligible for relocation. The lodging of an asylum application for these purposes also requires the individual to have been through an identification procedure and to have been registered and fingerprinted. This means that any asylum seeker who has not been successful in registering his or her asylum application is excluded from the possibility of relocation (see above on Dublin take charge). Secondly, relocation is only available for asylum seekers who arrived in Greece or Italy after 15 August 2015, according to the First Relocation Decision, and after 24 March 2015, according to the Second Relocation Decision. It seems the evidential burden is on the asylum seeker to prove when he or she arrived.

³¹ *Secretary of State for the Home Department v ZAT*, [2016] EWCA Civ 810, United Kingdom: Court of Appeal (England and Wales), 2 August 2016, available at: <http://www.refworld.org/docid/57bf02554.html> [accessed 22 January 2017]

The next key criterion is nationality. In order to avoid the relocation of asylum seekers with little chance of being successful in their claims to international protection, the Commission proposed and the Council chose to apply a nationality criterion to relocation. Only asylum seekers holding the nationality of a country 75% of whose nationals who applied for protection in the EU in the previous quarter and were recognised as refugees or granted international protection are eligible. This is quite a complex formula. First, nationality of the asylum seeker is critical. As many asylum seekers arrive in the EU without documents or with unreliable documents, there is often difficulty establishing what their nationality is. Some evidence indicates that the allocation of a nationality to an asylum seeker can be a contested matter.³² If the opportunity to be included in the relocation scheme depends on the correct assessment of nationality, this needs to be done most carefully in a spirit of trust and cooperation between the asylum seeker and the official whose job this is.

Secondly, every asylum seeker's possible inclusion in the relocation scheme is dependent on EUROSTAT's quarterly statistics on asylum. The key figure is the first instance decision on every asylum application. Since the Decisions were adopted, two EUROSTAT reports have been issued in June³³ and December 2016.³⁴ Even over the short time relocation has been in operation, that threshold has produced different eligible nationalities. When the Council Decisions were adopted, the main nationalities eligible for relocation were Syria, Iraq, and Eritrea.³⁵ At the first update (Q3-2015), the nationalities eligible for relocation were: Bahrain, Central African Republic, Eritrea, Iraq, Syria, Swaziland, and Yemen.³⁶ The Commission's Ninth Report indicated that the current nationals eligible for relocation are those from Burundi, Eritrea, Maldives, Oman, Qatar, Syria and Yemen.³⁷ Iraqis are no longer eligible for relocation, although the Commission states that 'although some nationalities are no longer eligible for relocation, this does not affect those already identified as persons in possible need for international protection (e.g., those pre-registered can still be relocated).'³⁸

However, looking at aggregate recognition rates across the EU obscures the divergences in recognition rates among Member States. For instance, according to UNHCR in 2014, only 15% of new asylum applications by Eritreans in France resulted in recognition. In Hungary the percentage for Eritreans was 49%, but in Austria 100%.³⁹ The UNHCR statistics reveal a similar range for Syrian refugee recognition rates in 2014: positive decisions in 64% of first instance applications in Italy, 74% in Greece, 65% in Hungary, but 100% in Poland. More recent statistics are not available from UNHCR, but the situations in both Eritrea and Syria have not improved substantially since 2014.

These disparities highlight a number of issues regarding the use of a composite past recognition rate for relocation. First, past recognition rates may not register changes of circumstances. If the aim is to identify asylum-seekers with a 'clear need of international

³² According to EUROSTAT in the ranking of countries of origin of asylum seekers in respect of whom decisions were taken in the 3rd quarter 2016 were stateless http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_by_outcome_and_recognition_rates_30_main_citizenships_of_asylum_applicants_granted_decisions_in_the_EU-28_3rd_quarter_2016.png accessed 3 February 2017 this may be an indication of disputed nationality.

³³ http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_by_outcome_and_recognition_rates_30_main_citizenships_of_asylum_applicants_granted_decisions_in_the_EU-28_3rd_quarter_2016.png accessed 23 January 2016.

³⁴ http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report accessed 23 January 2017

³⁵ European Commission, *First Report on Relocation and Resettlement*, COM(2016) 165, 16 March

³⁶ European Commission, *Second Report on Relocation and Resettlement*, COM(2016) 222, 12 April 2016.

³⁷ European Commission, *Ninth Report on Relocation and Resettlement*, COM(2017) 74 final, February 2017, p. 2, n. 5.

³⁸ Ibid.

³⁹ UNHCR Statistical Yearbook 2014 table 13 <http://www.unhcr.org/56655f4b3.html> accessed 23 January 2017.

protection', past recognition rates may not be an accurate proxy. Secondly, where those fleeing are at risk due to their membership of ethnic, religious or status, nationality alone will not be a clear indicator. Thirdly, using an EU average means that whether a particular nationality becomes eligible for relocation depends on where past asylum-seekers from that nationality group apply for asylum. If the majority of Syrian asylum seekers arriving in the EU sought protection in Hungary, for instance, then the 75% threshold would not have been achieved. Finally, relocation of asylum seekers on the basis of their nationality to Member States with low recognition rates for their country, e.g. Syrians to Hungary instead of Poland, may result in unfair outcomes, in that more of the applications are likely to be refused in Hungary than in Poland. A Syrian asylum seeker relocated from Greece to Hungary will lose 9% of his or her chance to receive protection (from a state with a protection rate of 74% to one of 65%). Alternatively, a Syrian relocated from Greece to Poland will benefit from a 100% protection rate in Poland.

The first Relocation Decision states at preamble 30 that '[c]onsidering that an applicant does not have the right under EU law to choose the Member State responsible for his or her application, the applicant should have the right to an effective remedy against the relocation decision...only in view of ensuring respect for his or her fundamental rights'. Thus, the asylum seeker has no opportunity to choose the relocation State and is at the mercy of the EU system whether he or she will be relocated to Hungary or to Poland, which may have very different outcomes for the person concerned.

1.3. Relocation rights and obligations and procedures

According to Article 6 of the 14 September Decision, there are three rights and one obligation for asylum seekers being relocated. First, the principle of best interests of the child must be a primary consideration; second, Member States must ensure that family members are relocated to the same Member State; and third, Italy or Greece must notify the person subject to a relocation decision in writing, specifying where he or she is going to be sent, and this must happen before the relocation takes place. The obligation is for an asylum seeker to stay in the Member State allocated to him or her (or return immediately to it if he or she has strayed into another Member State). As noted at the outset, the best (and fundamental rights compliant) way to ensure that asylum seekers stay in a Member State is to enable him or her to go to the State where he or she wants to go. If asylum-seekers cannot be offered their first choice, then preference-matching systems can be designed. To be fair and workable, any system must afford asylum-seekers clear, transparent, and reliable information to inform their decisions. Unfortunately, as explored in Chapter 3, this has not always been the case with relocation in practice as yet.

Textbox 2: The Basics of Preference Matching

Preference matching allows asylum seekers choice over where they are to be protected and enables States to manage the sharing of responsibility for granting asylum in a way which is equitable and efficient. Preference matching works well in many areas, including tertiary education, within the Erasmus and other EU student mobility programmes. These systems work fairly well and there is only minor 'secondary movement' – the great concern of Member States in the asylum field.

The economic theories and practical experience of preference matching demonstrate that such systems can work as long as (i) countries or local areas can state their quotas clearly and at the same time and (ii) data on refugees and local areas capacities can be processed centrally. If these two conditions are satisfied, it is possible to conceive of a number of effective and efficient ways to relocate asylum seekers from Greece and Italy across the rest of Europe. For example, one could simply maximise the total number of relocated asylum seekers or relocated families. Another fruitful approach is to use stated priorities of countries

or local areas (e.g. over skills or language ability) and stated preferences of the refugees (over the sorts of the local areas in which they think they would thrive) in a matching system. The advantage of the matching system approach is that it can reveal valuable information about the wishes and ambitions of refugees and the priorities of countries / local areas and can therefore substantially increase the number of apt matches between asylum seekers and local areas.

See further: W Jones, A Teytelboym 'Choices, preferences and priorities in a matching system for refugees' (2016) *Forced Migration Review*, available at: <http://www.fmreview.org/destination-europe/jones-teytelboym.html>

The relocation procedure set out in Article 5 of the first Relocation Decision requires cooperation between Italy and Greece, EASO and the other Member States to achieve relocation. Italy and Greece are required to identify asylum seekers eligible for relocation, register them, and make them available to potential receiving states. Article 5(7) provides that Member States retain the right to refuse to relocate asylum applicants only where there are reasonable grounds for regarding them as a danger to their national security or public order or where there are serious ground for applying exclusion provisions in the Qualification Directive. Unfortunately, as discussed in Chapter 2, some national authorities appear to be using 'national security' without explanation, which does not meet the EU general requirements to give reasons and respect the principle of legality (Article 41 CFR).

Relocation is intended to take place rapidly, so time limits are ideally within two months from the time of indication given by the relocation State, though there are possibilities for extensions. A financial incentive is provided to relocation states of EUR 6,000 per relocated asylum seeker (Article 10).

1.4. Modifications introduced by the second Relocation Decision and the amending Decision

The second Relocation Decision's main purpose was to increase the numbers of persons and introduce a relocation key to designate Member State responsibility. It also introduced a new incentive for Italy and Greece of financial support in the form of €500 per asylum seeker relocated. The second Relocation Decision includes, for the first time, two Annexes, which set out how many asylum seekers should be relocated from Italy and Greece to each of the other Member States according to a distribution key. According to the Commission's proposal,⁴⁰ the distribution key is based on the following elements:

- a) the size of the population (40%) as it reflects the capacity to absorb a certain number of refugees;
- b) total GDP (40%) as it reflects the absolute wealth of a country and is thus indicative for the capacity of an economy to absorb and integrate refugees;
- c) average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 (10%) as it reflects the efforts made by Member States in the recent past;
- d) unemployment rate (10%) as an indicator reflecting the capacity to integrate refugees.

According to the European Commission, as of 2 February 2017, 11, 966 asylum seekers had been relocated under the scheme.⁴¹ In Chapters 2, 3 and 4, we examine the factors that have affected the relocation rates across the EU.

⁴⁰ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_annex_en.pdf accessed 23 January 2017.

⁴¹ European Commission, Ninth report on relocation and resettlement, COM (2017) 74 final, 8 February 2017.

On 29 September 2016, the Council adopted an amending Decision, which permits Member States to meet their relocation obligations under the 22 September 2015 Relocation Decision, by admitting Syrian nationals present in Turkey under national or multilateral legal admission schemes for persons in clear need of international protection (but outside the resettlement scheme set up by the Council on 20 July 2015). The objective is to expedite the implementation of the EU-Turkey Statement of 18 March 2016.⁴² The counter effect is to diminish the number of persons a Member State is committed to admitting under the 22 September relocation Decision by the number of persons resettled from Turkey. It applies to persons admitted from Turkey to a Member State from 1 May 2016.

⁴² EU-Turkey Statement, 18 March 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

CHAPTER 2: RELOCATION IN PRATICE

KEY FINDINGS

- **Although the Relocation Decisions are legally binding, some Member States have effectively failed to comply with them.** These include the Member States that voted against their adoption in the Council (**Hungary, Czech Republic, and Slovakia**), and a number of others where practical and political challenges against relocation have emerged.
- **The States on track to meet their relocation commitments are Estonia, Latvia, Lithuania, Luxemburg, Malta and Finland. Those that are not relocating at all include Austria, Hungary and Poland.**
- **Hungary and Slovakia** brought a **legal challenge** against the Relocation Decision, but legal experts view the arguments raised therein as relatively weak. Notably, the applicant States did not ask the CJEU to suspend the operation of the Decision pending its ruling, so it remains fully in force.
- **Hungary, Austria, and Poland** have not relocated any asylum seekers, although Austria has been granted a suspension relating to 30% of its relocation quota.
- Aside from outright defiance of the Relocation Decisions, the **most common form of non-compliance** has been the **failure to pledge** or provide sufficient (or in some cases any) relocation places.
- Even where relocation places are made available, receiving States have **frequently rejected applications for relocation** in a questionable manner, either by citing 'national security' (a ground permitted in the Relocation Decisions) without explanation; or invoking grounds not permitted in the Relocation Decisions, or simply rejecting the application without giving reasons.
- The **explanations for varying degrees of compliance** with the Relocation Decisions lie in varying degrees of **1) political support; 2) reception and processing capacity, in particular for vulnerable applicants and 3) perceptions regarding security threats posed by applications for relocation.**
- In **both Italy and Greece**, the main challenges to the effective working of relocation are **external**. These include the **lack of available places for relocation**, in particular for **unaccompanied minors; frequent rejections** on unexplained national security grounds and grounds such as public health not envisaged in the Relocation Decisions.
- In **Italy**, the main **internal** challenges include **lack of preparedness** and understanding of relocation amongst relevant agencies; **lack of coordination** between relevant agencies; and **cumbersome procedures** that often involve the moving asylum-seekers three times across different reception facilities.
- In **Greece**, the main **internal** challenges include **lack of administrative capacity**, in particular when relocation was first introduced; **lack of coordination** between relevant agencies; and **over-centralised procedures** that fail to reach asylum seekers who have been dispersed across the mainland.
- The result is that **asylum seekers lack information on relocation**, and are often left **waiting, frustrated, and anxious**.
- Stakeholders have also identified **problems with the normative content** of the Relocation Decisions, in particular the use of the nationality criterion to determine eligibility, the interaction with the Dublin System, and the failure to accommodate asylum seekers' preferences. The **lack of individual redress** was also identified as a source of unfairness.

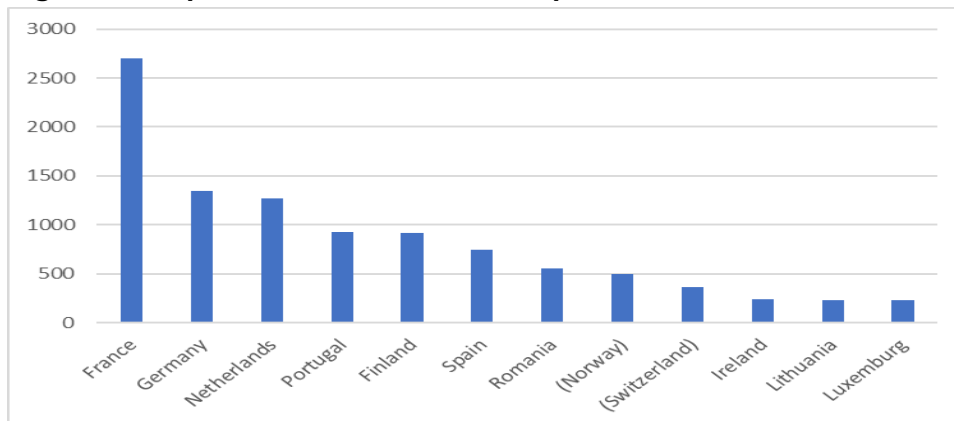
This chapter presents the implementation so far of the two Relocation Decisions of September 2015. First, it focuses on the perspective of the receiving States. The rationale for this focus is that they are the source of the main problem with the system, namely the lack of relocation places being made available. Then it turns to relocation on the ground in Italy and Greece.

As outlined in Chapter 1, in total 160,000 asylum-seekers are to be relocated. According to the first Relocation Decision, 24,000 asylum-seekers should be relocated from Italy and 16,000 from Greece. The second Relocation Decision required the relocation of another 15,600 applicants from Italy, 50,400 applicants from Greece, and a further 24,000 to be allocated. Although the Commission had originally proposed relocation from Hungary, this became politically unnecessary.⁴³ The relocation of asylum-seekers from Hungary was later abandoned, and according to the 2016 Decision, Member States may use these 54,000 places to resettle Syrians from Turkey as part of the EU-Turkey Statement.⁴⁴

2.1. Compliance, semi-compliance and non-compliance amongst States obliged to relocate⁴⁵

Figure 1 shows that the top ten relocators in total numbers are France (2,696 relocations), Germany (1,349 relocations), the Netherlands (1,274 relocations), Portugal (922), Finland (919 relocations), Spain (745 relocations), Romania (558 relocations), Ireland (241 relocations), Lithuania (229 relocations), and Luxemburg (226 relocations). Norway (493 relocations) and Switzerland (368 relocations), two Schengen associated States that agreed to take part in the relocation scheme through bilateral agreements also figure among the top relocators.

Figure 1: Top 10 relocators in total (plus 2 associated States)



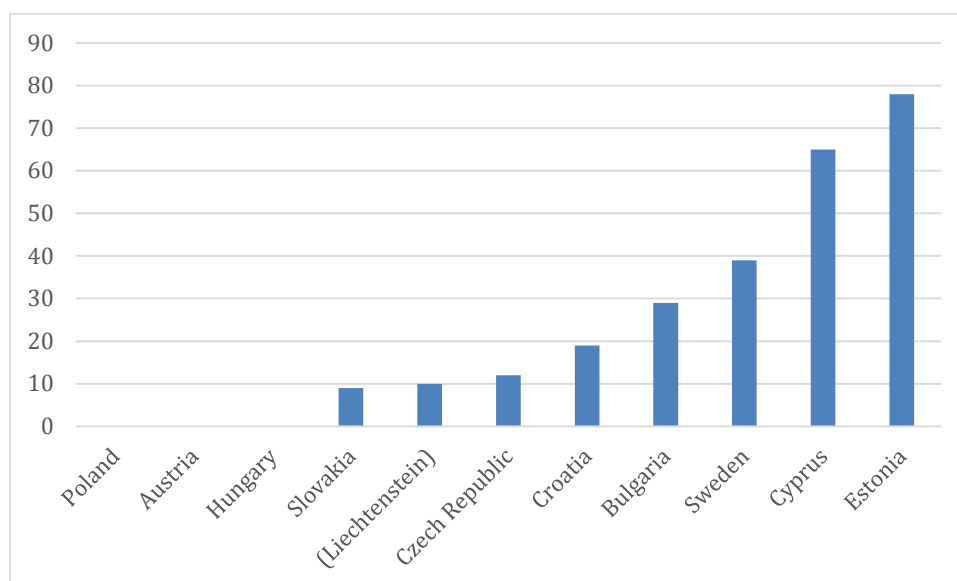
Member States that have the lowest relocation numbers in total (see Figure 2) are Poland, Austria, and Hungary, which have each not resettled any asylum-seekers, Slovakia (9 relocations), Liechtenstein (10 relocations), Croatia (19 relocations), Bulgaria (29 relocations), Sweden (39 relocations), Cyprus (65 relocations), and Estonia (78 relocations).

Figure 2: Last 10 relocators in total

⁴³ Commission Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary, Brussels, 9.9.2015 COM(2015) 451 final.

⁴⁴ Council of the European Union, Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 268, 1.10.2016, p. 82–84.

⁴⁵ For the overall numbers, please consult Tables 5 and 6 in the annex. All numbers used in this section are based on the European Commission's Report on Member States' Support to Emergency Relocation Mechanism (as of 25 January 2017).



However, focusing on the total numbers relocated obscures the relative commitments of the Member States. Looking at the relative shares, some of the smaller Member States are, in fact, doing particularly well (see Table 1). The associated States again score very high in fulfilling their commitments. Liechtenstein has relocated the 10 asylum-seekers it has agreed to take, Norway has relocated half of its share, and Switzerland 34.1%. (However, it should be noted that Switzerland has kept making use of the Dublin take back/take charge mechanisms to send refugees elsewhere, including Italy.⁴⁶) Very small countries like Malta and Luxemburg have relocated 61.1% (Malta) or 40.6% (Luxemburg) of their share. Finland and Ireland again score relatively highly, with 44.2% (Finland) and 40.2% (Ireland) of their relocation places filled. Also, Latvia (41.1%), Lithuania (34.1%), and Portugal (31.2%) do well.

Table 1: Top 10 relocators among Member States (plus 3 associated States) in relative terms

Member State	Relocated	Responsibility	Percentage
(Liechtenstein)	10	10	100.0%
Malta	80	131	61.1%
(Norway)	493	995	49.5%
Finland	919	2078	44.2%
Latvia	197	481	41.0%
Luxemburg	226	557	40.6%
Ireland	241	600	40.2%
Lithuania	229	671	34.1%
(Switzerland)	368	1080	34.1%
Portugal	922	2951	31.2%

⁴⁶ ECRE, *Admissibility, responsibility and safety in European asylum procedures*, AIDA Report (September 2016), p. 24 ff.

Estonia	78	329	23.7%
Slovenia	124	567	21.9%
Netherlands	1274	5947	21.4%

Poland, Hungary and Austria have not relocated any asylum-seekers so far. The Czech Republic has only relocated 0.4% of its share and Slovakia has relocated 1.0%. Croatia and Bulgaria have relocated 2.0% and 2.2% respectively. Interestingly, also three Member States that have usually taken an active role on refugee protection in Europe, namely Sweden (1.0%), Germany (4.9%) and Belgium (5.4%), figure among the slowest relocators (see Table 2).

Table 2: Last 10 relocators among Member States in relative terms

Member State	Relocated	Responsibility	Percentage
Poland	0	6128	0%
Austria	0	1953	0%
Hungary	0	1294	0%
Czech Republic	12	2691	0.4%
Slovakia	9	902	1.0%
Sweden	39	3766	1.0%
Croatia	19	968	2.0%
Bulgaria	29	1302	2.2%
Germany	1349	27536	4.9%
Belgium	206	3812	5.4%

According to the Commission, only Estonia, Latvia, Lithuania, Luxembourg, Malta, and Finland are expected to meet their obligations in time and two associated States, Switzerland and Norway, will meet them even ahead of schedule.⁴⁷

For relocation to work properly, Member States should pledge relocation places swiftly. In the latest Commission report, Member States have been asked to make substantial pledges every month to meet the target of relocation 2,000 asylum-seekers monthly from Greece and 1,000 asylum-seekers from Italy.⁴⁸ The Italian and Greek authorities may then act upon these pledges and send proposals for potential candidates.⁴⁹ The associated States have bilaterally agreed with the EU to take part in the relocation scheme. The share of asylum-seekers they are allocated is not based on a distribution key, but on their voluntary commitment to relocate a specific share, previously decided (see Table 3). Thus, the associated States have made all their formal pledges right from the beginning of the process. Among the others, Ireland, that opted into relocation unlike Denmark and the UK, has pledged 85.7% of its share, followed by the Baltic States, Lithuania (82.0%) and Latvia

⁴⁷ European Commission, Ninth report on relocation and resettlement, COM (2017) 74 final, 8 February 2017, p. 2-3

⁴⁸ Ibid., p. 3-4.

⁴⁹ Natascha Zaun, Telephone Interview Official A, (Oxford, 14 February 2017).

(81.9%); Estonia has still pledged 63.8% of its share. But, again, countries like Malta, Finland and Portugal figure among those Member States that have pledged a majority of their share.

Table 3: Top 10 pledgers in relative terms

Member State	Pledges	Responsibility	Percentage
(Norway)	995	995	100.0%
(Switzerland)	1080	1080	100.0%
(Liechtenstein)	10	10	100.0%
Ireland	514	600	85.7%
Lithuania	550	671	82.0%
Latvia	394	481	81.9%
Malta	99	131	75.6%
Finland	1420	2078	68.3%
Estonia	210	329	63.8%
Portugal	1618	2951	54.8%
Luxemburg	270	557	48.5%
Cyprus	140	320	43.8%
Romania	1702	4180	40.7%

Two of the Member States (Austria and Hungary) that have not relocated any asylum-seekers have not made any pledges either. Poland, which has not relocated for the past six months, did, however, initially make 100 pledges. These pledges had been submitted in December 2015, but were subsequently suspended by Poland in April 2016, thus freezing the relocation procedure from Italy and Greece.⁵⁰ The other two Visegrád countries, the Czech Republic and Slovakia, had only pledged 1.9% and 3.3% of their share. Croatia has pledged less than 5% of its share, Spain less than 10%, and Belgium and Germany have pledged less than 20% of their shares.

Table 4: Last 10 pledgers in relative terms

Member State	Pledges	Responsibility	Percentage
Austria	0	1953	0.0%
Hungary	0	1294	0.0%
Sweden	50	3766	1.3%
Poland	100	6128	1.6%
Czech Republic	50	2691	1.9%
Slovakia	30	902	3.3%
Croatia	46	968	4.8%

⁵⁰ European Commission, 'Communication from the Commission to the European Parliament, the European Council and the Council. Eight report on relocation and resettlement', COM(2016) 791 final, 8 December 2016, p. 7.

Spain	900	9323	9.7%
Belgium	530	3812	13.9%
Germany	5250	27536	19.1%

2.2. Explaining good and bad performances in relocating states

Some Member States have not implemented the Relocation Decisions at all (Austria, Poland, Hungary) or implemented it very slowly (Slovakia, Czech Republic, Sweden). It is difficult to isolate the precise reasons for the variable compliance rates with relocation. There appears to be no *common* political framing of the 'refugee crisis' as being a *common* European problem. Our research suggests that **the degree of compliance is influenced by the variation in 1) political support for relocation; 2) administrative and reception capacity; and 3) perceptions regarding security threats posed by applications for relocation.**

Although the degree of political commitment cannot entirely explain the slow relocation process in all or even most Member States, it has significant explanatory value. In particular, some States have raised **overt political, legal and ideological objections** to the concept and practice of relocation. These States have tended to have right-wing authoritarian governments. Some other States are not relocating as they seem to have **genuine lack of reception and processing capacity**. For some others, **security concerns** have emerged. In the case of the latter two issues, **it is difficult to verify independently the nature and cogency of the objections**, a matter we address further in the recommendations.

2.2.1. Political Support for relocation

Some of the reluctant governments have **overtly objected to the concept and practice of relocation**. The **Czech Republic, Hungary, and Slovakia voted against** the adoption of the Relocation Decisions in the Council, and **Hungary and Slovakia have even challenged the decision before the CJEU**.⁵¹ Hungary and Slovakia seem, wrongly, to consider the Relocation Decision inapplicable to them. Notably, they did not request the CJEU to suspend the application of the impugned Decision, so it remains fully in force. Moreover, legal experts have tended to view **the legal arguments raised by the applicant States as weak**.⁵²

Zero relocation from **Hungary** might not be surprising, as Hungarian Prime Minister Orbán had displayed strong anti-refugee and Eurosceptic attitudes,⁵³ and objected to relocation from the outset. His government held a **referendum** on the relocation system. The

⁵¹ Case C-643/15 and C-647/15 *Hungary and Slovakia v Council of the European Union* 3 December 2015.

⁵² See Steve Peers 'Relocation of Asylum-Seekers in the EU: Law and Policy' 24 September 2015'; Marco Di Filippo 'The actions for annulment of the second relocation decisions and the poor implementation of the scheme: the margins for reaffirming the rule of law' (2016) IJHL Policy Paper No 2; Kees Groenendijk and Boldizsar Nagy, 'Hungary's appeal against relocation to the CJEU: upfront attack or rear guard battle?', (16 December 2015) available at <http://eumigrationlawblog.eu/hungarys-appeal-against-relocation-to-the-cjeu-upfront-attack-or-rear-guard-battle/>.

⁵³ Levy Gale, Sadie, 'Hungarian prime minister calls migrants entering Europe a poison', *The Independent*, August 2016, available at: <http://www.independent.co.uk/news/world/europe/refugee-crisis-hungary-migrants-europe-prime-minister-viktor-orban-asylum-seekers-a7157871.html>. Ian Traynore, Hungary to hold referendum on EU's refugee quotas, *The Guardian*, 24 February 2016, available at: <https://www.theguardian.com/world/2016/feb/24/hungary-viktor-orban-will-call-referendum-on-eu-refugee-quotas>.

government's information leaflet framed relocation as 'coerced settlement' that would 'increase the terror threat', with illustrations showing number of victims of the recent Paris, Brussels and Nice attacks.⁵⁴ In the words of the Council of Europe Commissioner for Human Rights, the **campaign 'demonized' refugees**, 'portrayed migrants as a danger to the Hungarian society' and promoted 'deceptive messages'.⁵⁵ Most who voted (98%) rejected relocation and supported the government's position, but the low turnout of 43.9% meant it was not valid, as the Constitution required a 50% quorum.⁵⁶ Nonetheless, Prime Minister Orbán signalled his intention to propose a constitutional amendment to give effect to the referendum result.⁵⁷

The Prime Minister of **Slovakia**, Robert Fico had also Stated that 'Islam ha[d] no place in Slovakia', highlighting that Slovakia was not open to receiving refugees from this cultural background.⁵⁸ The October 2015 change in government in **Poland** has also brought a change in attitude to relocation. Poland was among the Member States that were critical of the relocation agreement initially, but did not vote against it. In October 2015, the national conservative *Prawo i Sprawiedliwość* (PiS; Law and Justice) party came into power. After the terrorist attacks in Paris on 13 November 2015, the Polish Minister for European Affairs, Konrad Szymánsik, said '[i]n the face of the tragic acts in Paris, we do not see the political possibilities to implement [this]',⁵⁹ also suggesting that Muslims were considered raising the level of danger of terrorism. Overall, the rise in right-wing populism and authoritarianism in various European countries mobilising anti-immigrant sentiment present in countries that have only experienced immigration recently has entailed the orchestrated stigmatisation of and hostility towards asylum seekers and refugees. These governments **use security concerns** to justify their lack of commitment to EU relocation.⁶⁰ Yet, their reluctance to accept the relocation decision long before the terrorist attacks in Paris highlights that this is **mainly a pretext**.

Relocation is framed very differently in other States, which have been more compliant with the Relocation Decisions. For example, in **Ireland**, a government Minister has underlined that a coordinated European response to the humanitarian crisis is needed and highlighted that 'Ireland has always lived up to its international humanitarian obligations and [is] fully committed to playing [its] part in addressing the Migration Crisis facing Europe'.⁶¹ Another government Minister Stated of those being relocated that 'It is now abundantly clear that the people arriving to-date [...] have suffered greatly and are made up of people fleeing civil war and conflict. Many have suffered terribly, have unaddressed or undiagnosed medical needs and many children have never attended school or have missed years of their schooling. They

⁵⁴ Boldizsar Nagy 'The aftermath of an invalid referendum on relocation of asylum seekers: a constitutional amendment in Hungary' (10 November 2016)

Available at <http://eumigrationlawblog.eu/the-aftermath-of-an-invalid-referendum/>

⁵⁵ Nils Muiznieks 'Hungary's Duty to Refugees' New York Times, 28 September 2016.

⁵⁶ Patrick Kingsley, Hungary's refugee referendum not valid after voters stay away, The Guardian, 2 October 2016, available at: <https://www.theguardian.com/world/2016/oct/02/hungarian-vote-on-refugees-will-not-take-place-suggest-first-poll-results>.

⁵⁷ 'Prime Minister Viktor Orbán informs EC President of referendum result via letter' <http://www.kormany.hu/en/the-prime-minister/news/prime-minister-viktor-orban-informs-ec-president-of-referendum-result-via-letter>.

⁵⁸ Vince Chadwick, Islam has no place in Slovakia, 27 May 2016, available at: <http://www.politico.eu/article/robert-fico-islam-no-place-news-slovakia-muslim-refugee/>.

⁵⁹ Ashley Cowburn, Poland says it cannot accept migrants under EU quotas, following attacks in Paris, The Independent, November 2015, available at: <http://www.independent.co.uk/news/world/europe/poland-plans-to-backtrack-on-migrant-commitment-following-attacks-in-paris-a6734521.html>.

⁶⁰ Zaun, Natascha, States as Gatekeepers in EU Asylum Politics: Explaining the Failure of a Refugee Quota System. Paper presented at the Conference 'EU refugee policies in crisis' of the Jean Monnet Centre of Excellence 'The EU in Global Dialogue', University of Mainz, 9-10 June 2016.

⁶¹ Irish Department for Justice and Equality, Ireland to accept to 4,000 persons under Relocation and Resettlement programmes- Fitzgerald, 10 September 2015, available at: <http://www.justice.ie/en/JELR/Pages/PR15000463>.

have lost everything they have ever owned and are arriving on our shores with just the clothes on their backs. **This is a terribly vulnerable group that need all our help and assistance.**⁶² In spite of this stated political support, Ireland relocation has been slow, and it now imposes additional security checks which block relocation from Italy.⁶³

Bulgaria has yet to relocate many asylum seekers, yet Bulgarian Prime Minister Borisov has called on Eastern European Member States to show solidarity with the Western European partners, saying that '[w]hen taxpayers (in richer European countries) give money for European solidarity, we are happy. When, however, they have a problem – because the migrant flow is mainly headed there – then, in my view, we also have to show solidarity and mutual aid'.⁶⁴

While in some States, support for relocation seems to depend on strong political leadership at the national level, in others grassroots, local and regional actors have demanded greater support for refugees, including through relocation. For example, a recent demonstration in **Barcelona** urged **Spain** to fulfil its duties under the relocation agreement.⁶⁵ Spain has not relocated many asylum seekers as yet, for domestic political reasons (repeated general elections,⁶⁶ corruption scandals,⁶⁷ and instability over the past year)⁶⁸ but like Bulgaria, appears to be stepping up its pledges. In other effective states of relocation, such as **Finland** (as discussed in the next section) relocation does not appear to have a high political salience, receiving little media coverage.⁶⁹

While a lack of support from the public for receiving additional asylum-seekers and refugees is often cited as a reason for the hesitance to receive additional asylum-seekers, **public opinion** on refugee issues is **generally supportive of protection according to States' reception capacity**. Research has shown that, generally, **voters prefer a capacity-based distribution key over the Dublin system**, even if this implies that their respective Member State will have to receive additional asylum seekers.⁷⁰ Moreover, it has been suggested that negative attitudes towards refugees are on the decline in every European country.⁷¹ This does not imply that citizens are completely uncritical of recent arrivals. In fact, 54% of the

⁶² Irish Government Press Release : 'Tánaiste and Minister Stanton outline progress on Ireland's commitments under refugee relocation and resettlement programmes' 5 October 2016, <http://www.inis.gov.ie/en/INIS/Pages/pressrelease-refugee-relocation-and-resettlement-programmes051016>

⁶³ 'Italy: security checks by Irish police blocks relocation of refugees', *ECRE News*, 13 January 2017, available at: <http://www.ecre.org/italy-security-checks-by-irish-police-blocks-relocation-of-refugees/>

⁶⁴ Novinite.com, Bulgaria's PM Calls for EU Solidarity on Refugee Relocation Quota's. 5 May 2016. Available at: <http://www.novinite.com/articles/174342/Bulgaria's+PM+Calls+for+EU+Solidarity+on+Refugee+Relocation+Quotas>.

⁶⁵ The Guardian, Protestors in Barcelona urge Spain to take in more refugees, 18 February 2017, available at: <https://www.theguardian.com/world/2017/feb/18/protesters-in-barcelona-urge-spain-to-take-in-more-refugees>.

⁶⁶ 'Spanish elections: renewed deadlock beckons as no party wins majority', *The Guardian*, 27 June 2016, available at: <https://www.theguardian.com/world/2016/jun/26/spanish-elections-exit-polls-show-deadlock-likely-to-continue>.

⁶⁷ 'Corruption scandals threaten Mariano Rajoy's future', *Financial Times*, 16 February 2016, available at: <https://www.ft.com/content/1f98d546-d3e4-11e5-829b-8564e7528e54>; 'Spanish politicians in court over corruption case billed as trial of the year', *The Guardian*, 4 October 2016, available at: <https://www.theguardian.com/world/2016/oct/04/spanish-politicians-court-corruption-case-trial-year>.

⁶⁸ 'Spain's Socialists vote to allow Rajoy minority government', *BBC News*, 23 October 2016, available at: <http://www.bbc.com/news/world-europe-37744078>.

⁶⁹ E-mail NGO B, 16 February 2017. Natascha Zaun, Skype Interview with NGO A (Oxford, 13 February 2017).

⁷⁰ Bansak, Kirk, Hainmueller, Jens, Hanggartner, Dominik, Aristotelian Equality and International Cooperation: Europeans Prefer a Proportional Asylum Regime, Stanford-Zurich Immigration Policy Lab Working Paper Series, No. 16-02.

⁷¹ Hatton, Timothy, "Immigration, public opinion and the recession in Europe." *Economic Policy* 86(2016): 205-246.

respondents think that criteria for refugee status should not be interpreted too generously.⁷² When asylum seekers are portrayed as 'illegal immigrants', attitudes are rather critical.⁷³ This research underlines the significant impact of political and public discourse, and crucially framing, on public opinion.

2.2.2. Administrative and reception capacity

Research has shown that **administrative capacity** is an important factor explaining why some Member States implement EU asylum policy more effectively than others.⁷⁴ Member States where asylum applications increased significantly in 2015 have faced more problems implementing the relocation agreement. In particular, there may well be instances where there is genuinely a **lack of reception and processing capacity**. However, this finding is subject to a significant **caveat**. At present, there is **no reliable assessment of States' reception capacity**. Moreover, the crucial determinant of when places become available is when recognised refugees move out of reception centres and into normal accommodation. As was stressed in a previous study to the European Parliament, there are two hallmarks of a well-run reception and processing system, namely 'chain management' of the reception and processing system, and flexibility to ensure that reception capacity can be expanded in times of higher demand.⁷⁵

While this section accepts that previous high demand for asylum may lead to reluctance to relocate, due to lack of reception capacity, that remains a hypothesis rather than a proven fact. In some cases, there may be **mismanagement of the asylum system, leading to lack of reception places**. Or States may simply claim to lack places – **there is no EU mechanism to check the availability of reception spaces**. In contrast in many other fields, the EU does examine the workings of the decentralised administration of EU law. For instance, regarding effective border management, the European Border and Coast Guard (EBCG) conducts 'stress tests' to assess how national border controls are working.⁷⁶ Similar mechanisms of transparency and best practice guidance could be developed to help assess the efficacy of reception and processing systems.

Sweden is the top recipient (per capita) of asylum-seekers in the EU, followed by **Austria**. Both States have been granted temporary suspensions of their relocation commitments. In **Sweden**, the numbers of asylum applications increased by 60% from November 2014 to November 2015,⁷⁷ and in Austria applications increased by 230% from November 2014 to November 2015.⁷⁸ Additionally, both countries were engaged in resettlement. In June 2016,

⁷² Bertelsmann, EU citizens want a fair distribution of refugees, Press Release, 16 February 2016, available at: <https://www.bertelsmann-stiftung.de/en/press/press-releases/press-release/pid/eu-citizens-want-a-fair-distribution-of-refugees/>.

⁷³ Hatton, Timothy, "Immigration, public opinion and the recession in Europe." *Economic Policy* 86(2016): 205-246.

⁷⁴ Zaun, Natascha, EU Asylum Policies. The Power of Strong Regulating States, Palgrave Macmillan 2016, p. 190, 216-222.

⁷⁵ Guild, Elspeth, Costello, Cathryn, Garlick, Madeline, Moreno-Lax, Violeta, *Enhancing the Common European Asylum System and Alternatives to Dublin*. Study for the LIBE Committee of the European Parliament, available at: http://www.epgencms.europarl.europa.eu/cmsdata/upload/983a50a5-69d6-48b1-a0bd-2b34cced9e36/Sessions_1_and_2_-_Study_European_Asylum_System_and_Alternatives_to_Dublin.pdf, p. 30-31, citing European Migration Network Study, (2014), *The Organization of Reception Facilities for Asylum Seekers in different Member States*.

⁷⁶ European Commission, Securing Europe's external borders: Launch of the European Border and Coast Guard Agency, Press Release, 6 October 2016, available at: http://europa.eu/rapid/press-release_IP-16-3281_en.htm.

⁷⁷ Council of the European Union, Council Decision (EU) 2016/946 of 9 June 2016 establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Decision (EU) 2015/1523 and Article 9 of Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 157, 15.6.2016, p. 23–25, p. 24.

⁷⁸ Council, Council Implementing Decision (EU) 2016/408 of 10 March 2016 on the temporary suspension of the relocation of 30 % of applicants allocated to Austria under Decision (EU) 2015/1601 establishing provisional

Sweden was therefore granted a one-year suspension from contributing to relocation.⁷⁹ This explains its rather low relocation rates of 1% to date.⁸⁰

Austria,⁸¹ in contrast, was granted a 30% suspension on its relocation obligation. In contrast to the Swedish authorities, the Austrian government did not make any efforts to relocate the remaining 70%, nor did it resettle anyone from Turkey.⁸² However, Council Decision (EU) 2015/1601 is binding for *all* Member States and Austria should work towards its obligations. Some of the measures adopted by Austria in response to the large numbers of arrivals in 2015 appear to breach EU and international law, notably its annual refugee quota.⁸³ While it certainly experienced a large increase in asylum seekers, its responses suggests a political backlash, as well as genuine concerns about lack of reception capacity. Politically, an Austrian minister expressed concern that relocation would trigger greater arrivals of asylum seekers to Italy and Greece, and so exacerbate rather than solve the refugee crisis.⁸⁴

In total numbers, **Germany** was the top recipient of asylum-seekers in 2015 with 890,000 applications.⁸⁵ Since then, asylum decisions are severely backlogged with 200,000 to 250,000 pending cases in 2017.⁸⁶ With delayed processes, places in reception centres are blocked, making it harder to use these for relocation purposes.

The cases of **Austria**, **Sweden**, and **Germany** show that Member States with significant rapid increases in asylum applications may face lack of reception capacity to support relocation. In contrast, Member States, such as **Finland**, that are doing comparatively well in relocation also do so, because they have sufficient space in reception centres. The good performance of Finland may be surprising, as Finland had initially been more hesitant and abstained in the vote on the second Relocation Decision. In addition, in a further gesture of neighbourly solidarity, in 2015, Finland had received 30,000 Iraqi applicants who had come to Finland from Sweden. Finland had processed their applications swiftly and hence could benefit from a significant number of available places in the relocation process.⁸⁷ The Finnish examples confirms that administrative capacity is key to effectiveness in the provision of refugee protection. Finland was able to process many spontaneous asylum applications, apparently ensuring that asylum seekers stays in reception centres were relatively short,, and so became an effective relocater also. It also accepts unaccompanied minors for relocation, in contrast to many other Member States.

measures in the area of international protection for the benefit of Italy and Greece, OJ L 74, 19.3.2016, p. 36–37, p. 36.

⁷⁹ Survey, Official C, 20 February 2017.

⁸⁰ Council of the European Union, Council Decision (EU) 2016/946.

⁸¹ Council of the European Union, Council Implementing Decision (EU) 2016/408 of 10 March 2016.

⁸² Die Presse, 'Österreich nimmt derzeit keine Flüchtlinge über EU-Türkei-Deal auf', 12 July 2016, available at: <http://diepresse.com/home/innenpolitik/5048640/Oesterreich-nimmt-derzeit-keine-Fluechtlinge-ueber-EUTuerkeiDeal-auf>.

⁸³ 'Austria's rapid reversal in refugee policy', *Deutsche Welle*, 3 March 2016, available at: <http://www.dw.com/en/austrias-rapid-reversal-in-refugee-policy/a-19092684>; AIDA Country Report: Austria (2016) http://www.asylumineurope.org/sites/default/files/report-download/aida_at_2016update.pdf.

⁸⁴ CITE <https://www.welt.de/politik/ausland/article158501236/Kurz-uebt-scharfe-Kritik-an-deutscher-Fluechtlingspolitik.html>.

⁸⁵ Bundesministerium des Inneren, 890,000 Asylsuchende im Jahr 2015, 30 September 2016, available at: <http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2016/09/asylsuchende-2015.html>.

⁸⁶ Frankfurter Allgemeine Zeitung, 250.000 unerledigte Asylanträge, 29 September 2016, available at: <http://www.faz.net/aktuell/politik/fluechtlingskrise/bamf-nimmt-250-000-unerledigte-asylantraege-in-2017-mit-14459055.html>.

⁸⁷ Natascha Zaun, Telephone Interview with Official A, (Oxford, 14 February 2017).

Some smaller Member States indicate that they struggle particularly with the provision of sufficient accommodation⁸⁸ or that there were initial struggles related to the establishment of cooperation channels.⁸⁹ Some Member States such as Finland and Cyprus claim to lack interpreters, particularly for Eritrean refugees.⁹⁰ In **Estonia** stakeholders report a lack of Kurdish interpreters.⁹¹ In **Cyprus**, asylum seekers have complained about the length of the asylum procedure and the low quality of accommodation, yet, highlighting that conditions were still better than in Italy.⁹²

2.2.3. Reception Challenges for Vulnerable Asylum Seekers

Receiving States also report particular problems finding reception places for vulnerable asylum seekers, in particular those who are ill, and for unaccompanied minors. **Luxemburg** reports that relocation of large families (5+) is difficult due to the lack of adequate accommodation.⁹³ In **Estonia** meeting the needs of severely ill refugees presents a challenge.⁹⁴ Generally, the relocation of unaccompanied minors has only progressed very slowly. Some governments claim to lack the special reception facilities in Member States which are required to host unaccompanied minors,⁹⁵ or claim their facilities are full.⁹⁶ In some Member States, there have also been problems with minors moving onward irregularly after relocation.⁹⁷ These Member States, therefore, prefer to relocate particularly young children. In **Ireland**, for example, these children are usually placed in foster families and are viewed as less likely to disappear than older teenagers (over the age of 16), who are usually accommodated in larger reception facilities.⁹⁸

In February 2017, 523 unaccompanied minors have been registered (on top of the 2,200 estimated to be present in Greece as of 27 January 2017⁹⁹), but only 248 have been relocated from Greece. Some receiving States also appear to be using national definitions of unaccompanied minors. Only one minor has been relocated from Italy so far. And the situation is due to worsen in the near future. Out of the total 28,129 minors arriving in Italy in 2016, 91.6% were unaccompanied – including 3,806 Eritrean and 218 Syrian, who would qualify for relocation. A further 462 unaccompanied minors have arrived in January 2017.¹⁰⁰

2.2.4. Perceptions regarding security threats posed by applications for relocation

The Relocation Decisions permit refusals to relocate on national security grounds. However, it appears that many relocation requests are rejected on these grounds, without any

⁸⁸ Survey Official B, 15 February 2017.

⁸⁹ Survey Official D, 3 March 2017.

⁹⁰ Survey, Official E, 2 March 2017. Email NGO B, 16 February 2017.

⁹¹ Survey Official G, 6 March 2017.

⁹² Survey, NGO D, 20 February 2017. Survey Official E, 2 March 2017.

⁹³ Survey Official B, 15 February 2017.

⁹⁴ Survey Official G, 6 March 2017.

⁹⁵ Survey Official B, 15 February 2017. Survey Official F, 3 March 2017.

⁹⁶ ECRE, The implementation of hotspots in Italy and Greece, p. 28. Survey Official E, 2 March 2017.

⁹⁷ Survey Official B, 15 February 2017.

⁹⁸ Natascha Zaun, Skype Interview with NGO A, (Oxford, 13 February 2017).

⁹⁹ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 4.

¹⁰⁰ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 4.

individual explanation.¹⁰¹ Stakeholders reported dubious rejections on national security grounds. For instance, it was reported that some Eritreans were rejected for relocation due to their past military service, although it was precisely that compulsory military service from which they were fleeing.¹⁰² EU general principles of legality and reason-giving (Article 41 CFR) mean that **individual reasons should be given when taking decisions on national security or similar grounds.**

As well as specifying individual reasons, where an applicant is rejected based on security grounds, **information should be shared across Member States.** Otherwise people in whose case there were reasonable grounds to believe that they posed a security threat can move around freely in either Italy or Greece.¹⁰³ And yet, while **Europol** has offered a **dedicated secured channel** for communication to this effect, it appears it has not yet been used to notify grounds for rejection.¹⁰⁴ The failure to explain and communicate the individual reasons for national security rejections is a **breach of the duty of sincere cooperation**, as if there are genuine security concerns, they should be explained to the host State on account of their potential EU/Schengen-wide impact.

While there is some evidence that national security is being invoked spuriously by some receiving States, on the other hand, in many States there was a strong and understandable political perception that security screenings in Italy and Greece were flawed, and that **more precautions needed to be taken to meet public concerns** after terrorist attacks in Europe since 2015.¹⁰⁵ Some officials of receiving countries have explained the need for additional security screening by referring to the fact that some of the relocation applications they received were incomplete.¹⁰⁶ This led to the institutional practice of receiving States wanting to send their police officers or other security personnel to sending States to conduct additional screening interviews. It appears that **France** led this practice, but now **Ireland** and **Estonia** also do not currently relocate from Italy as Italian authorities have not allowed Irish police officers and the Estonian liaison to conduct special security screenings on Italian territory.¹⁰⁷ The institutional practice of sending officers to conduct such additional reviews has no legal basis, and has met with resistance from Italy.

2.3. Relocation in practice in Italy and Greece

This Part examines relocation in practice, focusing on the input of stakeholders in Greece and Italy. Unsurprisingly given the problems identified in the preceding section, the main challenges to the effective workings of relocation are 'external', and relate to the lack of available places for relocation. In addition, there are also 'local' challenges that relate to Greek, Italian and EU administrative practices on the ground. Many stakeholders also identified problems with the legal design of relocation in terms of its scope and fairness, which we categorised as 'normative' challenges.

¹⁰¹ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 6.

¹⁰² Natascha Zaun, Skype Interview with NGO A (Oxford, 13 February 2017).

¹⁰³ Natascha Zaun, Skype Interview with NGO A (Oxford, 13 February 2017). European Commission, Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017.

¹⁰⁴ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 6.

¹⁰⁵ Natascha Zaun, Skype Interview with NGO A (Oxford, 13 February 2017).

¹⁰⁶ Survey Official B, 15 February 2017.

¹⁰⁷ Natascha Zaun, Skype Interview with NGO A (Oxford, 13 February 2017). Survey Official G, 6 March 2017.

2.3.1. External Challenges from Receiving States

The main challenges identified for relocation are similar in both Greece and Italy, although they have led to different outcomes, with far more asylum seekers relocated from Greece than Italy. This is partly a function of the different nationalities of those arriving in the two countries, but also reflects a different prioritisation by receiving states.

The **most significant problem** is the **lack of available relocation places** in general. In practice, relocation depends on receiving States making available relocation places, which they seem to treat as an option, rather than an obligation. As one stakeholder in Italy put it, 'relocation is practically not mandatory for receiving States.'¹⁰⁸ A Greek stakeholder commented 'It is clear that with [many] asylum seekers identified in Greece as candidates for the relocation, the delay is not happening here. The stumbling block is the reluctance of EU Member States to take the quota of refugees that corresponds to them according to the [Relocation Decisions]. So long as this doesn't happen, people will remain in limbo in Greece with frustrations rising and the government/non-governmental sector, being too weak to respond appropriately due to this insecurity that makes long term planning impossible.'¹⁰⁹

This problem is particularly acute when it comes to the **lack of relocation places for unaccompanied minors and other vulnerable and 'unwanted' applicants**. Several Italian stakeholders identified this problem,¹¹⁰ the extent of which is such that they viewed receiving States as having established *de facto* limitations on the personal scope of the Relocation Decisions.¹¹¹

Stakeholders identified many instances of apparently **wrongful rejection of relocation requests**, in particular on **national security grounds**. It was reported that in the Greek experience, some receiving states impose excessive security checks imposed by.¹¹² In addition, it appears that when receiving States reject applicants on national security grounds, they often fail to provide any individualised reasons to the Greek authorities.¹¹³ As one stakeholder explained 'The idea that a Member State can reject an applicant based on unexplained reasoning goes against the spirit of European union, as the applicant may later be accepted by another Member State. If this person is a security risk for one country, aren't they for another? And aren't they later able to travel in the Schengen zone freely, thereby potentially remaining a threat to the State that rejected them in the first place?'¹¹⁴

There have also been challenges with security screening by the Greek authorities. For instance, it was reported that the Greek Relocation Unit has cancelled outgoing relocation requests on finding 'hits' in domestic and European security lists. Reportedly, this has

¹⁰⁸ Daniela Vitiello, Written Interview with Valentina Brinis, ABD (Rome, 9 February 2017).

¹⁰⁹ Christina Velentza, Written Interview with Fotini Rantsiou Independent humanitarian advisor (Athens, 17 February 2017).

¹¹⁰ This impacts sharply the relocation of unaccompanied minors: see Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017); Skype Interview with Valeria Gerace, STC (Rome, 16 February 2017), both emphasising that up to now only three Member States (The Netherlands, Germany, Belgium) and two Associate Countries (Norway, Switzerland) have committed to relocate unaccompanied minors from Italy. In general, on the discrimination against vulnerable and/or unskilled asylum seekers eligible for relocation see Telephone Interview with Christopher Hein and Elisa Maimone, CIR (Rome, 15 February 2017); Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017).

¹¹¹ Daniela Vitiello, Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017); Unofficial Summary of a meeting with NGO networks on relocation challenges in Italy (Rome, 9 February 2017).

¹¹² Christina Velentza, Written Interview with Official B (Athens, 15 February 2017); Christina Velentza, Written Interview with Official B (Athens 21 February 2017).

¹¹³ Christina Velentza, Written Interview with Official B (Athens 21 February 2017).

¹¹⁴ Christina Velentza, Written Interview with Fotini Rantsiou Independent humanitarian advisor (Athens, 17 February 2017).

occurred in cases of mistaken identity.¹¹⁵ Some receiving States conduct additional procedures in Greece, even after the ‘matching’ of the applicant to the Member State of the relocation, including interviews with the eligible candidates in the Member States’ embassy. These are reported to be tantamount to a full asylum procedure, going beyond what is envisaged in the Relocation Decisions.¹¹⁶

Stakeholders in Italy also report excessive and unexplained recourse to rejection on **security grounds**,¹¹⁷ and unjustified recourse to rejection grounds not permitted in the Relocation Decisions, notably for **public health** reasons.¹¹⁸ The apparently wide margin of discretion allowed to Member States of relocation when interpreting rejection grounds in the Relocation Decisions was singled out for criticism.¹¹⁹ On national security in particular, a key stakeholder in Italy reported – ‘there is an emerging mutual trust gap in the cooperation with receiving States, which can impair the relocation process. The *querelle* between Italian authorities and the national authorities of certain Member States with reference to the security screening is a good example of this lack of mutual trust’.¹²⁰

Relocation is hampered by **delays at all stages**. Greek stakeholders report delay in approvals of relocation requests,¹²¹ and in executing transfers.¹²² Overall, in Greece, it is reported that the average time between the registration of an asylum-seeker eligible for relocation, and the outgoing request by the relocation unit is 49 days.¹²³ The answer is usually received within 29 days, while the transfer reportedly needs another 58 days in order to be completed.¹²⁴ There are delays in the procedure when the family reunification provisions come into play, this leads to frustration and anxiety to several separated families in Greece.¹²⁵ Overall, these waiting periods intensify anxiety and lack of trust in the process. Similarly, in Italy, there are frequent delays in receiving relocation pledges, approving Italy’s relocation requests, and authorisations to transfer asylum seekers.¹²⁶ In Italy, this reportedly leads to the expiration of pledges and congestion of reception facilities in Italy.¹²⁷ This receiving state practice whereby pledges ‘expire’ has no clear basis in the Relocation Decisions. Again, this illustrates that States are treating relocation as a matter of discretion, rather than duty.

¹¹⁵ Christina Velentza, Written Interview with Official B (Athens 21 February 2017).

¹¹⁶ Christina Velentza, Written Interview with Official B (Athens 21 February 2017).

¹¹⁷ On the ‘liberal’ use of rejection grounds by receiving States, see Daniela Vitiello, Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017); Written Interview with Official C, MSF (Rome, 21 February 2017).

¹¹⁸ On the ‘creative’ exercise of the right to refuse to relocate an applicant within the relocation framework, including because she/he has suffered from minor health problems in Italy, see Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017).

¹¹⁹ Daniela Vitiello, Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017); Unofficial Summary of a meeting with NGO networks on relocation challenges in Italy (Rome, 9 February 2017).

¹²⁰ See also Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017):

¹²¹ Christina Velentza, Telephone Interview with Official A (Athens, 15 February 2017); Written Interview with Fotini Rantsiou Independent humanitarian advisor (Athens, 17 February 2017).

¹²² Christina Velentza, Telephone Interview with Official A (Athens, 15 February 2017).

¹²³ Christina Velentza, Telephone Interview with Official A (Athens 21 February 2017).

¹²⁴ Christina Velentza, Written Interview with Official B (Athens 21 February 2017).

¹²⁵ Christina Velentza, Telephone Interview with Official A (Athens 21 February 2017); Written Interview Fotini Rantsiou humanitarian advisor (Athens, 17 February 2017).

¹²⁶ Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017); Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017); Daniela Vitiello, Unofficial Summary of a meeting with NGO networks on relocation challenges in Italy (Rome, 9 February 2017).

¹²⁷ Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017); Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017).

These lack of relocation places, refusals and delays are understood as a manifestation of a lack of sincere cooperation and mutual trust in the relocation system.

2.3.2. Local Challenges in Greece

The implementation of the Relocation Decisions in Greece altered considerably with the **closure of the Greek-Macedonian border on 9 March 2016** and then the implementation of the **EU-Turkey Statement**. Although the statement is not a legal instrument, it is treated as amending the Relocation Decisions, so that only those present in Greece from 16 September 2015 until 20 March 2016 (when the EU-Turkey statement came into effect) are regarded as eligible for relocation. The legality of this practice is doubtful. The EU-Turkey statement is not a legal instrument, so cannot amend the legally binding Relocation Decisions. In practice, the Greek authorities maintain this distinction by having transferred asylum-seekers from the Greek islands to the mainland before the EU-Turkey statement comes in effect and regarding only those on the mainland as eligible for relocation. In practice, the implementation of this distinction has led to frustration and clashes on the ground.¹²⁸

A further contextual challenge in Greece is the **poor reception conditions**. It remains unlawful to transfer asylum-seekers back to Greece, based on rulings of both the ECtHR and CJEU finding reception conditions there to be inhuman and degrading.¹²⁹ Although reception conditions in some instances have improved, the picture is highly varied.¹³⁰ Challenges in Greece have been hampered by the **strains and limitations on key personnel**. There are now 84 officials working on relocation, mainly in Athens, with some staff also in Thessaloniki and Thrace.¹³¹ However, the general issue of the limited capacity of the Greek Asylum Service remains.

The relocation procedure is **over-centralised**, given that the asylum seekers who were moved from the Greek islands are dispersed across over 40 reception places spread across the Greek mainland. However, relocation interviews take place mainly in Athens (with smaller offices in Thessaloniki and Thrace), and it appears that officials do not travel frequently to conduct procedures where asylum seekers are. It was reported that some asylum seekers in more isolated locations were not informed of their rights, or the possibility of applying for relocation.

Lack of coordination across different agencies - reception centres, EASO, immigration officers and NGOs - is also hampering relocation.¹³² At the time relocation was launched, asylum seekers were still arriving on the Greek islands in large numbers, creating a

¹²⁸ See Christina Velentza, Written Interview Fotini Rantsiou Independent humanitarian advisor (Athens, 17 February 2017).

¹²⁹ *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, European Union: Court of Justice of the European Union, 21 December 2011, available at: <http://www.refworld.org/docid/4ef1ed702.html> [accessed 21 January 2017]; *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, available at: <http://www.refworld.org/docid/4d39bc7f2.html> [accessed 21 January 2017]

¹³⁰ Amnesty International Annual Report 2016-2017, <https://www.amnesty.org/en/countries/europe-and-central-asia/greece/report-greece/>; GCR Reception Conditions of asylum seekers in Greece <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Drakopoulou%20Reception%20Conditions%20of%20Asylum%20Seekers%20in%20Greece.pdf>; AIDA Report on Greece November 2015, <http://www.asylumineurope.org/reports/country/greece>; HRW, Greece Refugee hotspots unsafe, unsanitary, May 2016 <https://www.hrw.org/news/2016/05/19/greece-refugee-hotspots-unsafe-unsanitary>

¹³¹ See Appendix 1, eg. Christina Velentza, Telephone Interview with Official A (Athens 21 February 2017).

¹³² See Appendix 1, eg. Christina Velentza, Written Interview Fotini Rantsiou Independent humanitarian advisor (Athens, 17 February 2017).

humanitarian and reception crisis. At that time, providing asylum seekers information on rights and procedures was neglected, in favour of moving people to the mainland swiftly. With the implementation of the Greek-Macedonian border closure, and the EU-Turkey Statement, the context has altered completely, but lack of coordination remains a serious problem, leading to confusion amongst asylum seekers who have been transferred to the mainland in particular.

Additional administrative problems identified in Greece include **incidents of double registrations**, in both the Dublin family reunification process and the relocation system. Unfortunately, it is reported that the responsible officials cancelled both requests, delaying further the processing of claims. Applicants were required to reapply from the beginning.

2.3.3. Local Challenges in Italy

The main challenges identified with reference to Italian administrative practices are:

Stakeholders reported widespread **unpreparedness** across all agencies, including local immigration offices, asylum services and reception centre management.¹³³ This creates **delays and uncertainty** amongst asylum seekers on the functioning and duration of the procedure.¹³⁴ As one NGO stakeholder explained, 'The first word asylum seekers learn in Italian is "aspetta" (wait)'.¹³⁵

There is a **lack of effective coordination** across these relevant agencies, including local immigration offices, asylum services and reception centre management.¹³⁶ The lack of coordination also includes international and EU bodies. For instance, there is duplication of unnecessary checks and controls with a consequent waste of time and resources (e.g. secondary health screenings by IOM¹³⁷ and secondary security checks by Europol).¹³⁸ Actors appear to lack an accurate and shared understanding of the relocation procedure, and their role therein. This problem has not been fully addressed by the adoption of the Italian Road Map and the Standard Operating Procedures (SOPs).¹³⁹ Stakeholders also attribute

¹³³ Daniela Vitiello, Written Interview with Valentina Brinis, ABD (Rome, 9 February 2017); Written Interview with Official C, MSF (Rome, 21 February 2017).

¹³⁴ On the uncertain length of the procedure and its connection with obstacles encountered in the cooperation with receiving Member States see Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017). On the duration of the procedure cf. the different average reported by the Dublin Unit (four months) and NGOs. See in particular, Telephone Interview with Christopher Hein and Elisa Maimone, CIR (Rome, 15 February 2017); Written Interview with Caterina Bove, ASGI (Rome, 21 February 2017); Daniela Vitiello, Written Interview with Niccolò Ferrucci, BE (Rome, 14 February 2017); Written Interview with Official C, MSF (Rome, 21 February 2017).

¹³⁵ Daniela Vitiello, Telephone Interview with Flavia Calò, MEDU (Rome, 16 February 2017).

¹³⁶ Daniela Vitiello, Unofficial Summary of a meeting with NGO networks on relocation challenges in Italy (Rome, 9 February 2017).

¹³⁷ Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017): 'The European Commission concluded an agreement with IOM, tasked with second pre-departure health screening to each asylum seeker. [...] The DG Home opted for this generalised second medical screening to meet public health concerns of receiving Member States.'

¹³⁸ On the involvement of Europol, recently formalised through the Relocation Protocol for Italy, see Daniela Vitiello, Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017); Daniela Vitiello, Written Interview with Caterina Bove, ASGI (Rome, 21 February 2017). This Relocation Protocol, which is not public, was first announced in the *Seventh report on relocation and resettlement* (COM(2016) 720 final, 9.11.2016, p. 3) and mentioned in the *Eighth report on relocation and resettlement* (COM(2016) 791 final, 8.12.2016, p. 4). As specified in the *Ninth report on relocation and resettlement* (COM(2017) 74 final, 8.2.2017, p. 4), it allows Europol teams to conduct 'joint security interviews'. The first interview by Europol, Norwegian and Italian officers took place in the first half of February 2017.

¹³⁹ Cf. Italian Ministry of the Interior, *Italian Roadmap*, 28 September 2015, available at http://www.asylumineurope.org/sites/default/files/resources/ministry_of_interior_roadmap_for_relocation.pdf;

coordination problems to the continued arrival of asylum seekers, and limitations of the current mandate of EASO.¹⁴⁰ Also the fact that asylum-seekers are dispersed over the country makes pre-relocation health checks more difficult and delays the relocation process.¹⁴¹ Compared to the Greek process, it was reported that Italian authorities do not provide complete lists containing important information for the process in the relocating Member State, e.g. identifying health issues or family ties.¹⁴²

The **procedure on the ground is excessively complex and cumbersome**, with multiple stages in different places, requiring the transfer of asylum seekers eligible for relocation from first reception centres in Southern Italy to a second destination in Central and Northern Italy, and then to Rome (the only pre-departure hub for relocation).¹⁴³ This system of decentralised reception means that asylum seekers seem to fall through the cracks, although some stakeholders have defended this approach.¹⁴⁴

The **hotspot approach has hampered relocation**.¹⁴⁵ The approach envisages that arrivals are quickly identified, and have their eligibility for relocation assessed by virtue of their nationality. However, as a key actor has pointed out,¹⁴⁶ **nationality determination is often complex and contested**, and if mistakes are made in the hotspots, it is difficult to contest or correct them afterwards.

2.4. Impact on Asylum Seekers in Greece and Italy

These complex processes leave **asylum seekers frustrated and anxious**.

In Greece, it was reported that asylum seekers frequently **lack information** about the relocation process.¹⁴⁷ Greek stakeholders raised problems with **lack of individual redress** in the relocation system. Given that rejections are not subject to appeal, and appear often to be unexplained, there is an evident gap in effective judicial protection. The impact of lack of knowledge, long waiting times, and poor reception conditions is understandably increasing

Standard Operating Procedures (SOPs), applicable to Italian hotspots, available at: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf.

¹⁴⁰ On EASO's role and responsibilities, see Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017).

¹⁴¹ Survey Official H, 28 February 2017.

¹⁴² Survey Official H, 28 February 2017.

¹⁴³ See Daniela Vitiello, Written Interview with Niccolò Ferrucci, BE (Rome, 14 February 2017); Daniela Vitiello, Written Interview with Valentina Brinis, ABD (Rome, 9 February 2017); Daniela Vitiello, Unofficial Summary of a meeting with NGO networks on relocation challenges in Italy (Rome, 9 February 2017), all explaining how the centralisation of departures may complicate the fulfilment of relocation.

¹⁴⁴ See Daniela Vitiello, Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017); Daniela Vitiello, Telephone Interview with Flavia Calò, MEDU (Rome, 16 February 2017). *Contra*, see Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017), defending a reception system based on the model of 'spread reception' (so-called '*accoglienza diffusa*'). On this model, see also Daniela Vitiello, Telephone Interview with Christopher Hein and Elisa Maimone, CIR (Rome, 15 February 2017).

¹⁴⁵ Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017): "*There is an unbridgeable gap between the Italian concept of reception and the EU-led hotspot/relocation approach*"; Daniela Vitiello, Telephone Interview with Flavia Calò, MEDU (Rome, 16 February 2017): "*Relocation has become a synonym for fingerprinting and long waits. This makes people live in an unnecessarily inhumane limbo*"; Daniela Vitiello, Telephone Interview with Christopher Hein and Elisa Maimone, CIR (Rome, 15 February 2017): "*At the EU level, decisions of immigration and asylum cannot be taken only because there are no feasible alternatives – politically speaking. Political feasibility should be squared with EU legality and respect for the rule of law*".

¹⁴⁶ Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017).

¹⁴⁷ Christina Velentza, Telephone Interview Refugee Center Coordinator (Athens, 10 February 2017); Christina Velentza, Written Interview Fotini Rantsiou Independent humanitarian advisor (Athens, 17 February 2017).

anxiety and frustration amongst those who seek to be relocated. Similarly in Italy, it was reported that eligible **asylum seekers often lack information** about the opportunity to apply for relocation or, when correctly informed, face administrative barriers during the relocation process, especially when transferred from one reception centre to another.¹⁴⁸ Efforts made by competent IOs and NGOs to support the identification of eligible asylum seekers and prioritise/follow up vulnerable cases are undermined by the regional reallocation of asylum seekers eligible for relocation. Asylum seekers' frustration and anxiety leads to increased unauthorised abandonment of reception centres¹⁴⁹ and subsequent punitive exclusion from reception services in Italy.¹⁵⁰ In turn, this increases risks of onward movement¹⁵¹ and, for unaccompanied minors, of becoming victims of trafficking.¹⁵²

Concerning the **experience of asylum seekers post-relocation**, NGOs reported that there were **misunderstandings as to the status** of relocated asylum seekers. Some believed that they had already been granted asylum,¹⁵³ and that once relocated, they would be welcomed as refugees and granted immediate access to the labour market. As they were not given access to the labour market and housing immediately, this led to understandable frustration.¹⁵⁴

It was also reported that asylum seekers did not receive a copy of their file with their initial interview when they are relocated to another Member State. This has reportedly led to problems for family reunification in The Netherlands, where the initial interview is used to check whether an applicant has mentioned the name of their family members. Long delays in transmitting these files later on have, at least in one case, led to family reunification being denied, because relevant proof did not arrive within the designated time frame. Providing asylum seekers with a copy of their file when they are relocated could help in this regard.¹⁵⁵

2.5. Normative Challenges

Stakeholders in both Italy and Greece identified various shortcomings in the design of the relocation process. Firstly, the nationality criterion in the Relocation Decisions was characterised as distorted, discriminatory and ineffective, in particular for Italy, in light of migratory patterns. In practice too, issues were raised about swift nationality determinations, without a right of appeal. As these determine access to relocation, and there is currently no means to secure individual redress or correct wrongful decisions, this was seen as particularly unfair. The asymmetry between the context of Italy and Greece was noted. In particular, it

¹⁴⁸ On the information challenge and the difficulties to 'filter' asylum seekers eligible for relocation at the points of disembarkation see Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017).

¹⁴⁹ Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, DU (Rome, 8 February 2017); Daniela Vitiello, Summary of a group interview with asylum seekers eligible for relocation (Rome, 18 February 2017), according to which many eligible asylum seekers move to Rome in the attempt to fast-track their relocation application.

¹⁵⁰ Daniela Vitiello, Written Interview with Caterina Bove, ASGI (Rome, 21 February 2017); Daniela Vitiello, Written Interview with Niccolò Ferrucci, BE (Rome, 14 February 2017); Daniela Vitiello, Written Interview with Official C, MSF (Rome, 21 February 2017); Daniela Vitiello, Written Interview with Valentina Brinis, ABD (Rome, 9 February 2017).

¹⁵¹ Daniela Vitiello, Telephone Interview with Officials A and B, UNHCR (Rome, 16 February 2017); Daniela Vitiello, Written Interview with Official C, MSF (Rome, 21 February 2017); Daniela Vitiello, Unofficial Summary of a meeting with NGO networks on relocation challenges in Italy (Rome, 9 February 2017).

¹⁵² Daniela Vitiello, Telephone Interview with Flavia Calò, MEDU (Rome, 16 February 2017); Daniela Vitiello, Written Interview with Official C, MSF (Rome, 21 February 2017).

¹⁵³ E-Mail, NGO B, 16 February 2017. Natascha Zaun, Telephone Interview with NGO C, (Oxford, 20 February 2017). Survey NGO D, 20 February 2017.

¹⁵⁴ Survey NGO D, 20 February 2017.

¹⁵⁵ Natascha Zaun, Telephone Interview NGO C, (Oxford, 20 February 2017).

was noted that Dublin transfers back to Greece are still prohibited, while Italy still takes back many asylum seekers under the Dublin system.

Overall, the lack of involvement of asylum seekers in the decision-making process concerning their relocation was criticised. It was noted that it contributed to disaffection and secondary movements. As Chapter 1 makes clear, this study supports the use of preference matching to take the voice and agency of asylum seekers into account, and to make relocation more efficient. To be fair and effective, this means asylum seekers must have access to reliable sources of information, in order to determine their preferences as to states of relocation. At present, it appears that while many reasons why some destinations are considered more attractive than others, insufficient and misleading information could also be a problem in this regard.¹⁵⁶ As **Chapter 4** explores, EASO is developing preference matching tools, and an app to provide information on relocation options. It was reported that at present it did not contain reliable information.¹⁵⁷

2.6. Conclusions and Recommendations

The most serious problem with relocation is that receiving Member States do not pledge any or enough places. In some cases, this is because Member States have overtly challenged the authority of the EU to relocate asylum seekers. In this context, while **enforcement action** to encourage compliance with EU law is available, it may not necessarily be effective. For those Member States that have overtly objected to relocation, that rejection has been part of a wider rejection of the EU rule of law, and a challenge to European values. In this context, relocation has become highly politicised. As yet, the European Commission is not keen to launch infringement proceedings.¹⁵⁸ Some of the resistance to relocation reflects broader political challenges facing the European Union – in securing the rule of law at the supranational and national levels, and sustaining and fostering liberal democracy within the EU and its Member States. The modest project that is embodied in the EU relocation decisions had become a lightning-rod for much broader political concerns. It has been politicised and distorted in some Member States. Responding to this political challenge is important for the European Parliament and all EU institutions, and its scope goes well beyond the scope of the question of relocation itself.

The other forms of non-compliance are less overt, and possibly less deliberate. For instance, when States claim not to have adequate reception spaces, a potential response to it is to **create robust systems for external monitoring of the workings of reception and processing systems**, and help states develop more efficient chain management of the asylum process, to avoid blockages in reception centres. At present, **EASO** has not developed tools to check real reception capacity, contest national assessments, or impose the acceptance of requests. The relocation scheme relies on the good will of Member States and the information they each provide, which eventually becomes the biggest source of hidden discretion in the system. EASO has a mandate to support Member States to develop their asylum processing and reception capacity, so developing tools for better management of reception is its role. Moreover, such supportive approaches could also lead to greater transparency about reception capacity. EU funding should be targeted to ensure that national reception systems are working efficiently, and that spaces are made available to cater for all asylum seekers, including unaccompanied minors. Most stakeholders envisaged that a

¹⁵⁶ Survey NGO E, 20 February 2017, Natascha Zaun, Skype Interview with NGO A, (Oxford, 13 February 2017). Survey Official F, 3 March 2017.

¹⁵⁷ Natascha Zaun, Skype Interview NGO A, (Oxford, 13 February 2017).

¹⁵⁸ Cf. Read-out of the College meeting of 8 February 2017 by Frans Timmermans, First Vice-President of the EC in charge of Better Regulation, Inter-Institutional Relations, Rule of Law and the Charter of Fundamental Rights, available at: <http://ec.europa.eu/avservices/audio/audioDetails.cfm?ref=1132953&sitelang=en>.

better package of penalties and incentives should be developed to encourage greater relocation pledges.

The administrative and reception challenges in both Italy and Greece demand better coordination of all relevant agencies; greater personnel on the ground with the appropriate communication skills; and swifter response to request for relocation. On national security screening, EASO should develop clear guidelines on this matter, but substantively and institutionally. EUROPOL's role should be clarified, in particular in ensuring proper communication across pertinent authorities when there are genuine national security concerns.

Many of the practical problems with the workings of relocation would be alleviated if Member States were pledging places simultaneously, which would enable effective **preference matching**. The **voice and agency of asylum seekers** must be taken into account if the relocation system is to respect and protect their human rights, and work effectively.

CHAPTER 3: THE ROLE OF THE HOTSPOT APPROACH IN RELOCATION

KEY FINDINGS

- The **Hotspots approach is operationally linked to the relocation scheme** as its 'enabler'. When originally designed, its key function was to support the identification of candidates for relocation. Yet, the practical focus has rather shifted to migration control, in a manner that has given rise to **serious fundamental rights violations**.
- In Greece, the function of hotspots has **transformed** after the adoption of the EU-Turkey Statement **into closed centres of arbitrary pre-removal detention**.
- Overall, hotspots have **not helped in alleviating pressure** on the Italian and Greek systems. On the contrary, they increase burdens, due to structural shortcomings and continuing applications, **exacerbating the flaws of the Dublin system**.
- While the contribution of the hotspot approach to relocation has been minimal, **serious structural deficiencies in its design and implementation** have emerged, including an overall dereliction of protection standards in both countries.
- Inter alia, the hotspot approach is **based on existing reception facilities**. It does not directly provide additional reception capacity, which each hosting country must develop and enhance on its own, with assistance from EU funds and EU actors.
- This contributes to **exacerbating the persistent shortage of resources**, aggravated by continuing arrivals and under-engagement from fellow Member States in relocation, deriving into delays, long waiting times, and despair among applicants.
- **If the emphasis continues to be on control and containment** of flows, **hotspots will replicate the deficiencies of Dublin** and, just like Dublin, will not possibly succeed in rationalising responsibility allocation and a functioning protection system for the EU. A change of focus towards real engagement with Italy, Greece, and the refugees' plight is necessary.

3.1. Overarching rationale of the hotspots-relocation tandem

Originally, the '**hotspot approach**' emerged in the *EU Agenda on Migration* to deal with the situation in the Mediterranean,¹⁵⁹ as an inter-agency joint venture to be deployed in Member States facing disproportionate pressures in terms of migration and border control. Ostensibly based on Articles 78(3) and 80 TFEU, the concept rapidly gained support in the Council.¹⁶⁰ Yet, the term '**hotspot**' is of longer standing. It apparently has its origins in Frontex's jargon to denote a section of the EU external border at risk of receiving high numbers of irregular arrivals.¹⁶¹ This prompts a policy and operational response, namely placing centres of first identification and registration close to those points, which are also called 'hotspots'. So, while the 'hotspots' are physical locations, the 'hotspot approach' is the policy strategy to be applied at such locations. However, there is no clear legal framework clarifying its content or workings in practice.

The approach focuses on **EU agencies assisting host Member States** to 'swiftly identify, register and fingerprint incoming migrants'.¹⁶² The basic objective is to foster coordination and complementarity of efforts through an efficient division of labour, whereby EASO is to

¹⁵⁹ EU Agenda on Migration, COM(2015) 240, 13 May 2015.

¹⁶⁰ EC Conclusions, 25-26 June 2015, EUCO 22/15, 26 June 2015, at 4. See also *Measures to handle the refugee and migration crisis*, Council doc. 13880/15, 9 November 2015.

¹⁶¹ Violeta Moreno-Lax, Interview with EU Official A (Brussels, 9 February 2017).

¹⁶² Agenda on Migration, p. 6.

ensure that asylum seekers are 'immediately channelled into an asylum procedure where [Asylum Support Teams] help process [applications] as soon as possible', while Frontex helps Member States with the return of irregular migrants that do not qualify for international protection, and Europol and Eurojust assist with investigations to dismantle smuggling rings.¹⁶³ On the other hand, no specific role is assigned to the Fundamental Rights Agency (FRA).

Since the opening of the first hotspots in Italy and Greece, the **approach** has been **linked in operational terms to the implementation of the relocation programme**.¹⁶⁴ The 'hotspot approach' has in fact been defined as the key 'enabler' of the relocation scheme.¹⁶⁵ It provides a platform for joint and targeted action, via an EU Regional Task Force (EURTF) (sited in their respective headquarters in Catania (Italy) and Piraeus (Greece)) responsible for overall coordination, coupled with a series of expert teams from contributing Agencies and Member States.¹⁶⁶ As Chapter 4 shows, the teams assume a variety of different functions; from the registration, fingerprinting, screening and referral of arrivals, to the implementation of relevant procedures (Dublin/relocation/asylum/return), the gathering of information on secondary movements and smuggling routes, and the coordination of removal and readmission arrangements to facilitate the expulsion of 'persons who can be returned immediately'.¹⁶⁷

One key function, therefore, is to **identify candidates for relocation** and help with related processing and transfer to relocation countries. EASO activities in this realm also include assistance in the process of 'matching' potential beneficiaries with the most appropriate Member State.¹⁶⁸ Indeed, potential beneficiaries are not allowed to choose their country of relocation and may oppose relocation decisions only in case of violations of their fundamental rights – through appeals, which, in principle, have no automatic suspensive effect.¹⁶⁹ Otherwise, it is for the Member States to gauge their integration potential on the basis of 'the specific qualifications and [other] characteristics of the applicants concerned', including language, family, cultural or social ties.¹⁷⁰

3.2. Practical role of the hotspot approach in relocation from Italy

In Italy, there are both **fixed hotspots** in Taranto, Trapani, Pozzalo, and Lampedusa, and several **mobile units** applying the hotspot approach in landing sites outside those locations – where up to 70% of arrivals disembark.¹⁷¹ The **focus** is **mostly on border control** and

¹⁶³ Ibid.

¹⁶⁴ Managing the Refugee Crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration, COM(2015) 490 final/2, 29 September 2015, Annex 2.

¹⁶⁵ Violeta Moreno-Lax, Interview with EU Official A (Brussels, 9 February 2017).

¹⁶⁶ The Hotspot Approach to Managing Exceptional Migratory Flows, 8 September 2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf.

¹⁶⁷ Explanatory Note on the Hotspot Approach (July 2015), p. 4-5, available at: <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>. See also Relocation Decision 2015/1601, Art 7; and Relocation Decision 2015/1523, Art 7.

¹⁶⁸ EASO, Hotspot-Relocation (undated), available at: <https://www.easo.europa.eu/operational-support/hotspot-relocation>.

¹⁶⁹ Relocation Decision 2015/1601, Recital 25 and Art 3; and Relocation Decision 2015/1523, Recital 20 and Art 3.

¹⁷⁰ Relocation Decision 2015/1601, Recitals 34-35; and Relocation Decision 2015/1523, Recitals 28 and 30.

¹⁷¹ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 9.

'the conduct of policing activities',¹⁷² as manifested by an overwhelming presence of Frontex. It appears that, in practice, the multi-agency/multi-purpose rationale of hotspots is thereby being lost.¹⁷³

Activities are governed by Standard Operating Procedures (SOPs),¹⁷⁴ adopted by Italy on the basis of a Roadmap.¹⁷⁵ However, the SOPs are not legally binding and **no legislation** has been **adopted** to govern the hotspots specifically. In line with the key focus on border and migration control, the SOPs emphasise the need for **fingerprinting** as 'the only reliable way' of identification.¹⁷⁶ To overcome any resistance – following the Commission's encouragement¹⁷⁷ – the **use of force**, including on vulnerable individuals,¹⁷⁸ is authorised – disregarding constitutional standards and criticism, not least, from the Italian police officers' Union.¹⁷⁹ In practice, there are credible reports that the coercive means include beatings, deprivation of basic services, food/water, and, in particular, arbitrary detention.¹⁸⁰ The SOPs underline that 'person[s] can leave the Hotspot *only* after having been photo fingerprinted'.¹⁸¹ This comes to confirm the risks foreshadowed in previous studies for the European Parliament.¹⁸²

The focus on border and migration control has also meant that **return procedures** have been **predominant**. Orders to leave the territory and instances of forced removal **without proper hearing or access to the asylum procedure** have been identified, as have also practices of profiling on grounds of nationality, treating arrivals from non-relocation countries directly as 'non-refugees',¹⁸³ selectively (mis-)informing them about their options and swiftly expelling them. Indeed, it appears that potential asylum seekers are not informed that it is at the pre-registration stage, via the compilation of the *foglio notizie*, that the intention to apply for asylum should be noted. And, although statements at this point can, in theory, be later changed, in practice, people are referred to the 'right' procedure on the basis of information disclosed in this phase.¹⁸⁴ As a result, **pre-registration works as a super-summary/hyper-accelerated form of processing**, impeding access to international

¹⁷² Standard Operating Procedures (SOPs) applicable to Italian Hotspots (undated), p. 4, available at: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf.

¹⁷³ Concurrently: Neville, Sy and Rigon, *On the frontline: The hotspot approach to managing migration*, Study PE 556.942 (European Parliament, 2016), p. 40.

¹⁷⁴ Standard Operating Procedures (SOPs) applicable to Italian Hotspots (undated), available at: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf.

¹⁷⁵ Ministry of Interior, Roadmap Italiana, 28 September 2015, available at: <http://www.meltingpot.org/IMG/pdf/roadmap-2015.pdf>.

¹⁷⁶ Italian SOPs, p. 12.

¹⁷⁷ Italy – State of Play Report, COM(2016) 85, 10 February 2016, Annex 3.

¹⁷⁸ Italian SOPs, p. 15.

¹⁷⁹ UGL Polizia di Stato, 'Fotosegnalamento forzoso, la risposta del Dipartimento', 11 January 2016, available at: http://www.uglpoliziadistato.it/index.php?option=com_content&view=article&id=6394:fotosegnalamento-forzoso-la-risposta-del-dipartimento&catid=1:ultime&Itemid=50.

¹⁸⁰ ECRE et al., *The Implementation of the Hotspots in Italy and Greece: A Study*, October 2016, p. 16 and 23, available at: www.refworld.org/docid/584ad1734.html.

¹⁸¹ Italian SOPs, p. 8 (emphasis added). See also p. 16 for cases of damage to fingerprints.

¹⁸² Guild et al., *New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International*, Study PE 509.989 (European Parliament, 2014); and Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Study PE 519.234 (European Parliament, 2015).

¹⁸³ Concurrently: Neville, Sy and Rigon, *On the frontline: The hotspot approach to managing migration*, Study PE 556.942 (European Parliament, 2016), p. 40.

¹⁸⁴ Italian SOPs, p. 7. Cf. p. 8, mentioning that '[f]or those who have not expressed the intention to apply for international protection...filling the...*foglio notizie*' the return process should be started for removal to 'be executed immediately'.

protection procedures, with no legal assistance and no appeal options (in fact no copy of the *foglio notizie* is handed to the applicant).¹⁸⁵ Most worryingly, this triage is performed by police officers – not trained and not competent to make protection-related judgments – tasked to take instant decisions and refer people to either the asylum, the relocation, or the return process.¹⁸⁶ It is, in fact, ‘based on the results of the screening’ that people ‘will receive a rejection order’.¹⁸⁷ These practices appear tantamount to collective expulsion, in breach of Article 4 of Protocol 4 ECHR, and risk *refoulement* of those with international protection needs.¹⁸⁸

For the very few qualifying (due to the nationality criterion implicit in the 75% EU-wide recognition rate required for relocation), referrals for **relocation** are **channelled (only) through the hotspots**. Gaps in capacity to register and process lead to **long delays** and long stays in temporary accommodation, often in **sub-standard conditions**. These conditions affect particularly the most vulnerable, especially unaccompanied minors (UAMs). Italy has yet to develop sufficient accommodation capacity for UAMs, and their relocation prospects in practice are slim, as Chapter 2 had explained.¹⁸⁹ Stays are generally in closed reception centres, again, in circumstances amounting to systematic/indiscriminate **detention**, with no effective judicial oversight or possibility to contest their deprivation of liberty – contrary to international human rights, EU, and constitutional guarantees.¹⁹⁰

During that period, EASO assists Italian authorities in carrying out the relocation procedure via a ‘matching activity’. This consists in ‘examining the applicants’ profile taking into account all relevant elements such as educational titles, professional qualifications and knowledge of foreign languages, previous jobs and family relations, etc. with indications for relocation by Member States, preparing and sending the relocation request, always taking into consideration prioritization of vulnerable applicants’.¹⁹¹ Usually, relocation candidates are asked to indicate 8 preferred Member States that EASO takes into account as far as possible.¹⁹² Security and exclusion screening takes place then by the Italian authorities, in cooperation with Member States’ liaison officers through EASO’s intermediation, and, if successful, ‘[f]ollowing approval by the Member State of relocation, a relocation decision [is] prepared with the support of the EASO experts assigned to the Dublin Unit’,¹⁹³ which is then handed to the applicant. But, as relocation decisions cannot be generally challenged, there have been instances of secondary movement, in particular where candidates were allocated to a state of relocation not in line with their preferences. Technical difficulties and additional delays have also been an obstacle to creating trust in the system.¹⁹⁴

There are several problems that can arise throughout this process. Relocation, as pointed out in Chapter 2, is dysfunctional due to limited Member State engagement: under-pledging relocation places, unresponsive to EASO repeated calls for additional experts, and distrusting

¹⁸⁵ ECRE et al., *The Implementation of the Hotspots in Italy and Greece: A Study*, October 2016, p. 14-15, 21 and 30-31, available at: www.refworld.org/docid/584ad1734.html.

¹⁸⁶ Ministry of Interior, Circular 41807, 29 December 2015.

¹⁸⁷ Italian SOPs, p. 19.

¹⁸⁸ Cf. ECtHR, *I.M. v France*, Appl. 9152/09, 2 February 2012; *A.C. v Spain*, Appl. No. 6528/11, 22 April 2014; *Sharifi v Italy and Greece*, Appl. 16643/09, 21 October 2014.

¹⁸⁹ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 9-10.

¹⁹⁰ ECRE et al., *The Implementation of the Hotspots in Italy and Greece: A Study*, October 2016, p. 14-15, 21 and 28, available at: www.refworld.org/docid/584ad1734.html.

¹⁹¹ EASO Operating Plan to Italy, December 2016, p. 11, available at: <https://www.easo.europa.eu/sites/default/files/20161214%20EASO%20OP%20Italy.pdf>.

¹⁹² Violeta Moreno-Lax, Interview with EU Official A (Brussels, 9 February 2017).

¹⁹³ EASO Operating Plan to Italy, December 2016, p. 11.

¹⁹⁴ Violeta Moreno-Lax, Interview with EU Official A (Brussels, 9 February 2017).

of security-checking by the Italian authorities. Chapter 2 explores the reasons for the poor compliance with the Relocation Decisions.

3.3. Practical role of the hotspot approach in relocation from Greece

The **role of** the five operative **hotspots** in the relocation scheme for Greece (located in Lesbos, Chios, Samos, Leros, and Kos) has to be de-coupled into **two different phases**: prior to 20 March 2016 and after, coinciding with the conclusion of the EU-Turkey Statement for the curtailment of migratory flows through the Aegean.¹⁹⁵

3.3.1. Before the EU-Turkey Statement

Before the EU-Turkey Statement, hotspots were **sites of reception for relocation** and channelling to the asylum (or return) procedure of sea arrivals. Because most of those arriving were Syrian nationals, the primary focus was on managing their relocation out of Greece, thereby alleviating pressure from the Greek system. However, out of the approximately 1 million arrivals in Greek shores in 2015,¹⁹⁶ barely 10% submitted an application for international protection.¹⁹⁷ Most of them progressed to their preferred destinations in Germany and elsewhere through the Balkan route until its closure in March 2016.¹⁹⁸

3.3.2. After the EU-Turkey Statement

After the conclusion of **the EU-Turkey Statement**, protection seekers on the islands were moved to the mainland so that the hotspots have mainly been converted **into closed pre-removal detention centres**, where post-EU-Turkey-Statement arrivals are mandatorily confined,¹⁹⁹ while awaiting expulsion to Turkey.²⁰⁰ The European Commission led the way, stating that 'the current focus on registration and screening before swift transfer to the mainland [was to be] replaced by the objective of implementing returns to Turkey'.²⁰¹ The change of emphasis was also marked by the amendment to the Decision of 22 September 2015, allowing for the 54,000 places earmarked for relocation to be usable for resettlement from Turkey in implementation of the agreement.²⁰² The staffing policy and differential budget allocations also denote a prevalence of migration and border control functions, with Frontex being the main agent supporting Greek authorities.²⁰³

¹⁹⁵ EU-Turkey Statement, 18 March 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

¹⁹⁶ UNHCR, 'Over one million sea arrivals reach Europe in 2015', 30 December 2015, available at: <http://www.unhcr.org/en-au/news/latest/2015/12/5683d0b56/million-sea-arrivals-reach-europe-2015.html>.

¹⁹⁷ UNHCR, Operational Portal – Mediterranean Situation, available at: <http://data.unhcr.org/mediterranean/country.php?id=83%20>.

¹⁹⁸ 'Balkan Route "closed" after cascade of border shutdowns', *EuroActiv*, 9 March 2016, available at: <https://www.euractiv.com/section/global-europe/news/balkan-route-closed-after-cascade-of-border-shutdowns/>. For analysis, see Danish Refugee Council, *Closing Borders, Shifting Routes: Summary of Regional Migration Trends Middle East*, Report (May, 2016), available at: <http://reliefweb.int/report/world/closing-borders-shifting-routes-summary-regional-migration-trends-middle-east-may-2016>.

¹⁹⁹ Confinement can be within the hotspot centres or through limitation of movement to the islands on which they are placed. In all cases, refugees cannot leave, which according to the ECtHR amounts to deprivation of liberty akin to detention: *Labita v Italy*, Appl. 26772/95, 6 April 2000.

²⁰⁰ ECRE et al., *The Implementation of the Hotspots in Italy and Greece: A Study*, October 2016, p. 48-49.

²⁰¹ Next operational steps in EU-Turkey cooperation in the field of migration, COM(2016) 166, 16 March 2016, p. 4.

²⁰² Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, [2016] OJ L 268/82.

²⁰³ European Commission Fact Sheet, 'Implementing the EU-Turkey Agreement – Questions and Answers', 20 April 2016, available at: http://europa.eu/rapid/press-release_MEMO-16-1494_en.htm.

The new landscape has been backed by **domestic legislative amendments** in April and June 2016. **Law 4375/2016** adopted the fast-track asylum procedure at border sites, incorporating the 'safe third country' and 'first country of asylum' notions in flexible terms. The aim was to ensure that returns to Turkey would be permitted, in spite of legal and empirical doubts about whether it meets EU conditions to be either a 'Safe Third Country' or 'First Country of Asylum'.²⁰⁴ Many returns to Turkey were legally prevented, due to the lack of effective international protection there, and due to the evidence of serious human rights violations against refugees.²⁰⁵ The response, under pressure from EU institutions,²⁰⁶ was to alter the composition of the Greek Asylum Appeal Committees via **Law 4357/2016**. Both legal instruments allow for EASO's intervention, conducting inadmissibility interviews, assessing merits, and recommending final decisions. Yet, the **adoption of detailed SOPs is still pending**.²⁰⁷

The new arrangements foresee **very short periods** for submission (1 day for interview preparation), processing, and appeal (3 days since rejection) of international protection requests, which can hardly qualify as 'reasonable time' under Article 43 APD.²⁰⁸ The **absence of automatic suspensive effect** is also at odds with European standards, as is stereotypical decision-making and **insufficient substantiation of rejection decisions**.²⁰⁹ **Removals** of failed applicants are equally **swift**, facilitated by the bilateral readmission protocol of 2002 (amended in 2016 to allow for 'immediate' expulsion)²¹⁰ and, since 1 June 2016, replaced by the EU-Turkey Readmission Agreement.²¹¹ **A total of 1,187 persons have been returned in the course of 2016** under these arrangements.²¹² Readmission is then organised between Greece and Turkey normally within 7-10 days. Returnees are grouped together and expelled by boat or plane. Turkish liaison officers deployed in Greece assist in the process, alongside Greek and EU Agencies personnel, with returns organised and coordinated by Frontex. There have been **reports of collective expulsions** and removals amounting to **refoulement**, with no consideration of individual circumstances.²¹³ And very little official

²⁰⁴ Human Rights Watch, 'Turkey: Border Guards Kill and Injure Asylum Seekers', 10 May 2016, available at: <https://www.hrw.org/news/2016/05/10/turkey-border-guards-kill-and-injure-asylum-seekers>; Amnesty International, 'Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal', 1 April 2016, at: <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>.

²⁰⁵ This has led to 390 out of the 407 inadmissibility decisions being reversed. See Fourth report on the progress made in the implementation of the EU-Turkey Statement, COM(2016) 792, 8 December 2016, p. 6. The constitutionality of this approach is being tested at the Greek Council of State. See Decision No. 441/15.02.2017 referring the matter to the Plenary of the Court.

²⁰⁶ 'Greece's asylum committees are about to change under EU Council's pressure', *New Europe*, 10 June 2016, available at: <https://www.neweurope.eu/article/greeces-asylum-committees-are-about-to-change-under-eu-councils-pressure/>; 'Greece's Asylum Appeals Committees denounce changes to facilitate mass deportations to Turkey', *Keep Talking Greek Blog* (containing a post signed by several members of the Committees), 20 June 2016, available at: <http://www.keptalkinggreece.com/2016/06/20/greeces-asylum-appeals-committees-denounce-changes-to-facilitate-mass-deportations-to-turkey/>.

²⁰⁷ Fourth report on the progress made in the implementation of the EU-Turkey Statement, COM(2016) 792, 8 December 2016, Annex I, p. 4.

²⁰⁸ See also Case C-69/10 *Diouf* [2011] I-7151.

²⁰⁹ Art. 47 CFR. Apparently, the majority of 1st instance decisions are being rejected by reference to the safe third country principle, in identical terms and with no proper reasoning. See ECRE et al., *The Implementation of the Hotspots in Italy and Greece: A Study*, October 2016, p. 38.

²¹⁰ 'Greece and Turkey build on plan for return of refugees', *Ekathimerini*, 23 March 2016, available at: <http://www.ekathimerini.com/206786/article/ekathimerini/news/greece-and-turkey-build-on-plan-for-return-of-refugees>.

²¹¹ European Commission Fact Sheet, Implementing the EU-Turkey Statement – Questions and Answers, 28 September 2016, available at: http://europa.eu/rapid/press-release_MEMO-16-3204_en.htm.

²¹² *Ibid.*

²¹³ ECRE et al., *The Implementation of the Hotspots in Italy and Greece: A Study*, October 2016, p. 12-14.

information is publicly available on the situation of returnees – though they are such that, e.g., ‘ten [Syrians] decided to return voluntarily to Syria’.²¹⁴

The hotspot-relocation link has thus been **broken** in Greece. Since April 2016, international protection cases considered admissible (mostly on Dublin family criteria or vulnerability grounds) are pre-registered, provided with an asylum seeker card and an interview date in Athens through the (unreliable) Skype system operated by the Greek Asylum Service (GAS),²¹⁵ and only then permitted to leave the islands. The time until the Athens appointment is normally a few weeks during which the applicant may or may not be accommodated in reception centres.

Only those from eligible nationalities who arrived in Greece before the EU-Turkey Statement qualify for relocation. As pointed out in Chapter 2, this entails a distorted reading of the terms of the (binding) Relocation Decisions, which do not contain a time limit for relocation outside the two-year period of total duration of the scheme. Irrespective of the political aims, the non-binding EU-Turkey ‘Statement’ cannot legally change the scope of the binding Decisions. In any event, to enable identification, the GAS conducted a mass pre-registration exercise of 28,000 potential candidates in the summer of 2016.²¹⁶ Thereafter, relocation is arranged only from the mainland, with applications filed in Athens, Thessaloniki, or Alexandroupoli. Interviews are performed by the GAS and/or EASO officials. A Relocation Unit has succeeded the Dublin Unit in undertaking security and matching tests (using the same methodology as in Italy), with participation from the liaison officers of Member States, who may conduct additional checks and provide pre-arrival information upon acceptance of the relocation case.²¹⁷

3.4. Conclusions and Recommendations: Overall contribution of the hotspot approach to relocation

Hotspots have not helped in relieving the pressure on Italy and Greece. Instead, they increase **burdens**, leading to rising numbers of applicants, **exacerbating Dublin shortcomings**, and to the adoption of **repressive measures**, disregarding human rights and **degrading protection standards**.²¹⁸ They have mainly functioned as a ‘filtering’ mechanism, but with little to no procedural guarantees and vulnerabilities/special needs discounted or ill-identified.²¹⁹

²¹⁴ Fourth report on the progress made in the implementation of the EU-Turkey Statement, COM(2016) 792, 8 December 2016, p. 5.

²¹⁵ Neville, Sy and Rigon, *On the frontline: The hotspot approach to managing migration*, Study PE 556.942 (European Parliament, 2016), p. 20. Confirmed: Violeta Moreno-Lax, Telephone Interview with EASO Official C (London, 16 February 2017). Note that there is merely a one-hour window for relocation candidates to try book an appointment via Skype on Mondays, Tuesdays, or Wednesdays only, according to the information leaflet distributed by EASO in Greece, p. 2: https://www.easo.europa.eu/sites/default/files/public/BZ0416141ENC_proof2_5rev.pdf.

²¹⁶ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 8; and EASO Special Operating Plan to Greece, EASO/DOP/OU/2016/1812, December 2016, p. 5. Cf. data provided by EU Official C sets this number to nearly 50,000. See Violeta Moreno-Lax, Telephone Interview with EU Official C (London, 16 February 2017).

²¹⁷ AIDA, Country Report Greece: Update, February 2017 (on file).

²¹⁸ Maiani, ‘Hotspots and Relocation Schemes: The right therapy for the Common European Asylum System?’ *EU Migration Law Blog*, 3 February 2016, available at: <http://eumigrationlawblog.eu/hotspots-and-relocation-schemes-the-right-therapy-for-the-common-european-asylum-system/>. See also Webber, ‘Hotspots for asylum applications: Some things we urgently need to know’, *EU Law Analysis*, 29 September 2015, available at: <http://eulawanalysis.blogspot.com.au/2015/09/hotspots-for-asylum-applications-some.html>.

²¹⁹ ECRE et al., *The Implementation of the Hotspots in Italy and Greece: A Study*, October 2016, p. 7, available at: www.refworld.org/docid/584ad1734.html. See also Amnesty International, ‘Hotspot Italy: How flagship approach leads to violations of refugee and migrant rights’, October 2016, available at: <https://www.amnesty.ch/it/news/2016/italia-espulsioni-illegali-e-maltrattamenti-di-profughi/hotspot-italy-final.pdf>; and Amnesty International, ‘Greece: Refugees detained in dire conditions amid rush to implement EU-

Indeed, while the contribution of the hotspot approach to relocation has been minimal, **very serious structural deficiencies in its design and implementation** have emerged: The provision of information on relocation arrangements seems to be unsystematic and delivered only 'where appropriate'.²²⁰ Fingerprinting practices include recourse to 'reasonable coercion',²²¹ and the prevention of secondary movements has led to systematic detention.²²²

Serious shortages of material, equipment, and personnel are deepening the crisis, with only a fraction of the total number of officers requested for deployment by EU agencies seconded to the hotspots. In fact, **one key drawback** is that **the hotspot approach 'does not provide reception facilities** to its host Member States but builds on their existence and functioning',²²³ which has revealed wholly unrealistic. With continuing arrivals in Greece and Italy, it is obvious that reception capacities in both countries can't but be overwhelmed, exposing the inadequacy of the premise underpinning hotspots.

In these circumstances, hotspots have contributed to **slow processing** of relocation and related case-loads. In practice, long **waiting periods**, inhuman conditions, perceptions of **discrimination and unfairness** have contributed to **despair** among applicants. On the other hand, constant calls for speed from the Commission and the EU Coordinator on the implementation of certain provisions of the EU-Turkey Statement have had an impact on the quality of decision-making, particularly at first instance.²²⁴ The lack of a dedicated legal framework has boosted uncertainty, if not arbitrariness. The intervention of different actors at national, EU, and international level, as explained in Chapter 4, has confounded responsibilities, blurring roles/competences and rising issues of liability/accountability.²²⁵

With the **accent put on the control and containment** of flows, hotspots **replicate the flaws of Dublin** and, just like Dublin, will not possibly succeed in fostering solidarity and fair sharing of responsibility. The **need to recognise the rights and agency of forced migrants** as to their decisions on where they wish to apply for asylum and incorporate their concerns and entitlements in the selection of the country of their relocation, if only for practical reasons, is fundamental to the functioning of the scheme. Until and unless a non-coercive system of responsibility allocation is in place, irregular secondary flows and human rights violations will continue, as people will find ways to reunite with family and friends.²²⁶

Turkey deal', 7 April 2016, available at: <https://www.amnesty.org/en/latest/news/2016/04/greece-refugees-detained-in-dire-conditions-amid-rush-to-implement-eu-turkey-deal/>.

²²⁰ Explanatory Note on the Hotspot Approach (July 2015), p. 4, available at: <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>.

²²¹ Implementation of the Eurodac Regulation as regards the obligation to take fingerprints, SWD(2015) 150 final, 27 May 2015, para. 7; and Relocation Decision 2015/1601, Art 5(5); and Relocation Decision 2015/1523, Art 5(5). On the risks of forcible fingerprinting, see *Fundamental rights implications of the obligation to provide fingerprints for Eurodac*, FRA Focus 05/2015, available at: <http://fra.europa.eu/en/publication/2015/fundamental-rights-implications-obligation-provide-fingerprints-eurodac>.

²²² Cf. Relocation Decision 2015/1601, Recitals 38-41; and Relocation Decision 2015/1523, Recitals 32-34.

²²³ Explanatory Note on the Hotspot Approach (July 2015), p. 5, available at: <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>.

²²⁴ Cf. Joint Action Plan of the EU Coordinator on the implementation of certain provisions of the EU-Turkey Statement, Annex I, Fourth Report on the Progress made in the implementation of the EU-Turkey Statement, COM(2016) 792, 8 December 2016; Ninth Report on relocation and resettlement, COM(2016) 74, 8 February 2017.

²²⁵ Concurrently: Neville, Sy and Rigon, *On the frontline: The hotspot approach to managing migration*, Study PE 556.942 (European Parliament, 2016).

²²⁶ On the shortcomings of the Dublin system and advocating for a 'Dublin without coercion' alternative, see Guild et al., *New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International*, Study PE 509.989 (European Parliament, 2014); and Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Study PE 519.234 (European Parliament, 2015).

CHAPTER 4: THE ROLE OF EU AGENCIES AND INSTITUTIONS IN RELOCATION

KEY FINDINGS

- Together with EASO, **several** other EU agencies, international bodies, and other **loosely coordinated actors** contribute to the implementation of the hotspot and relocation schemes with **varying degrees of implication and importance, without an overarching, a priori definition of roles and responsibilities.**
- **Frontex plays a key role**, in some respects even more so than EASO, with the **overwhelming emphasis** of hotspot arrangements **on control and removal.**
- Both agencies assume tasks and powers beyond the terms of their founding regulations, **acting without a clear EU legal mandate.**
- **Coordination structures** are horizontal and non-hierarchical, thus apparently **creating barriers to the translation of legal priorities** into practical action. This generates **real risks of fundamental rights violations and international protection guarantees.**
- The **lack of monitoring mechanisms** and channels of **democratic and judicial oversight** entails **specific threats on the EU rights** to asylum, the prohibition of *refoulement*, and effective remedy guarantees, as reflected in the Charter of Fundamental Rights.

4.1. Hotspots and relocation as multi-actor ventures

As pointed out in Chapter 3, the hotspot approach has been conceived of and designed as a multi-actor, multi-purpose project, with a series of EU agencies intervening to support national administrations of beneficiary Member States. The most important are Frontex and EASO, but there are also other bodies and organisations assuming a role.

4.2. The role of EASO in hotspots and relocation

The 'grand lines' of **EASO's** tasks in Italy and Greece are similar, but there are important nuances, due to the specific role the Agency plays in each country and the legal backing sustaining it, that need be noted.

4.2.1. The role of EASO in Italy's hotspots and relocation scheme

In Italy, EASO intervenes in hotspots on the basis of the **SOPs**, assisting at various points of the 'operational sequence' defined therein.²²⁷ The agency is tasked with the provision of information on relocation to new arrivals alongside UNHCR, 'aimed at ensuring the relocation of applicants as quickly as possible'.²²⁸ They are also called on to assist with the identification and handling of UAMs in particular, to cater for their particular reception and procedural needs.²²⁹ Finally, EASO is also supposed to support the practical and effective administration

²²⁷ Italian SOPs, p. 7.

²²⁸ Ibid., p. 5 and 7. See also EASO Information Leaflet for Italy (undated): https://www.easo.europa.eu/sites/default/files/public/BZ0416141ENC_proof2_5rev.pdf.

²²⁹ Italian SOPs, p. 17-18.

of the relocation scheme with regard to transfers to reception centres and the management of relocation candidates.²³⁰ In this regard, not only should EASO experts provide detailed know-how to facilitate decision-making, but they may also engage in ‘forms of joint evaluation’ – beyond the terms contemplated in the current version of the EASO Regulation.²³¹

On this basis, EASO itself has adopted an ***Operating Plan to Italy*** in December 2016.²³² Communication regarding its implementation is ensured through regular dialogue between the Italian plan coordinator and the EASO plan coordinator. The EASO office in Rome coordinates the work.²³³ According to the Plan, EASO assumes a series of activities to be conducted in the course of 2017. These include support with the provision of information not only to relocation candidates, but also to potential applicants for international protection generally for effective channelling into the adequate procedure (asylum/relocation/return);²³⁴ support with registration handling following the transfer to reception centres, recording applications, conducting ‘supplementary interviews’ for relocation purposes and with a view to identifying Dublin and exclusion cases;²³⁵ assistance with handling outgoing relocation and Dublin cases, through the matching procedure, sending and receiving relocation requests, preparing relocation decisions upon approval of the relocation country, processing relocation and Dublin files;²³⁶ strengthening reception capacity, especially for UAMs, through counselling on age and status assessment, family tracing, guardian appointment;²³⁷ and building professional development through training and exchange activities with other Member States.²³⁸

4.2.2. The role of EASO in Greece’s hotspots and relocation scheme

Like in Italy, EASO in Greece is engaged in all stages of the hotspot-relocation/asylum/return continuum, starting with the provision of initial information through the distribution of a leaflet in six languages, specifying key details regarding the different procedures.²³⁹ It also records and registers relocation/asylum requests, carries out the matching test (as specified in Chapter 3), and may handle the processing of applications from beginning to end, undertaking all intermediary steps.²⁴⁰ If the application is successful, it may be involved in the provision of pre-departure information to relocation beneficiaries.²⁴¹ The office provides also interpreters, counsellors, and cultural mediators to support the different processes.²⁴²

²³⁰ Ibid., p. 19 and 22.

²³¹ Ibid., p. 22. Note that EASO’s mandate is currently under review and it may be expanded to accommodate some of the tasks the Agency is presently undertaking in the hotspots and within the relocation scheme. See Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM(2016) 271, 4 May 2016.

²³² EASO, *Operating Plan to Italy*, 21 December 2016, available at: <https://www.easo.europa.eu/sites/default/files/20161214%20EASO%20OP%20Italy.pdf>.

²³³ Ibid., p. 6.

²³⁴ Ibid., p. 8.

²³⁵ Ibid., p. 9-10.

²³⁶ Ibid., p.11.

²³⁷ Ibid., p. 12-13.

²³⁸ Ibid., p. 13.

²³⁹ ECRE et al., p. 20. For a copy of the English version, see EASO Information Leaflet for Greece (undated): https://www.easo.europa.eu/sites/default/files/public/BZ0116194ENN_0.pdf.

²⁴⁰ ECRE et al., p. 34, 38, 44, 47-48.

²⁴¹ Ibid., p. 48.

²⁴² Violeta Moreno-Lax, Telephone Interview with EU Official C (Brussels, 9 February 2017).

A **Special Operating Plan** for 2017 has also been adopted for Greece, matching the Italian template.²⁴³ The first task attributed to EASO under the Plan is also related to information provision on relocation and international protection within the Greek system, so that applicants can be referred to the appropriate track.²⁴⁴ Advice on nationality, vulnerability assessment, and possible security or exclusion issues is also foreseen.²⁴⁵ Support with Dublin cases along the lines of the Italian Plan should also be provided, specially considering that the Greek Dublin Unit has rapidly expanded and most officers are 'junior and inexperienced'.²⁴⁶ Assistance with the detection of document fraud relating to 'Syrians, Iraqis, Afghanis and Palestinians' in particular is also contemplated.²⁴⁷ Practical support in the operation of reception centres is equally foreseen, including through 'practical on-the-job support' and 'liaison, information and referral...to the relocation process'.²⁴⁸ Support in training, the delivery of tailor-made ad-hoc workshops, the organisation of study visits to other Member States to strengthen bilateral contacts and exchange best practices, as well as assistance with the absorption of EU funds and other financial resources are all geared towards enhancing Greek capacity.²⁴⁹

Indeed, after the adoption of the **EU-Turkey Statement**, EASO efforts concentrate in supporting its implementation and increasing overall capacity of the Greek system. This shall be done, inter alia, through direct intervention in the admissibility processing of asylum requests.²⁵⁰ According to Article 60(4) of **Law 4375/2016**, the participation of EASO experts in all first instance procedures is allowed. As a result, the Plan provides for admissibility interviews to be conducted by EASO officers, charged with drafting opinions and recommending final decisions on individual cases²⁵¹ – despite limitations in the current version of the EASO Regulation, according to which the Agency 'should have *no direct or indirect* powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection'.²⁵² They are, in fact, already conducting most of these functions independently, notwithstanding the exercise of administrative discretion they entail (which should be reserved to domestic officials, at least until a legal basis is available under EU law).²⁵³ In relation to those under the 1:1 scheme from Turkey, EASO, in cooperation with the Commission, the Member States, UNHCR and Turkey, is currently developing SOPs for application to resettlement procedures – which for the time being follow ad hoc arrangements.²⁵⁴ And once (if ever) the Humanitarian Admission Programme is activated, EASO will also play a role therein – SOPs for this scheme are equally under development.²⁵⁵

²⁴³ EASO, Special Operating Plan to Greece, December 2016, available at: https://www.easo.europa.eu/sites/default/files/EASO%20Special%20Operating%20Plan%20to%20Greece%202017_%2014122016.pdf.

²⁴⁴ Ibid., p. 5-6.

²⁴⁵ Ibid., p. 6 and 15-16.

²⁴⁶ Ibid., p. 6-7.

²⁴⁷ Ibid., p. 7-8.

²⁴⁸ Ibid., p. 10.

²⁴⁹ Ibid., p. 9-15.

²⁵⁰ Ibid., p. 8-9.

²⁵¹ Ibid., p. 9.

²⁵² Recital 14 and Art 2(6), Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [2010] L 132/11.

²⁵³ Concurrently: Tsourdi, 'Hotspots and EU Agencies: Towards an integrated European administration', *EU Migration Law Blog*, 26 January 2017, available at: <http://eumigrationlawblog.eu/hotspots-and-eu/>.

²⁵⁴ European Commission Fact Sheet, Implementing the EU-Turkey Statement – Questions and Answers, 28 September 2016, available at: http://europa.eu/rapid/press-release_MEMO-16-3204_en.htm.

²⁵⁵ Ibid. Fourth Report on the Progress made in the implementation of the EU-Turkey Statement, COM(2016) 792, p. 10. For a detailed critique of the Humanitarian Admission Programme, see Moreno-Lax, *Europe in Crisis*:

4.3. The role of FRONTEX in hotspots and relocation

Perhaps surprisingly, the role of **Frontex** in the hotspots is much more prominent than the one played by EASO (both in Italy and post-EU-Turkey-Statement Greece). Since the filtering for relocation (asylum or return) occurs at the hotspots at an early stage, Frontex's intervention impacts decisively on relocation (asylum and return) outcomes.

Generally, the Agency provides assistance with registration and nationality screening of new arrivals, possibly including fingerprinting and EURODAC recording. As already stated, it is after the screening interview that applicants are referred and channelled (on the basis of their nationality and asylum requests) to relocation/international protection/return processing. Frontex also undertakes debriefing interviews for intelligence gathering purposes on smuggling and trafficking networks. The return process is also supported by the Agency, through pre-return/return assistance in obtaining travel documents, the organisation of removal operations, and cooperation with authorities of third countries.²⁵⁶ All these functions have received legal backing in the new European Board and Coast Guard (EBCG) Regulation since October 2016, with new Article 18 on 'Migration Management Support Teams'.²⁵⁷

4.3.1. The role of Frontex in Italy's hotspots and relocation scheme

In Italy, Frontex assists with identification, recording, and fingerprinting of new arrivals.²⁵⁸ The Agency can also support personal security checks and checks on personal effects.²⁵⁹ It has been assigned pre-identification and screening functions to determine nationality, through the compilation of the *foglio notizie* and/or via in-depth interviews in case of doubt.²⁶⁰ For the detection of forged documents, Frontex may deploy high-level experts in this matter.²⁶¹ Applicants should be informed of the purpose of these steps 'orally...in a language that the person can understand' and taking account of any vulnerabilities.²⁶² Cross-checks of fingerprints and personal details in EURODAC and national databases can also be entrusted to the Agency.²⁶³ To collect and examine details regarding smuggling routes, Frontex undertakes debriefing interviews as well, gathering evidence from boats and retrieving articles in possession of individual applicants (including 'notes, maps, phone numbers, mobile phones, photographs, tickets, documents...food containers or paper used for wrapping'), to enable risk analysis.²⁶⁴ It shall also 'report' persons in need of protection – although no clear referral tools have been devised yet²⁶⁵ – and coordinate returns.²⁶⁶

Facilitating Access to Protection, (Discarding) Offshore Processing and Mapping Alternatives for the Way Forward (Red Cross EU Office, February 2016), available at: <http://www.redcross.eu/en/News-Events/NEWS-ROOM/Migration-Europe-in-Crisis/>.

²⁵⁶ 'Situation at External Border', Frontex Press Room, available at: <http://frontex.europa.eu/pressroom/faq/situation-at-external-border/>.

²⁵⁷ Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard [2016] OJ L 251/1.

²⁵⁸ Italian SOPs, p. 15.

²⁵⁹ Ibid., p. 10.

²⁶⁰ Ibid., p. 11.

²⁶¹ Ibid., p. 12.

²⁶² Ibid., p. 15.

²⁶³ Ibid., p. 16.

²⁶⁴ Ibid., p. 24 and 18-19.

²⁶⁵ Observations by Frontex Fundamental Rights Officers, 2015 Report on the Implementation of the Maritime Surveillance Regulation 656/2014 (Frontex, 2016), p. 13.

²⁶⁶ Italian SOPs, p. 10, 22-23.

4.3.2. The role of Frontex in Greece's hotspots and relocation scheme

The role of Frontex in Greece is similar to the one the Agency plays in Italy. From disembarkation to registration, Frontex may provide first aid and escort arrivals ashore. As in Italy, it will conduct nationality screening, asking questions on language, culture, geography, in the absence of reliable identity documents. Frontex interpreters and document fraud detectors will be present at that stage. A screening form, similar to the *foglio notizie*, will be compiled, with the nationality, age, language spoken, and an indication of whether the person intends to apply for asylum. Identification through fingerprinting is then carried out in the presence of Frontex fingerprinting experts. Debriefing takes place immediately afterwards. Several questions covering family links, need for protection, etc. relevant to the asylum process are asked already at this stage, with a decision to detain with a view to deportation by the Greek authorities following, mostly based on the Frontex's assessment.²⁶⁷

4.4. The role of other EU agencies

Europol has an assigned role within the hotspots and is represented in the EU Regional Task Force. Its main responsibility is to enhance intelligence exchange on anti-smuggling/anti-trafficking efforts, relying on Frontex debriefing data. Information is cross-checked within the Europol Computer System (EIS) and relevant databases, and the agency may furnish capacity-building activities for the identification of threats, strategic and operational analysis, technical and coordination activities.²⁶⁸ Europol has devised a secured communication channel for national security determinations, so that Member States can 'safely provide reasons for rejections of relocation rejects', but it has never been used so far.²⁶⁹ Member States are zealous to conduct their own security screenings through their own domestic means and liaise with Italian/Greek authorities through their own liaison officers deployed in Rome and Athens, failing to engage in EU processes that they perceive out of their full control. This has prompted frictions and instances of insurmountable distrust, as the case of Ireland vis-à-vis Italy illustrates in recent times.²⁷⁰ Considering the sensitivity of the information concerned and the danger of it falling in the hands of potential persecutors/traffickers/smugglers, the centralisation of communications through duly encrypted, secured means should be seriously appraised.²⁷¹

Eurojust supports crime-prevention, hotspot-based work through its judicial cooperation role, coordinating action to dismantle and prosecute related criminal networks.²⁷² **EU-LISA** also contributes through provision of expertise regarding registration of biometrics, the optimal use of IT for registration, and data quality issues.²⁷³

On the other hand, the **Fundamental Rights Agency** (FRA) has no standing presence or predetermined function within the hotspots or the relocation scheme. It is foreseen that its expertise 'can be used', but there has been no streamlining so far of its input.²⁷⁴

²⁶⁷ ECRE et al., p. 40-41.

²⁶⁸ Italian SOPs, p. 4-5, 14, 21-22.

²⁶⁹ Ninth report on relocation and resettlement, COM(2017) 74, 8 February 2017, p. 6-7.

²⁷⁰ 'Italy: security checks by Irish police blocks relocation of refugees', *ECRE News*, 13 January 2017, available at: <http://www.ecre.org/italy-security-checks-by-irish-police-blocks-relocation-of-refugees/>.

²⁷¹ Concurrently: FRA, Opinion on Dublin IV Proposal, Council doc. 15313/16, 8 December 2016.

²⁷² Neville, Sy and Rigon, *On the frontline: The hotspot approach to managing migration*, Study PE 556.942 (European Parliament, 2016), p. 28.

²⁷³ Neville, Sy and Rigon, *On the frontline: The hotspot approach to managing migration*, Study PE 556.942 (European Parliament, 2016), p. 28.

²⁷⁴ 'Situation at External Border', Frontex Press Room, available at: <http://frontex.europa.eu/pressroom/faq/situation-at-external-border/>.

4.5. The role of the European Commission and related EU bodies

The **Commission** has overall responsibility for the hotspot approach and the relocation scheme. It convenes and chairs regular Liaison Officers' meetings in Greece and Italy. The most recent were held on 14 December 2016 and 31 January 2017. These meetings aim to improve information exchange during the relocation process, including cultural orientation sessions at the pre-departure phase to better manage expectations and minimise onward movement.²⁷⁵

The practical (horizontal) coordination of the hotspot approach is, in turn, ensured by an **EU Regional Task Force** (EURTF), headquartered in the benefiting Member State, bringing together officers from the key participating EU Agencies (i.e. Frontex, Europol, EASO and Eurojust) and either Italy or Greece. The EURTF is also charged with external liaising with relevant international and non-governmental organisations.²⁷⁶

Although not formally contemplated in EU documents regarding relocation/resettlement or the hotspot approach, the Italian SOPs foresee also the intervention of **EUNAVFOR Med** in relation to personal security checks and checks of personal effects.²⁷⁷ This, however, exceeds the scope and powers of the mission, as defined in its founding documents.²⁷⁸

Finally, with regard to the EU-Turkey Statement, an **EU Special Coordinator** has been nominated by the President of the European Commission (Director General Maarten Verwey) to ensure the effective implementation of the different commitments. He is assisted by a Coordination Team, charged with the strategic direction and relations with the main stakeholders. A **Steering Committee**, chaired by the Commission, with representatives of Greece, EASO, Frontex, Europol, the EC Presidency, France, Germany, and the UK, oversees the process – why France, Germany, and the UK are specifically represented, unlike other EU Member States besides Greece (as beneficiary of the scheme) is nowhere made explicit.²⁷⁹ The EU Coordinator, together with Greece, has put together a Joint Action Plan for the implementation of certain key provisions of the Statement with the objective of speeding up its application – thus insisting on shortening processing times, 'limiting appeal steps', increasing safety, security and 'detention capacities', accelerating relocation and returns, and sealing the Greek northern borders to avoid secondary movements.²⁸⁰ If fully implemented, Greece may become a pre-removal / return processing hub for the entire EU.

For those to be resettled from Turkey, the **EU Resettlement Team** coordinates assistance to Member State operations and intermediates with IOM, UNHCR, and the Turkish General Directorate for Migration Management.²⁸¹

²⁷⁵ Ninth report on relocation, COM(2017) 74, p. 11.

²⁷⁶ Neville, Sy and Rigon, *On the frontline: The hotspot approach to managing migration*, Study PE 556.942 (European Parliament, 2016), p. 27.

²⁷⁷ Italian SOPs, p. 10.

²⁷⁸ For all background documents of EUNAVFORMED Operation Sophia, see: https://eeas.europa.eu/headquarters/headquarters-homepage_en/12353/Background%20documents%20and%20legal%20basis%20-%20EUNAVFOR%20MED%20operation%20SOPHIA.

²⁷⁹ European Commission Fact Sheet, Implementing the EU-Turkey Statement – Questions and Answers, 28 September 2016, available at: http://europa.eu/rapid/press-release_MEMO-16-3204_en.htm.

²⁸⁰ Fourth report on the Progress made in the implementation of the EU-Turkey Statement, COM(2016) 792, Annex I.

²⁸¹ Ninth report on relocation, COM(2017) 74, p. 9.

4.6. The role of international organisations and NGOs

UNHCR is crucially engaged in the relocation and resettlement schemes.²⁸² Together with EASO, it typically assists in the early identification of persons in need of international protection, individuals with particular vulnerabilities (especially UAMs), and potential relocation beneficiaries.²⁸³ It is also involved in information activities in landing sites, distributing leaflets and orally.²⁸⁴ And it may conduct training activities for police officers and NGOs.²⁸⁵ It also plays an essential part assisting Turkish and EU authorities in referring cases for resettlement and supporting the development of a continuous registration mechanism of Syrians under temporary protection in Turkey, as potential candidates for resettlement.²⁸⁶

The same applies to **IOM**, which is also involved in the resettlement scheme, ensuring the logistics of operations.²⁸⁷ Within the hotspot-relocation tandem, it also assists in the provision of information (specially regarding assisted voluntary return) and the identification of vulnerable applicants, mainly potential victims of human trafficking.²⁸⁸ In addition, it ensures transportation and pre-departure cultural orientation.²⁸⁹

Although **NATO** plays no direct/official role in either the hotspots or the relocation programme, it has signed SOPs with Frontex in July 2016 for cooperation in the Aegean. This entails a 'common situational picture, early warning, surveillance activities and sharing of operational information with the Greek and Turkish Coast Guards...to continuously increase the already high detection rate and to speed up information exchange on migrant smuggling'.²⁹⁰ It can also be expected that this relation may feed the improvement of containment figures – with 'preventions of departure' from Turkey currently standing at around 400-500 weekly apprehensions, regardless of *refoulement* and right-to-leave implications.²⁹¹

4.7. Conclusions and Recommendations: The need for coordination and structured cooperation

The fact that a **host of** EU Agencies, international organisations, and other **stakeholders** have been **able to come and work together** with the Member States and the European Commission in the quest for a solution to the relocation problem is a **positive aspect of the hotspot approach**. This holds the **potential of fostering a common understanding and prompting a common solution** to the problems facing Italy and Greece as 'European problems' mandating a (truly) 'European response'.

On the other hand, the **proliferation of actors** in the hotspots and/or within the relocation process has by and large been *ad hoc*, creating **uncertainty**, especially in Greece, including

²⁸² ECRE et al., p. 48.

²⁸³ Italian SOPs, p. 4, 11, 18.

²⁸⁴ Ibid., p. 12, 17.

²⁸⁵ Ibid., p. 24-25.

²⁸⁶ Ninth report on relocation, COM(2017) 74, p. 9.

²⁸⁷ Ninth report on relocation, COM(2017) 74, p. 9.

²⁸⁸ Italian SOPs, p. 9, 11-12, 17-18.

²⁸⁹ Ibid., p. 25-26. See ECRE et al., p. 48, with regard to Greece.

²⁹⁰ Fourth report on the Progress made in the implementation of the EU-Turkey Statement, COM(2016) 792, p. 4.

²⁹¹ Ibid. On the right to leave, see Moreno-Lax, *Accessing Asylum in Europe* (OUP, 2017) ch 9.

in relation to simple, key tasks, such as the provision of initial (reliable) information on processes and outcomes.²⁹²

Uncertainty relates also to the **different roles and responsibilities of each actor**. **Without a dedicated legal framework** backing the relocation / hotspot scheme, each agency is relying on its own founding Regulation, without that, however, compensating the absence of an overarching scheme. **Frictions, contradictions, and legal vacuums** have thus emerged, with, for instance, no coverage being provided (in EU law) for EASO's role in asylum processing in Greece, and with Frontex overstepping its mandate when enrolling data in EURODAC or compiling pre-registration forms via interviews with candidates.

A **clearer apportioning of tasks and powers** would also be necessary to restore the **equilibrium between Agencies** and the **non-hierarchical spirit of the hotspot approach**. At present, there are considerable disparities between on-the-ground deployments and financial resources per Agency, hailing Frontex as 'primus inter pares'.²⁹³ The **preponderant focus** of hotspots has thus been on **migration management and swift returns, overshadowing** the **relocation** scheme. It is paradoxical that through the pre-eminence of Frontex and the emphasis on control and removal the **means-ends relationship between the hotspot approach and the relocation scheme has been inverted**. The latter has virtually disappeared from the Greek scene after the EU-Turkey Statement and the option given to Member States to instead resettle directly from Turkey.

The **lack of specific monitoring mechanisms by independent actors**, the **limited input of FRA and specialised NGOs**, makes the **whole scheme suspect and non-transparent**, as does the **lack of channels for individual challenge and judicial oversight**. The absence of remedies against crucial decisions devoid (in theory) of legal effect – including regarding nationality allocation, pre-registration, referral, and admissibility to international protection – disregards the essential impact they have on the (legal) position of applicants, depriving them of their rights to good administration and effective judicial protection (Articles 41 and 47 CFR). **By providing a binary choice** between protection or return, the hotspot approach **over-simplifies the complexities involved in status determination**, disregarding basic guarantees, and with the potential to hamper access to asylum (Article 18 CFR) and ultimately lead to *refoulement* (Articles 4 and 19 CFR).

Therefore, the '**Europeanisation**' of the **hotspot-relocation scheme** is in order – following the trend witnessed in the governance of external borders through the adoption of the EBCG Regulation – so as to re-balance representation on the ground and re-establish the equilibrium of priorities between protection and control. The rationalisation of links and functions of and between the different actors will bring clarity, transparency, and rule of law-compatibility to the system. It will serve to avoid duplication of efforts, apportion resources and responsibilities effectively, and foster trust in the scheme.

²⁹² ECRE et al., p. 15.

²⁹³ Rijpma, *The Proposal for a European Border and Coast Guard: Evolution or revolution in external border management?* Study PE 556.934 (European Parliament, 2016), p. 19.

CHAPTER 5: THE PROPOSED CHANGES TO THE DUBLIN REGULATION FOR RELOCATION

KEY FINDINGS

- The **coexistence of the relocation scheme with Dublin transfers is internally inconsistent and structurally flawed**. It leads to perverse outcomes, with incoming Dublin transfers outnumbering relocation figures, wasting resources and compounding strain on beneficiary Member States.
- The **resumption of Dublin transfers to Greece is premature and, given current reception conditions in Greece, incompatible with ECHR and EU Charter human rights standards**.
- The **consolidation of the relocation scheme** as part of the Dublin IV reform is to be **welcomed**, as it will provide continuity to the system on a permanent basis.
- On the other hand, the **fundamental shortcomings of the Dublin system remain unaddressed** in the Commission proposal, which will exacerbate the flaws that originally triggered the adoption of the relocation scheme. Maintaining the key features of Dublin will only **perpetuate deficiencies and consolidate the unfairness inbuilt into the system, contradicting the spirit of Article 80 TFEU**.
- The **new corrective allocation scheme**, if adopted as is, **will play a very small role in relieving pressure from beneficiary Member States**, because **most cases will not qualify for transfer** due to the new admissibility and security tests pre-phased to Dublin rules.
- That **Member States may choose not to participate** in the scheme **through payment of a financial contribution** is also ethically and empirically **at odds with Article 80 TFEU**.
- **A centralised system, doing away with Dublin deficiencies, would be a better investment**. It would reduce bureaucratisation, break the unfairness inherent in the 'first-country-of-entry' rule, maximise fair distribution potential, and allocate resources more effectively.
- **Whatever the course finally taken, the rights and preferences of asylum seekers must be taken into account in line with EU fundamental rights obligations and for purely practical reasons**, to diminish onward movements and recourse to coercion. Short of a system of free choice, the '**matching exercise**' developed by EASO within the relocation scheme **should be maintained**.

5.1. The coexistence of relocation with Dublin transfers

The unwillingness of certain Member States to whole-heartedly **engage in relocation** (as outlined in Chapter 2) has led the European Commission to explore alternative avenues. The strategy for the time being is to persuade countries 'in a political sense' to relocate and invite Member States to exert 'more peer pressure' on each other to that effect. But Vice-President Timmermans has also warned that 'other options' will be considered in preparation for the 10th report on relocation to be issued in March 2017.²⁹⁴ **Infringement proceedings** may thus be started against poor performers, specially considering what is really at stake – solidarity, the rule of law, and the integrity of the EU legal order in the asylum field.²⁹⁵

²⁹⁴ Read-out of the College meeting of 8 February 2017 by Frans Timmermans, First Vice-President of the EC in charge of Better Regulation, Inter-Institutional Relations, Rule of Law and the Charter of Fundamental Rights, available at: <http://ec.europa.eu/avservices/audio/audioDetails.cfm?ref=1132953&sitelang=en>.

²⁹⁵ Di Filippo, *The actions for annulment of the second relocation decision and the poor implementation of the scheme*, International Institute of Humanitarian law Policy Paper No. 2, February 2017.

In parallel, the Commission proposed the **consolidation of the relocation scheme** through a proposal for a permanent mechanism in September 2015,²⁹⁶ which has been 'absorbed' within the subsequent **Dublin IV amendment** put forward in May 2016.²⁹⁷ The key difference in design strives in the sequential, rather than cumulative application of the scheme alongside Dublin rules, as expounded below.

Indeed, the relocation Decisions do only partly derogate from Dublin arrangements. They were originally conceived of as an emergency response to an unsustainable situation, but they were not committed to permanently overhaul the Dublin regime. In fact, **relocation and Dublin transfers were supposed to occur simultaneously** if the circumstances allowed. Greece, for example, received 137 Dublin requests in 2015 and received, at least, 15 transfers, primarily from Switzerland,²⁹⁸ despite the 'systemic deficiencies' plaguing the Greek system.²⁹⁹ Italy was the second largest recipient of Dublin requests in 2015 (only after Hungary), with nearly 25,000 requests, coming mainly from Switzerland, Germany, and France. Yet, only 1.9% led to real transfers. Contrary to pronouncements of the Strasbourg Court in *Tarakhel*,³⁰⁰ several Member States (Austria, Sweden, and the UK) disregarded the requirement to obtain individual, binding assurances of treatment in line with ECHR standards, finding general conditions in Italy sufficient as such. By contrast, others (Belgium, The Netherlands) suspended all transfers due to Article 3 ECHR concerns.³⁰¹ But the **perverse end result** was eventually that, while Italy managed to relocate a limited number of applicants to other Member States, **incoming Dublin transfers by far outnumbered relocation figures**.³⁰²

Yet, the **absurdity** of giving with one hand what is taken away with the other does not appear to strike **at the heart of the European Commission plans**. On the contrary, a Recommendation of December 2016 proposes the **resumption of Dublin transfers to Greece** starting on 15th March 2017.³⁰³ While the Commission acknowledges the serious difficulties still facing the Greek system – corroborated by the Committee of Ministers of the Council of Europe overseeing the implementation of the *MSS* judgement³⁰⁴ – noting, for instance, that there are 'remaining systemic deficiencies' to be addressed, including with regard to reception and processing capacity and staffing problems, 'serious concerns' with UAMs and vulnerable applicants at large, and with the 'quality of the reception facilities [which] still fall short of the requirements [of the Reception Conditions Directive]',³⁰⁵ nonetheless, it considers that 'significant progress has been attained' in establishing the 'essential' legal and institutional structures. Thus, the recommendation to resume Dublin transfers '**gradually**' and '**on the basis of individual assurances**, taking account of the capacities for reception and treatment of applications in conformity with relevant EU

²⁹⁶ Proposal for a Regulation establishing a crisis relocation mechanism, COM(2015) 450, 9 September 2015.

²⁹⁷ Dublin IV Proposal, COM(2016) 270, 4 May 2016 ('Dublin IV Proposal').

²⁹⁸ ECRE, *Admissibility, responsibility and safety in European asylum procedures*, AIDA Report (September, 2016), p. 25, available at: <http://www.asylumlawdatabase.eu/en/content/aidaecre-report-admissibility-responsibility-and-safety-european-asylum-procedures>.

²⁹⁹ ECtHR, *MSS v Belgium and Greece*, Appl. 30696/09, 21 January 2011; CJEU, Joined Cases C-411/10 and C-493/10 *NS & ME* [2011] ECR I-13905.

³⁰⁰ ECtHR, *Tarakhel v Switzerland*, Appl. 29217/12, 4 November 2014.

³⁰¹ ECRE, *Admissibility, responsibility and safety in European asylum procedures*, AIDA Report (September, 2016), p. 26.

³⁰² *Ibid.*, p. 27.

³⁰³ Commission Recommendation of 8.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 8525, 8 December 2016.

³⁰⁴ *Ibid.*, para. 2.

³⁰⁵ *Ibid.*, paras 5, 9, 10, 12, 16-18, 19-23, 26-28, 33.

legislation' is deemed justified.³⁰⁶ The fact that the prospects of a fully functional asylum regime in the short run are utterly unrealistic, because of the 'large number of new asylum applicants...arising from the implementation of the pre-registration exercise, the continuing arrivals...and from responsibilities under the implementation of the EU-Turkey Statement', as the Commission itself avows, is not taken properly into account.³⁰⁷

Although political will alone cannot restore mutual trust without a material basis in real and effective compliance with the relevant standards in practice, this seems to be precisely the path taken by the European Commission. '**Aspirational mutual trust**' is thus gaining terrain as the principle structuring responsibility allocation and intra-EU solidarity.

5.2. Consolidating relocation: the Dublin IV proposal

The **Dublin IV proposal**, in connection with the above, contemplates the **primacy of Dublin transfers over relocation**, which is configured as a **minimalistic, emergency-driven, ex post, palliative measure** to be **actioned only as a last resort**. Whether this configuration of solidarity amounts to 'fair' sharing of responsibility as per the terms of Article 80 TFEU should thus be questioned.

Indeed, the Dublin IV provisions, as put forward by the Commission, **maintain the gist of Dublin III** as far as responsibility allocation is concerned. For the Commission, '[t]he objectives of the Dublin Regulation...remain valid' so that 'the current criteria in the Dublin system should be preserved'.³⁰⁸ Dublin remains considered 'the cornerstone of the Common European Asylum System',³⁰⁹ **despite its track record** of ineffectiveness and under-performance, which the Commission explicitly acknowledges. Indeed, while the **significant costs** of running the Dublin system have been estimated to approximate EUR 1 billion, the '**limited impact**' of Dublin III in the distribution of applicants, with '**net transfers...close to zero**' and 'incoming and outgoing requests cancel[ing] out each other', has been no bar to propose keeping the current regime.³¹⁰

The '**disproportionate responsibility placed on Member States at the external border**' is also **largely ignored**.³¹¹ What is more, retaining 'the link between responsibility in the field of asylum and...obligations in terms of protection of the external border' is considered key.³¹² So, instead of relieving burdens from peripheral Member States through the elimination of the 'first-country-of-entry' rule, the proposal not only consolidates current criteria, but also **eliminates margins of manoeuvre**, for instance, by **narrowing down the scope for recourse to the sovereignty and humanitarian clauses**,³¹³ by **eliminating deadlines to retention of responsibility for irregular entry** (the 12-month limit disappears, so that first-entry Member States retain responsibility under the new rules³¹⁴), and by **generating additional responsibilities**, through the interfacing of a **pre-Dublin admissibility stage** prior to the allocation test.³¹⁵

³⁰⁶ Ibid., para. 34 and II.9 and II.10.

³⁰⁷ Ibid., para. 33.

³⁰⁸ Dublin IV Proposal, Explanatory Memorandum, p. 3 and 4.

³⁰⁹ Ibid., p. 4.

³¹⁰ Ibid., p. 12.

³¹¹ Ibid.

³¹² Ibid., p. 14.

³¹³ Ibid., draft Art 19.

³¹⁴ Ibid., draft Art 15.

³¹⁵ Ibid., draft Art 3.

In this context, where **responsibility burdens are likely to be even less evenly distributed** than under Dublin III, Dublin IV proposes an automated system of corrective allocation, which however entrenches and deepens disparities between Member States. In fact, the mechanism will only be triggered not after 100% of capacities have been exceeded, but when an extra 50% has piled up. Again, whether this is **'fair' in the sense of Article 80 TFEU is doubtful** - even more so if the so-called 'financial solidarity clause' is examined and the nuances of the corrective allocation regime analysed in detail.

5.3. Advantages of the corrective allocation mechanism

According to EASO, the **mere existence of a relocation scheme** is to be celebrated as a **big political success**. The fact that Italy and Greece can be relieved, though limitedly, of asylum responsibilities, offering protection seekers a safe and *legal* way out of penury is an achievement.³¹⁶ By the same token, maintaining a relocation component as part of the CEAS reform should per se be welcomed – specially if it is considered that otherwise the Relocation Decisions will phase out after the September 2017 deadline, leaving the CEAS with no corrective re-distribution of protection burdens whatsoever.³¹⁷ So, the incorporation of the relocation mechanism into Dublin IV will **ensure the continuity of the scheme**.

The fact that **Dublin IV** envisages its **incorporation as a stable part of the system** (as opposed to the contingency nature of the Relocation Decisions) will contribute to **enhance certainty** and infuse some measure of **responsibility sharing on a permanent basis**. Yet, as detailed below, the main components of the proposed mechanism should be rethought to overcome the shortcomings inherent in the Dublin rules, drawing on the experience gained from the implementation of the Relocation Decisions.

5.4. Disadvantages of the corrective allocation mechanism

It is only *'after* the admissibility check' to be performed by beneficiary Member States that new applications will be allocated to another Member State. The new responsible State is one whose asylum caseload is below its capacity, as per the predefined reference key established in the draft Regulation.³¹⁸ It is envisaged that **inadmissible cases will not be transferred at all**. Instead, they will await removal from the Member State of first entry. The one key exception, as discussed in Chapter 1, are family unity assessments, which must be conducted in advance (and regardless) of inadmissibility determinations, as it would not be compatible with the human rights to family life or 'best interests' of the child to reject as inadmissible the claim of an individual with close family members in the Dublin zone.³¹⁹

According to proposed Article 3, **before applying the criteria for determination of responsibility** for examination of asylum requests, the Member State of first entry will have to determine the **admissibility of the application** according to the 'Safe Third Country' and 'First Country of Asylum' criteria of the Asylum Procedures Directive (APD). They will also have to check the foundedness of the application pursuant to the 'Safe Country of Origin' list adopted at EU level in an accelerated procedure. And they will also have to run a **security**

³¹⁶ Violeta Moreno-Lax, Telephone Interview with EU Official B (Brussels, 9 February 2017); and Violeta Moreno-Lax, Telephone Interview with EU Official C (London, 16 February 2017).

³¹⁷ It has been indicated that relocation decisions will be over after the deadline, but that transfers of adopted decisions will still take place. See Violeta Moreno-Lax, Telephone Interview with EU Official B (Brussels, 9 February 2017).

³¹⁸ Dublin IV Proposal, Explanatory Memorandum, p. 18.

³¹⁹ Concurrently: FRA, Opinion on Dublin IV Proposal, Council doc. 15313/16, 8 December 2016.

test to ascertain whether the applicant may be considered a danger to the national security or public order of the Member States. In any of these cases, if the application is adjudged to be inadmissible or unfounded, the **Member State of first application will retain responsibility** for Dublin purposes and no transfer will take place. The rationale is possibly to enhance procedural economy and avoid the transfer of applicants whose claims are likely to be rejected,³²⁰ but at the cost of increasing responsibility of first-entry countries.

No exception is made **in the context of the corrective mechanism**. Pursuant to draft Article 36(3), '[a]pplications declared inadmissible or examined in accelerated procedures in accordance with Article 3(3) *shall not* be subject to allocation' (emphasis added). Therefore, the actual **relief** that the corrective allocation mechanism may entail risks being **negligible**. Depending on how admissibility criteria are applied, many applications may be deemed inadmissible, meaning that few candidates will be eligible for relocation – even in the case of a 50% excess of capacity. The experience in Greece after the EU-Turkey Statement certainly suggests that this is likely. However, it should be borne in mind that deeming applications to be inadmissible in a blanket or generalised way (as seems to be the aim under the EU-Turkey Statement) is legally dubious, and leads to appeals and judicial reviews, creating further blockages in the system.

The **financial solidarity clause** in draft Article 37 allows Member States to '**pay not to play**' for a 12-month period under payment of EUR 250,000 per applicant they should have taken charge of.³²¹ However, the proposal fails to indicate whether renewal of suspension is admissible, how many times it can be invoked, or by how many Member States simultaneously, and it does not appear to preclude arbitrary decisions not to participate, which will not be controlled in any way. The Member State concerned needs solely 'notify' its intention not to contribute to the corrective allocation scheme, with EASO simply 'monitoring' the situation and 'reporting' to the Commission, but with no penalties or negative incentives for non-compliance beyond the solidarity sums contemplated in the draft Regulation³²² - which some Member States have already complained of and are likely to be reduced during Council negotiations.³²³ In any event, since **financial allocations alone**, as seen in the Greek experience, **cannot effectively address structural unfitness**, the conformity of this option with the spirit of Article 80 TFEU is not warranted at all. Indeed, the Greek relocation experience shows that, in times of crisis, it is difficult for a country to absorb EU funds quickly to enhance reception and processing capacities in the short to medium run. So, beside the ethical unsuitability of this clause, allowing Member States to pay their way out of intra-EU solidarity (thereby undermining the emergence of a 'Europeanised' approach to asylum management in line with Article 80 TFEU and Article 4(3) TEU), the practical incapacity of financial aid alone to operate improvements on the ground at the required pace should lead to its rejection and replacement with a clear focus on compulsory solidarity formulas – following the example, for instance, of the EBCG Regulation.

The **management of the corrective allocation mechanism**, especially during the time of crisis for which it is envisaged to operate, is too **heavily bureaucratised**.³²⁴ While it is true that activation will be automatic, as soon as the 150% ceiling has been reached, through a

³²⁰ Maiani, *The Reform of the Dublin III Regulation*, Study PE 571.360, (European Parliament, 2016), p. 31.

³²¹ *Ibid.*, p. 34.

³²² Dublin IV Proposal, p. 19.

³²³ See Council doc. 12724/16, 4 October 2016, para. 8; Council doc. 14708/16, 28 November 2016, para. 4; and Amendment 10, Committee of the Regions Opinion, Council doc. 15635/16, 19 December 2016: '...the amount of the contribution should be set at a level that is fair and sustainable, so as not to exacerbate public opinion, and lead to certain Member States rejecting the very principle of solidarity out of hand', the Committee of the Regions thus proposes a reduction to EUR 60,000.

³²⁴ For a similar perception of the management of the relocation scheme, see Violeta Moreno-Lax, Telephone Interview with EU Official C (London, 16 February 2017).

system that will monitor capacities on a weekly basis,³²⁵ **transfer of qualifying cases will not be immediate**. Relevant information is supposed to be exchanged *first*. The benefiting Member State shall transmit fingerprint data for **security verification** by the allocated Member State. If the check reveals 'serious reasons' for an applicant to be considered a threat, he/she will remain in the benefitting Member State, to whom responsibility in Dublin terms will revert.³²⁶ The practical experience with relocation to date suggests that national security objections can seriously hamper relocation, and lead to asylum seekers whose ostensible threat to national security is not clarified. Without further elaboration of both the substantive and procedural rules for security screenings, the proposal risks becoming unworkable. Leaving the '**serious reasons**' on which transfers may be rejected **undefined** will reproduce the uncertainties deriving from the security screenings provided for in the Relocation Decisions, with the potential to undermining the functioning of the scheme on indeterminate grounds.³²⁷

The fact that **costs of allocation transfers** will **not** be **centralised** also risks causing problems. In a situation in which benefiting Member States will be experiencing a 50% excess on their assumed capacities, a **system of advance payment** as contemplated in draft Article 42 is likely to **strain resources further and compound delays**.

It remains unclear how reference numbers will be calculated. That they will be determined in accordance to a fixed reference key, as per proposed Article 35, taking account of objective factors, such as total population and total GDP, may contribute to fairness – although other corrective elements, as those used within the Relocation Decisions, including territory and joblessness rates would have also helped. Yet, it is not immediately apparent what the 'application' of that key 'to the total number of applications as well as the total number of resettled persons that have been entered in the respective Member State responsible in the automated system during the preceding 12 months' will entail. Whether fluctuation in stock and flow data will also be taken into account is also not stated, which could lead to different (more or less fair) outcomes. In a previous study by the research team, it was concluded that different distribution key models (taking more or less factors into account) did not have a significant impact on final allocation quotas.³²⁸ The essential point is that the 'application' of the key to Member State capacities is administered at EU level to guarantee fairness and neutrality and minimise Member State disagreement and politicisation.

At the more operational level, the fact that the **automated system does not yet exist**, that it will be operated by EU-LISA (the EU agency in charge of large IT systems in the field of home affairs),³²⁹ but that responsibility for entering and adapting the reference key will fall on EASO, on the basis, however, of data provided by the asylum authorities of the Member States and EUROSTAT, may prove challenging.³³⁰ There is **no clear hierarchy or coordination strategy indicated** in the draft Regulation between the actors concerned. A more centralised organisation in the hands of the Commission or EASO itself (or the future EU Asylum Agency) may improve the workings of the system.

Finally, and most importantly, the Dublin IV model does **not** appear to **factor in the preferences of asylum seekers** for the Member State of allocation in any way. **Breaking**

³²⁵ Dublin IV Proposal, draft Arts 34 and 36.

³²⁶ *Ibid.*, draft Art 40.

³²⁷ Violeta Moreno-Lax, Telephone Interview with EU Official B (Brussels, 9 February 2017); and Violeta Moreno-Lax, Telephone Interview with EU Official C (London, 16 February 2017).

³²⁸ Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Study PE 519.234 (European Parliament, 2015).

³²⁹ Dublin IV Proposal, draft Art 44.

³³⁰ *Ibid.*, draft Arts 45 and 35.

away from the 'matching' test undertaken as part of the relocation scheme – and on which EASO is investing hugely for its refinement and further enhancement (including through the development of an online platform)³³¹ – the corrective mechanism does not contemplate any input at all on the part of the asylum seeker. There is equally **no indication of specific appeal rights against (random) allocation decisions** – draft Article 38 merely provides that the benefiting Member State must 'notify without delay' the decision to transfer and 'transfer the applicant' within 4 weeks from the final transfer decision. Drawing from experience with the relocation scheme, **denying asylum seekers agency and voice undermines trust and cooperation with the system, exacerbating disengagement, and increases rates of onward movement.**³³²

Regrettably, the **Dublin IV proposal consolidates, in a manner likely to lead to human rights violations, a punitive coercive approach**, in particular to onward movement. Asylum-seekers must apply in the responsible Member State under pain of reduction or elimination of reception conditions and procedural rights.³³³ In contrast, EASO itself acknowledges the advantages of taking account of relocation candidate preferences as a method that maximises integration chances and enhances trust in the system, as demonstrated by the use and development of the 'matching' system. That asylum seekers cannot choose the country of destination is one 'main problem' in the current relocation scheme.³³⁴

5.5. Conclusions and Recommendations: Alternatives to the envisaged scheme

Unless the system of relocation is **made operationally binding, it will not work.**³³⁵ As long as Member States are permitted multiple ways to avoid or evade their obligations, it will be frail. Depending on national pledges of available places, maintaining amorphous security grounds, and possibly allowing an opt-out from through financial contributions are likely to render relocation ineffective in practice.

A **centralised organisation** of the overall Dublin regime, including through the collection of applications at Union level and a central distribution of responsibility by EASO (or its successor Asylum Agency) would contribute to the rationalisation of the system, reducing bureaucratisation, duplication of efforts, and waste of procedural and material resources. **Pre-Dublin admissibility and security checks** could then be **eliminated, with direct allocations of responsibility according to predetermined distribution rates.** This would concretise relocation as an *ex ante* element of responsibility allocation, rather than as an *ex post*, emergency-driven, corrective tool as currently designed, diminishing the odds of a crisis developing and addressing the structural unfairness inbuilt in the 'first-country-of-entry-rule' system - whereby responsibility attaches to geographical proximity to the external borders of the EU - in favour of **better alignment with Article 80 TFEU.** Such a system would overall better reflect the European character of the *Common European Asylum System* to which Dublin belongs.

Our choice for a centralised structure is not ideologically motivated, but empirically grounded. The general experience with responsibility-sharing for refugees (globally and in Europe) suggests that centralisation is not inherently superior to *ad hoc* mechanisms for responsibility-sharing. Instead, both approaches may have a role to play; in some instances

³³¹ Violeta Moreno-Lax, Telephone Interview with EU Official C (London, 16 February 2017).

³³² Violeta Moreno-Lax, Telephone Interview with EU Official B (Brussels, 9 February 2017).

³³³ Dublin IV Proposal, draft Arts 4 and 5.

³³⁴ Concurrently: Violeta Moreno-Lax, Telephone Interview with EU Official B (Brussels, 9 February 2017).

³³⁵ Ibid.

(where a crisis response is needed to address a particularly urgent refugee situation) a 'hybrid' model with both centralized and *ad hoc* elements is likely to be the most effective.³³⁶ However, in the supra-national, constitutionalised, institutionally-dense context of the EU, **enhanced coordination and common detailed rules are necessary** to foster a **harmonised approach and a common understanding** of the problem and the solutions required to face them. The non-political administration of the scheme in the hands of a common institution is also likely to be more effective, provided that local support for the arrivals of asylum seekers can be harnessed to sustain the system.

Otherwise, if the current configuration (or close variations) of the Commission proposal is maintained, one key element to be amended, if the system is to work, concerns the **input of asylum seekers in relocation decisions**. Their rights and preferences must be properly heeded in line with **EU Charter guarantees**. Therefore, short of a 'free choice' mechanism, the EASO 'preference matching' tool should be preserved and expanded. Ignoring rights and interests of asylum seekers and refugees contributes to the coercive approach, which not only leads to human rights violations (in particular in the form of arbitrary detention), but is also counter-productive, as the experience in Italy and Greece demonstrates.

³³⁶ See, generally, Betts, Costello & Zaun 'A Fair Share': Refugees and Responsibility-Sharing (Paper Prepared for DELMI, 2017, *forthcoming*).

CHAPTER 6: DEFINING THE BASE FOR EFFECTIVE RELOCATION: A RIGHTS-BASED, DIGNITY-ORIENTED APPROACH FOLLOWING THE 'DUBLIN WITHOUT COERCION' PARADIGM

KEY FINDINGS

- In the relocation of asylum seekers, **reunification of family members must always take priority over relocation** elsewhere;
- **The preference of the asylum seeker should be the first priority of any relocation system**, as this favours integration and reduces onward movement. Only if this preference cannot be reasonably accommodated should other options be considered.
- **The voluntary sector must be fully involved in assisting asylum seekers in considering their options regarding relocation** and making informed choices.
- **A clearing-house approach to relocation could be useful** where offers and choices can be matched to achieve the best outcomes for both asylum seekers and Member States.
- Whatever the system finally retained, the **key tenets of the 'Dublin without coercion' model must be respected**, taking full account of asylum seekers agency and dignity.

The Dublin IV proposals described in the preceding Chapter seek to create a corrective mechanism to distribute asylum seekers around the EU in a manner consistent with the distribution key which takes into account population size and GDP.

Yet, this study urges that **relocation** under the distribution key **should only be pursued when reunion on the basis of family links has been fully exhausted**. Within the Dublin system, the **take-charge provisions should have priority over relocation**, as the ultimate objective of the process to guarantee international protection is delivered successfully and the outcomes in the Member States are optimal. Family members have the greatest interest in ensuring that newly arriving family members integrate successfully in the host Member State. The set backs of family members are a matter of concern and disappointment of the whole extended family. Further, the importance of family members in work to finding employment for new arrivals must never be underestimated. Of course, in Member States with historically low unemployment levels this is less of a concern than in those Member States with higher joblessness levels. Friends and family willing to assist people to find jobs or make a success of self-employment is often key to economic integration. Thus, even for practical reasons, this study recommends to the EU institutions to invest substantial resources and efforts in ensuring the widest use of family reunification in the relocation of asylum seekers. This entails a wide definition of family members among those sponsoring and those being relocated. It also means providing real assistance to asylum seekers subject to relocation, to find where their family members are. The Red Cross has extensive experience in family tracing and could be engaged in the process to this effect.

Only once family links as a basis for relocation have been fully explored and exhausted, should a wider relocation system be brought into play. As explained in Chapters 2 and 3, many asylum seekers who have arrived in Greece and Italy and got stuck there would be willing to move anywhere where they would have at their disposal decent living conditions and the chance of making a new life. Thus, two things are key to making the Dublin IV relocation provisions workable. Above all, asylum seekers need **reliable and accurate information about the living conditions and integration possibilities** for them in the proposed relocation State. The **engagement of civil society is key** in making relocation

work properly in this regard. The research team considers that non-governmental organisations, educational bodies, and religious institutions all have a role to play in making a success of relocation. When they are actively involved in relocation, they can play a central role in providing information to asylum seekers, which is not tainted by the possible suspicion of State or EU institutional interests. Further, people who do not have State functions in the asylum determination system, but are charged with an exclusive task of assisting the integration of asylum seekers, are well placed to act as a bridge between State and EU officials and asylum seekers. These bodies should be fully integrated into the relocation process.

As the **active participation of asylum seekers is an essential part of making relocation effective and durable**, it is important to make available to asylum seekers as much information as possible, provide counselling on the relocation process, and assist them to make informed decisions about their lives, rather than handing down decisions on relocation where they have had no involvement in the process. Engagement and participation in the relocation decision-making process is critical, as **it enhances integration potential, fosters cooperation and mutual trust, and reduces the chances of onward movement**. The Dublin IV proposal should include concrete measures to **prioritise the choices of asylum seekers** regarding relocation and provide for practical steps to ensure that asylum seekers can take fully informed decisions with the involvement of civil society. Where it is not possible to accommodate asylum seekers choices of relocation, this needs to be fully explained to them together with the reasons why it is not possible to accommodate those reasonable preferences. If the reason is a temporary one, which is likely to be resolved quickly, the asylum seeker should have the option of awaiting the imminent opening of relocation places in the Member State of his or her first choice. A time limit may be placed on that waiting period, so that people do not end up waiting years for relocation.

The establishment of a **clearing-house system**, as many Member States have for young people seeking university places, may be an idea worth pursuing. Successful examples of Member State allocation of supply and demand in socio-educational situations deserve attention, as effective mechanisms to accommodate the reasonable demands of prospective students seeking higher education **on the basis of dignity and respect**. These same principles can and should be applied to asylum seekers within the relocation system.

In any event, **coercion should always be avoided** in relocation schemes. The more asylum seekers are coerced into accepting choices which they have not made themselves and in respect of which they have not been consulted, the less likely the relocation system will deliver in the longer term. The willingness of people to make a go of a new situation always depends on the extent to which they consider that they have participated in choosing the situation. This is as true of asylum seekers as anyone else. The use of coercion risks leading to failure and resentment and requires a much greater degree of effort, resources, and public spending on the part of the receiving community to reconcile the reluctantly relocated asylum seeker to the benefits of his or her new home. The **key tenets of the 'Dublin without coercion' model**,³³⁷ taking full account of asylum seekers agency and dignity, **should be incorporated into any replacements of the Dublin III Regulation and Relocation Decisions**.

³³⁷ Guild et al., *New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International*, Study PE 509.989 (European Parliament, 2014); and Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Study PE 519.234 (European Parliament, 2015).

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APPENDIX I: METHODOLOGY

To understand better the **role of receiving states** in relocation, the research team conducted a survey and – where possible – follow-up semi-structured interviews with national contact points and pertinent NGOs, referred to us by ECRE as working on relocation in the Member States. If actors preferred this, the researchers also gave them the opportunity to respond to the interview immediately without responding to the survey previously to ensure a better response rate. The survey questionnaire was sent to the national contact points through EASO. Given time constraints, the response rate from national contact points was relatively low with 33,3% (9 in 27 national contact points responded). However, the low response rate may also be symptomatic of the lack of political commitment to relocation. In contrast, ten out of eleven NGOs the research team contacted initially responded. Yet, only seven felt they were expert enough on the issue to talk to us in an interview or answer the survey questions. The remaining contact points referred us to NGOs to us that they felt had greater expertise in the area. Given time constraints the research team were only able to conduct five interviews. All interviews were anonymised. The findings were also complemented by secondary sources – NGO and press reports as well as scholarship.

In **Greece**, twenty key stakeholders were identified to participate in the survey but due to time constraints, limited human resources and busy schedule of officials, there was a limited access to resources. The spoken languages were Greek and English. A survey was sent to all actors, with a response rate of 20% (5 actors). In addition, semi-structured telephone interviews were held with 1 representative of UNHCR Greece, 1 official of the Greek Ministry of Interior, 1 independent humanitarian advisor, 2 representatives from NGO sector. The research team also received feedback from 1 coordinator of a refugee center and 3 asylum seekers awaiting to be relocated, and provided summaries of these discussions, duly anonymised.

In **Italy**, fifteen actors were identified among Italian and EU institutions, international organisations, NGO networks directly or indirectly involved in the relocation procedure there.³³⁸ Key stakeholders were invited to participate in semi-structured interviews (of approximately an hour). Four interviews were conducted individually or in small groups by phone or on Skype.³³⁹ One interview was conducted in person and seven respondents provided written inputs. Three actors declined the invitation.³⁴⁰ Written consent to be interviewed was requested and obtained from all named respondents. In addition to interviews, relevant information on relocation obtained in an informal meeting of NGO networks, held in Rome during the first half of February 2017.

Feedback on the problems on the ground collected from a group of eligible asylum seekers who left their reception centres between January and February 2017 and moved to Rome in the attempt to fast-track their relocation. Ten asylum seekers, all young male Eritrean nationals hosted in Rome by the Red Cross, agreed to release an unstructured group interview on 18 February 2017, in the presence of two interpreters speaking Tigrinya, Arabic and Italian. The interview lasted four hours and all information was collected in Italian, anonymised and translated into English. Experiences and difficulties reported by these applicants complete this overview on the first year of implementation of the relocation procedure in Italy.

The official EU reports and documents were also complemented by a set of semi-structured interviews with **key EU officials** in pertinent institutional roles.

³³⁸ Namely one institutional actor, one EU agency, two international organisations and eleven NGOs.

³³⁹ Two of them were anonymised upon request.

³⁴⁰ In total, nine complete interviews were collected, while written input by three of whom responded answering only a marginal number of survey questions were taken into consideration within the analysis of findings.

APPENDIX II: LIST OF INTERVIEWS/SURVEY/OTHER ORIGINAL DATA

- Christina Velentza, Telephone Interview with Official A (Athens, 15 February 2017).
- Christina Velentza, Written Interview with Fotini Rantsiou, Independent humanitarian advisor (Athens, 17 February 2017).
- Christina Velentza, Telephone Interview with Refugee Center Coordinator (Athens, 10 February 2017).
- Christina Velentza, Written Interview with NGO Official B (Athens, 21 February 2017).
- Christina Velentza, Written Interview with NGO Official C (Athens, 21 February 2017).
- Christina Velentza, Summary of interviews with asylum seekers in refugee reception center eligible for relocation (Athens, 8-10 February 2017).
- Daniela Vitiello, Face-to-Face Interview with Simona Spinelli, Head of Dublin Unit of the Italian Ministry of the Interior – DU (Rome, 8 February 2017).
- Daniela Vitiello, Skype Interview with Valeria Gerace, Save The Children – STC (Rome, 16 February 2017).
- Daniela Vitiello, Summary of a group interview with asylum seekers eligible for relocation (Rome, 18 February 2017).
- Daniela Vitiello, Telephone Interview with Christopher Hein and Elisa Maimone, Italian Refugee Council – CIR (Rome, 15 February 2017);
- Daniela Vitiello, Telephone Interview with Flavia Calò, Medici per i diritti umani – MEDU (Rome, 16 February 2017);
- Daniela Vitiello, Telephone Interview with Officials A and B, United Nations High Commissioner for Refugees – UNHCR (Rome, 16 February 2017).
- Daniela Vitiello, Unofficial Summary of a meeting with NGO networks on relocation challenges in Italy (Rome, 9 February 2017).
- Daniela Vitiello, Written Interview with Caterina Bove, Associazione per gli Studi Giuridici sull'Immigrazione – ASGI (Rome, 21 February 2017);
- Daniela Vitiello, Written Interview with Niccolò Ferrucci, Baobab Experience – BE (Rome, 14 February 2017);
- Daniela Vitiello, Written Interview with Official C, Médecins Sans Frontières – MSF (Rome, 21 February 2017);
- Daniela Vitiello, Written Interview with Valentina Brinis, A buon diritto – ABD (Rome, 9 February 2017);
- E-Mail, NGO B, 16 February 2017.
- Natascha Zaun, Skype Interview with NGO A, (Oxford, 13 February 2017).
- Natascha Zaun, Telephone Interview Official A, (Oxford, 14 February 2017).
- Natascha Zaun, Telephone Interview with NGO C, (Oxford, 20 February 2017).
- Natascha Zaun, Telephone Interview with NGO C, (Oxford, 20 February 2017).
- Survey NGO E, 20 February 2017.
- Survey Official B, 15 February 2017.
- Survey, NGO D, 20 February 2017.
- Survey, Official C, 20 February 2017.
- Survey Official D, 3 March 2017.
- Survey Official E, 2 March 2017.
- Survey Official F, 3 March 2017.
- Survey Official G, 6 March 2017.
- Survey Official H, 28 February 2017.
- Violeta Moreno-Lax, Interview with EU Official A (Brussels, 9 February 2017).
- Violeta Moreno-Lax, Telephone Interview with EU Official B (Brussels, 9 February 2017).
- Violeta Moreno-Lax, Telephone Interview with EU Official C (London, 16 February 2017).

ANNEX I: RELOCATING MEMBER STATES

Table 5: Asylum seekers relocated in relation to responsibility

Member State	Asylum-seekers relocated	Remaining places from the 160,000	Total responsibility	Percentage responsibility fulfilled	of
Austria	0	1953	1953	0.0%	
Belgium	206	3606	3812	5.4%	
Bulgaria	29	1273	1302	2.2%	
Croatia	19	949	968	2.0%	
Cyprus	65	255	320	20.3%	
Czech Republic	12	2679	2691	0.4%	
Estonia	78	251	329	23.7%	
Finland	919	1159	2078	44.2%	
France	2696	17018	19714	13.7%	
Germany	1349	26187	27536	4.9%	
Hungary	0	1294	1294	0.0%	
Ireland	241	359	600	40.2%	
Latvia	197	284	481	41.0%	
Lithuania	229	442	671	34.1%	
Luxemburg	226	331	557	40.6%	
Malta	80	51	131	61.1%	
Netherlands	1274	4673	5947	21.4%	
Poland	0	6128	6128	0.0%	
Portugal	922	2029	2951	31.2%	
Romania	558	3622	4180	13.3%	
Slovakia	9	893	902	1.0%	
Slovenia	124	443	567	21.9%	
Spain	745	8578	9323	8.0%	
Sweden	39	3727	3766	1.0%	
Norway	493	502	995	49.5%	
Switzerland	368	712	1080	34.1%	
Liechtenstein	10	0	10	100%	

Source: European Commission, 'Member States' Support to Emergency Relocation Mechanism' (as of 25 January 2017), available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf.

¹ Ireland has opted into the relocation scheme.

² Norway, Liechtenstein and Switzerland have established bilateral agreements according to Article 11 of the Council Decisions and joined the relocation scheme. As part of these commitments Norway has formally pledged 995 places, Switzerland 1080 and Liechtenstein 10. In the case of these countries the pledges represent the maximum numbers these states are responsible for.

Table 6: Pledges made in relation to responsibility

Member State	Pledges	Responsibility	Pledges in relation to responsibility
Austria	0	1953	0.0%
Belgium	530	3812	13.9%
Bulgaria	400	1302	30.7%
Croatia	46	968	4.8%
Cyprus	140	320	43.8%
Czech Republic	50	2691	1.9%
Estonia	210	329	63.8%
Finland	1420	2078	68.3%
France	4170	19714	21.2%
Germany	5250	27536	19.1%
Hungary	0	1294	0.0%
Ireland ¹	514	600	85.7%
Latvia	394	481	81.9%
Lithuania	550	671	82.0%
Luxemburg	270	557	48.5%
Malta	99	131	75.6%
Netherlands	1525	5947	25.6%
Poland	100	6128	1.6%
Portugal	1618	2951	54.8%
Romania	1702	4180	40.7%
Slovakia	30	902	3.3%
Slovenia	180	567	31.7%
Spain	900	9323	9.7%
Sweden	50	3766	1.3%
Norway ²	995	995	100.0%
Switzerland ²	1080	1080	100.0%
Liechtenstein ²	10	10	100.0%

Source: All numbers used are based on the European Commission's *Member States' Support to Emergency Relocation Mechanism* (as of 25 January 2017).

¹ Ireland has opted into the relocation scheme.

² The associated Member States Norway, Switzerland and Liechtenstein agreed to relocate asylum-seekers through bilateral arrangements according to Article 11 of the Council Decision and joined the relocation scheme. However, they were not allocated places as part of a distribution key. Instead they could pledge places. Therefore, pledges and responsibilities are equal for these countries.

Table 7: Relocations from Italy

Member State	Responsibility Italy	Relocated Italy	Percentage relocated Italy
Austria	1201	0	0.0%
Belgium	1411	29	2.1%
Bulgaria	551	0	0.0%
Croatia	586	9	1.5%
Cyprus	140	10	7.1%
Czech Republic	1184	0	0.0%
Estonia	491	0	0.0%
Finland	787	359	45.6%
France	7175	282	3.9%
Germany	9346	455	4.9%
Hungary	496	0	0.0%
Ireland ¹	N/A	0	N/A
Latvia	378	9	2.4%
Lithuania	403	0	0.0%
Luxemburg	278	61	21.9%
Malta	192	46	24.0%
Netherlands	2166	380	17.5%
Poland	2802	0	0.0%
Portugal	1421	271	19.1%
Romania	1627	45	2.8%
Slovakia	666	0	0.0%
Slovenia	379	23	6.1%
Spain	4514	144	3.2%
Sweden	1402	39	2.8%
Norway	N/A	415	N/A
Switzerland	N/A	340	N/A
Liechtenstein	N/A	0	N/A

Sources: European Commission, 'Press Release: European Commission makes progress on Agenda on Migration', 27 May 2015, available at: http://europa.eu/rapid/press-release_IP-15-5039_en.htm. Council Decision 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, p. 39-40, available at: <http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>.

¹ Numbers on the individual responsibilities of Ireland are missing.

² Numbers on the commitments made by Norway, Switzerland and Liechtenstein vis-à-vis Italy and Greece are missing.

Table 8: Relocation from Greece

Member State	Responsibility Greece	Relocated Greece	from	Percentage Greece	relocated
Austria	2014	0		0.0%	
Belgium	2463	177		7.2%	
Bulgaria	901	29		3.2%	
Croatia	746	10		1.3%	
Cyprus	184	55		29.9%	
Czech Republic	1782	12		0.7%	
Estonia	452	78		17.3%	
Finland	1324	560		42.3%	
France	12794	2414		18.9%	
Germany	16711	894		5.3%	
Hungary	331	0		0.0%	
Ireland ¹	N/A	241		N/A	
Latvia	428	188		43.9%	
Lithuania	529	228		43.1%	
Luxemburg	332	165		49.7%	
Malta	173	34		19.7%	
Netherlands	3849	894		23.2%	
Poland	4965	0		0.0%	
Portugal	1971	651		33.0%	
Romania	2633	513		19.5%	
Slovakia	945	9		1.0%	
Slovenia	463	101		21.8%	
Spain	7986	601		7.5%	
Sweden	2425	0		0.0%	
Norway ²	N/A	78		N/A	
Switzerland ²	N/A	28		N/A	
Liechtenstein ²	N/A	10		N/A	

Sources: European Commission, 'Press Release: European Commission makes progress on Agenda on Migration', 27 May 2015, available at: http://europa.eu/rapid/press-release_IP-15-5039_en.htm. Council Decision 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, p. 39-40, available at: <http://data.consilium.europa.eu/doc/document/ST-12098-2015-INIT/en/pdf>.

¹ Numbers on the individual responsibilities of Ireland are missing.

² Numbers on the commitments made by Norway, Switzerland and Liechtenstein vis-à-vis Italy and Greece are missing.

Figure 3: Top 10 relocators and their performance

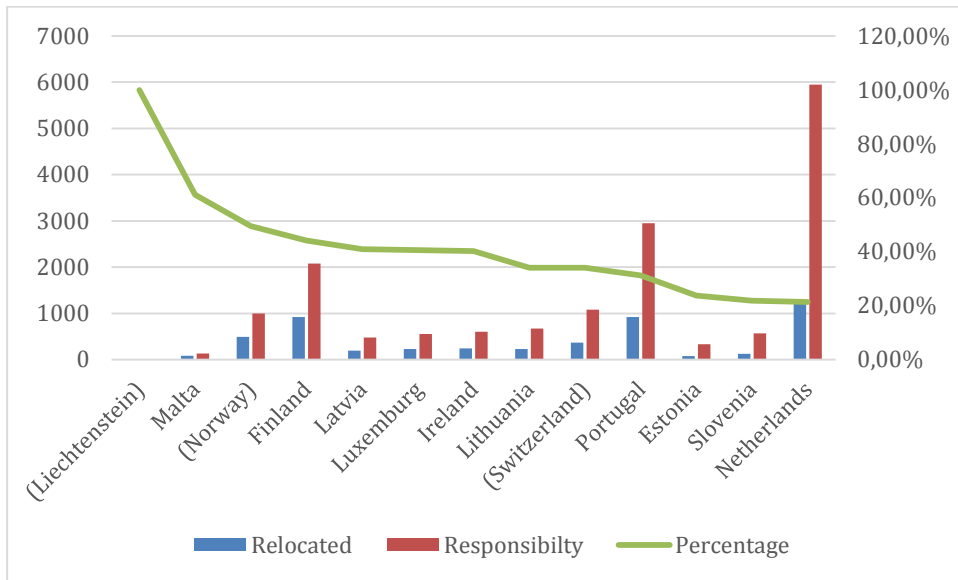
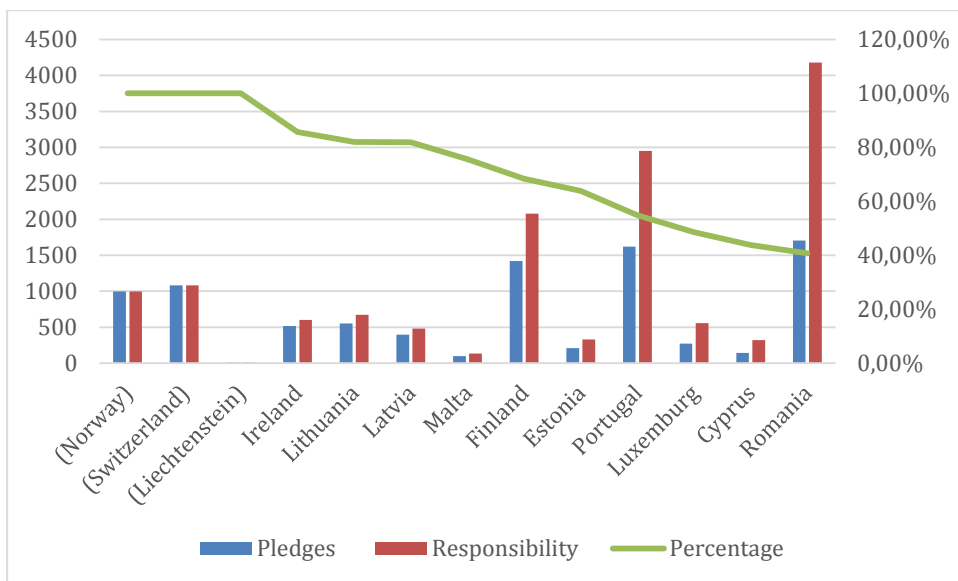


Figure 4: Top ten pledgers



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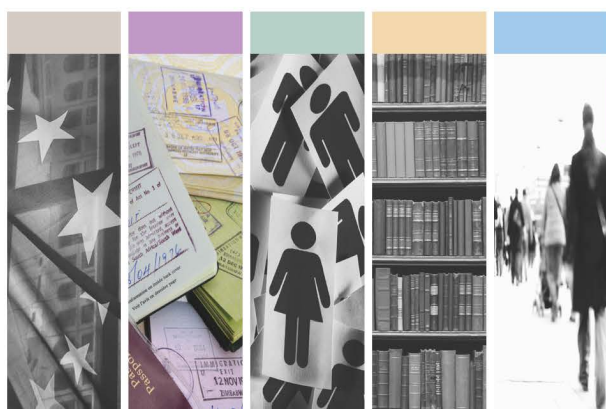
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ISBN 978-92-846-0738-9 (paper)
ISBN 978-92-846-0739-6 (pdf)

doi: 10.2861/70889 (paper)
doi: 10.2861/389341 (pdf)