

# Bachelor final project

## The position of the Dublin Regulation within a Common European Asylum System

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## **Executive summary**

Following the creation of a Schengen area, Member States agreed to create for a mechanism that would assign responsibility of asylum applications lodged within the area towards a sole Member State. This mechanism has become known as the Dublin Regulation. As a basic rule, the first Member State that an asylum seeker enters, is deemed responsible to handle its request for asylum. Supporting the execution of the regulation, the Eurodac computer database registers all fingerprints of asylum seekers and recognises when and where the asylum seeker has been registered before. The Dublin Regulation works effectively but leads to unforeseen practices due to the lack of harmonisation of national asylum policies and an unequal distribution of asylum seekers. Although Reception Conditions Directive 2003/9/EC, the Qualification Directive 2004/83/EC and, the Procedures Directive 2005/85/EC were created to the purpose of further harmonisation, Member States fail to show solidarity towards the minority of states that struggle with a majority of asylum seekers that enter EU territory. Plans were created for a Common European Asylum System. The system is to lead to the provision of a uniform asylum procedure and a similar form of protection within Europe. The set deadline of 2012 is unlikely to be met as Member States lack political will to transfer any of their national powers to the EU level. While asylum procedures and reception conditions greatly differ among Member States, asylum seekers try to reach for the countries that can offer them the best changes of asylum and reception facilities. Upon being send to another Member State under the Dublin Regulation, some asylum seekers rather prefer to live an illegal live than being send back to a country where they are offered less than the minimum standard. Member States should realize their role in adding to the suffering of asylum seekers that enter the EU and consequently enhance their efforts to accomplish the Common European Asylum System. In the meantime, as long as Member States cannot agree on steps leading to more solidarity, it will be necessary to have some sort of mechanism that assigns responsibility of dealing with an asylum application. The Dublin Regulation then is unlikely to be abolished during the development of a future common asylum system.

## **Preface**

From the beginning of February up till the end of May 2012 I have been given the opportunity to work within the Dutch Council for Refugees team at the Ter Apel Application Centre. During this period I came to know the Dutch asylum procedure both in theory and practice. Besides, I became informed on the Dublin Regulation that assigns responsibility for an asylum request to a single European Member State. Never before had EU law become so close to me as when I was explaining the consequences of this Regulation to newly-arrived asylum seekers that were indicated to fall under its workings. The personal stories of asylum seekers, their fears and worries of being send back to a country they did not head for, have been a strong motivation to research the Dublin Regulation and its likeliness to remain part of the Common European Asylum System.

Special thanks go to IND employee Mr. Brinkman from the Dublin claim kamer for referring me to Mr. Velders from the IND Dublin Unit Zevenaar in order to have all my questions answered. Moreover, I would like to thank Monica of the Dublin claim kamer for her enthusiasm and IND Immigration officer Mr. Gert Wobbles for introducing me into the topic of a common European asylum system. Special thanks also to Mr. Riemer Veltkamp and his colleague Maaïke of the Aliens Police for having me during the intakes of newly arrived asylum seekers and showing me the Eurodac fingerprint database system.

## Introduction

The Dublin Regulation is a frequent topic of debate within the Dutch Council for Refugees team of the Ter Apel Asylum Application Centre. As a tool for assigning the responsibility of an asylum application towards a single Member State it is a Regulation that works effectively but often puts a cross through peoples' dreams and hopes for building a new life in the European country of their choice. Cases are known of asylum seekers trying to hide proof of their travel route or persons that mutilate their fingers so as to hinder the Dutch authorities to recognise their fingerprints being taken in another Member State before. The Dublin Regulation then leads to distress among asylum seekers many trying to find ways to escape from its workings. While the Dutch Immigration and Naturalisation Service stresses their success in finding Dublin indications early on in the asylum circuit and handling relevant cases effectively (C. Velders, personal interview, April 3, 2012), the Dutch Council for Refugees points out the danger of violating Human Rights, the inequalities between Member States when it comes to assigning a refugee status and, a lack of solidarity as to the number of applications Member States have to deal with (VluchtelingenWerk). ***Consequently, this report states the political reality of the Dublin Regulation and discusses whether the Regulation can be expected to remain part of the future Common European Asylum System (CEAS).***

The first chapter includes an introduction to the topic of asylum and the Dublin Regulation and answers the question as to what purpose and aim the Dublin Regulation has been created. Chapter two of the report starts with a reflection on the different position Member States have within the Dublin system and offers a description on how the Regulation is being implemented within The Netherlands. Some practical difficulties are signalled including those made by the European Commission in its evaluation report of 2007. The chapter concludes with a description of measures as proposed by the European Commission to the purpose of a revised Dublin Regulation. The third and final chapter discusses the position of the Regulation within the Common European Asylum System and is followed by a final conclusion on the researchers' main question and a recommendations' section. Upon completion of the report an in-depth interview has been held with Mrs. Karina Franssen, policy advisor of the Dutch Council for Refugees. Following the results of this interview, chapter 7 reflects the official stance of the assignment providers' organisation on the topic of the Dublin Regulation and a CEAS.

## Research method

To the purpose of acquiring a balanced view on how the Dublin Regulation has been implemented in The Netherlands and how it is positioned within a Common European Asylum System several

methods have been used. Next to extended desk research, in-depth interviews and observations have been carried out. The interviews have been held with professionals in the field of asylum and are a reflection of the parties involved during the asylum procedure. Interviews have been held with Mr. Velders from the IND Dublin Unit Zevenaar, with asylum lawyer Mrs. Eleveld and, with policy officer Mrs. Karina Franssen from the Dutch Council for Refugees. The transcripts of these interviews are to be found in the appendixes to this report [*for privacy reasons these appendixes have been left out for the version as published in the HBO Knowledge Bank.*]. Observation took place at the Ter Apel Application Centre on March 14, 2012. The intake procedure of newly arrived asylum seekers as carried out by the Aliens Police has been observed. During the same day, an observation of employees from the Dublin claim kamer<sup>1</sup> carrying out their tasks took place.

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<sup>1</sup> The Dublin claim kamer or as mentioned later on in the text, Dublin office, has been created as of July 2011 and aims to quicken the creation of claims under the Dublin Regulation.

## 1. Purpose and aim of the Dublin Regulation

Starting from the eighties of the past century, European Member States have been receiving fluctuating numbers of asylum requests. Illustration 1.1 shows the exact number of asylum applications per year up till 2006. It can be noted that the year 1992 shows a peak of over 650.000 asylum applications being lodged whereafter the number of asylum applications sharply decreases. A second peak can be seen for the year 2002 with a little bit less than a total of 400 000 asylum applications. In short, total applications for Europe in the eighties and nineties of the twentieth century ranged from 150.000 up till a little less than 700,000 per year.

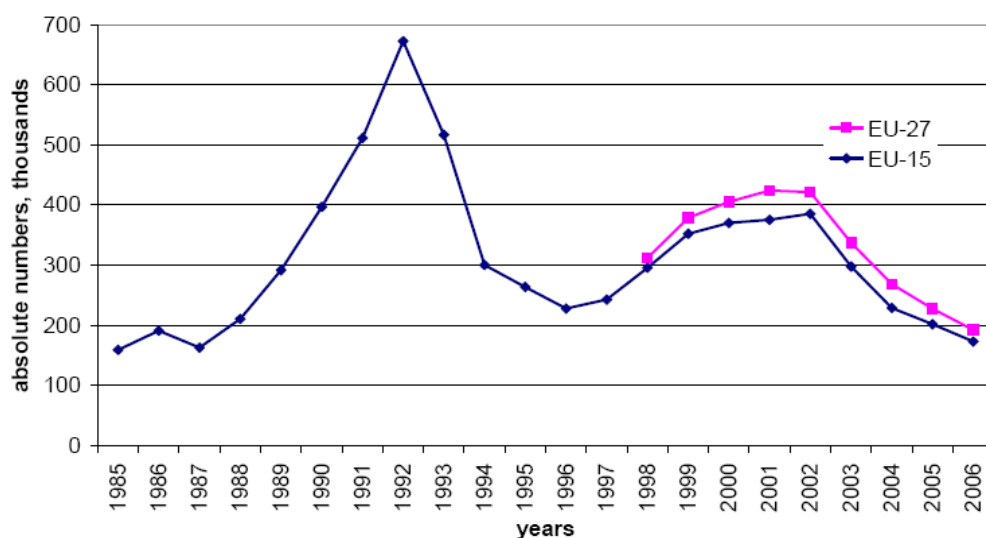
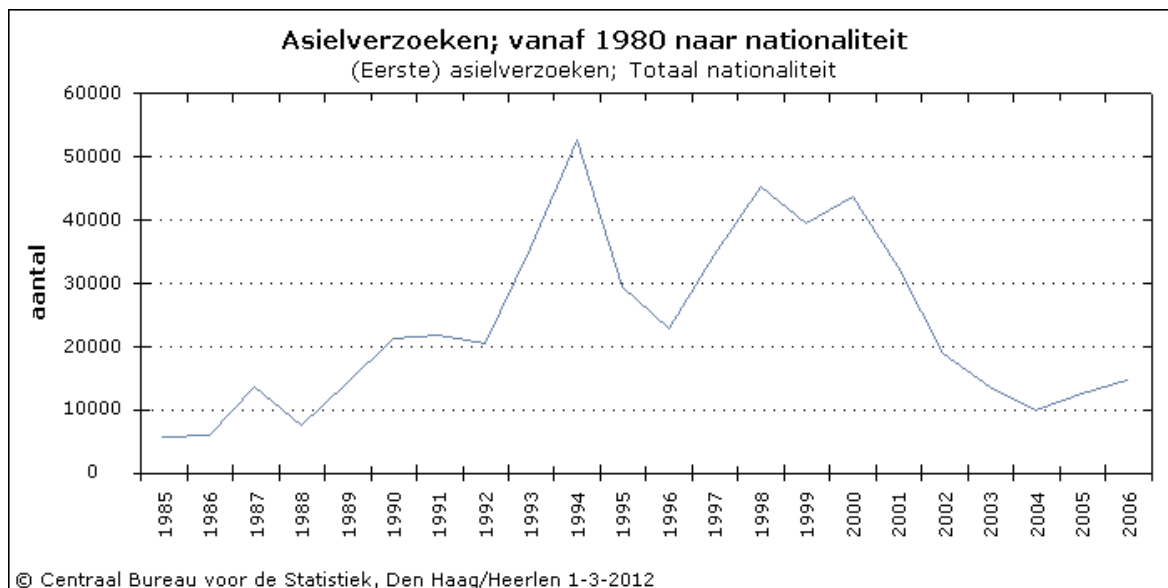


Illustration 1.1 (Eurostat, 2007) New asylum applications, EU-27, EU-15, 1985-2006 in absolute numbers (thousands).

The peak of applications in 1992 can be explained by the disintegration of the former Yugoslavia leading a high number of refugees to flee to Western European countries and ask for asylum (VluchtelingenWerk, 2010). From 1997 on, refugees from Afghanistan, Iraq and, Kosovo accounted for a new increase of the number of refugees entering the EU. Not visible in the graph is a third increase that started in 2008 bringing a high number of refugees from Somalia and Iraq (VluchtelingenWerk, 2010).

A similar graph can be created for the yearly number of asylum applications received by The Netherlands. Illustration 1.2 shows the number of asylum applications lodged in The Netherlands for exactly the same time period as in Illustration 1.1.





**Illustration 1.2 (CBS, 2012) Total asylum requests Netherlands 1980-2006**

From Illustration 1.2 it follows that The Netherlands experienced a peak of asylum applications in 1994 with a total of over 50.000 applications. This is one sixth of total applications lodged within Europe for the same year. Ten years later, in 2004, the share of Dutch asylum applications compared to the total European number is much lower. By then, roughly one out of twenty European applications has been lodged in The Netherlands. Currently, asylum seekers from Somali, Iraqi and, Afghan descent count for the main share of applicants within The Netherlands (IND, 2012)

Asylum requests need to be assessed according to the 1951 Geneva Convention on the status of refugees and its supplement, the 1967 New York protocol. The signatory states have agreed on the definition of a refugee to be: *'any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion.'* Any asylum requests is tested by means of this definition and asylum is given to those meeting the requirements of this definition. Next to this, the European Convention on Human Rights requires Member States to offer an additional ground for protection to those fearing a death penalty, torture or, other human degrading behaviour due to (inter)national weaponed conflict. Besides, current Dutch national law provides for other grounds under its 'traumatabeleid' and 'categoriale bescherming'<sup>2</sup> (VluchtelingenWerk Nederland, 2011).

<sup>2</sup> Article 29 of the Dutch Aliens Act (VreemdelingenWet) states the grounds for granting asylum. The first articles offer protection under Article 1A of the Geneva Convention and Article 3 ECHR. Next to this, the Dutch government decided on Article 29.c to offer an additional form of protection based on humanitarian reasons

In every Member State a national authority is to take a decision upon an asylum request being lodged in that country. For The Netherlands this is the Immigration and Naturalisation Service (hereafter IND). Only since 1994 this agency, in its current form, serves under the Ministry of Justice. The steep rise of asylum requests lodged in The Netherlands in the period 1993-1995 served as a direct cause for the IND agency to be assigned the sole task of implementing the Dutch Aliens law (EMN, 2009; Alink, 2006).

### **1.1. Dublin I (1990)**

The first Dublin Convention was signed June 1990 as an intergovernmental agreement between the EU countries of that time being Belgium, Germany, France, Italy Luxembourg, The Netherlands, Denmark, Ireland, the United Kingdom, Greece, Spain and, Portugal. Two circumstances are important to mention here providing as an incentive for drawing up this agreement between the twelve Member States by then.

In the first place, a little before the signing of the Dublin Convention, it was decided to remove internal borders and border controls by means of the 1985 Schengen agreement. This agreement aimed to support the realisation of the freedom of movement for persons within the Schengen area. The actual removal of internal border and border controls was to take place by 1992. Member States consequently felt urged to arrange for a policy on asylum now that internal border controls were about to be abolished; they wanted to specify the rules ascertaining responsibility for an asylum application in the case of an asylum seeker entering the Schengen area. Secondly, referring to Illustration 1.1, one is to see that the inflow of asylum seekers was on the rise. This certainly has added to the urge Member States felt to arrange for their responsibility towards those that had to be protected under Article 1A of the Geneva Convention.

By means of the Dublin Convention the interest of the asylum seeker was aimed to be served as the Convention would prevent applicants for asylum to be send from pillar to post without any state deeming itself responsible for this persons' application. The guarantee that an application is taken into consideration and the need for a reasonable period of time in which the procedure can be dealt with was acknowledged.

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(traumatabeleid) and Article 29.d that creates for a ground of granting asylum to persons because the Minister deems the general situation in the country of origin unsafe (categoriale bescherming).

Articles 4 until 8 of the Dublin Convention form the core of the Convention determining how responsibility is assigned towards a Member State examining an application for asylum. Nevertheless Article 3(4) foresees that a state, provided the applicant agrees, can always decide to take upon an application even under articles 4-8 this country is not responsible of the application. This can be done for reasons of a humanitarian nature related to family or cultural grounds. The actual state deemed responsible under articles 4-8 of the Convention then is relieved from its responsibility.

Dublin Convention of 1990 Article numbers	Examples aiming to clarify the workings of the Convention upon an asylum application lodged in a Member State
Article 4 on family relation	Mr. X has a family member (spouse or minor child) being assigned the refugee status already under the Geneva Convention in an EU country. Regardless where Mr. X arrives in the EU and lodges his application for asylum first, the Member State where his minor child or spouse are residing is also to take upon him the application of Mr. X.
Article 5 regarding visa	In his country of origin Mr. X receives a residence permit or visa from the Germany embassy. Entering Europe, he applies for asylum in The Netherlands. According to the Dublin Regulation then, The Netherlands will determine that Germany is responsible as the German embassy has granted the visa and consequently start up a request to take charge of Mr.X.
Article 6 - 7 on irregular entering EU territory	Mr. X has come to the EU illegally, without valid papers, by crossing a non-EU/EU border. The (first) Member State Mr. X has entered is made responsible. NB: This thus lays an extra responsibility on Member States having borders with non-EU territory.
Article 8 on the country of first application	It is not known where Mr. X has entered the EU first but he has lodged an asylum application in an EU country. This country then is to deal with his application.

**Illustration 1.3 Overview of content Articles 4-8 Dublin Convention**

Starting with the date an asylum seeker lodges his request for asylum, a country has six months to refer the request to another Member State asking this state to take charge of the application. Exceeding this period means the first country remains responsible for the asylum procedure. Following Article 11 of the Dublin Convention, the requested Member State has three months to react upon the taking

charge request. In case of an accord, the actual transfer of the applicant to the state deemed responsible for the asylum seekers' asylum request, is to be realized within one month.

Article 16 of the Convention gives the Member State holding the Presidency of the Council of the EU the possibility of calling together a meeting for the reason of revision or amending the Convention. Currently Denmark holds this position. Countries that made use of the possibility to call together a meeting have been Finland and The Netherlands. Their efforts led to the 1999 Tampere- and the 2004 The Hague Programmes containing Member States agreements for further harmonisation of asylum policy.

## **1.2. Dublin II (2003)**

### **1.2.1. From Convention to EU Regulation**

Next to serving as a guarantee that an application is taken into consideration, the first Dublin Convention also had the intended effect of preventing asylum seekers from applying for asylum in more than one Member State; the so-called 'asylum shopping'. Ratification of the Convention took a while; it was not before 1997 that the Convention took effect. During this time Austria, Sweden and Finland became Member State to the EU and subsequently became party to the Convention as well. Entering the Schengen Area in 2001, Norway and Iceland both joined the Dublin Convention as a non EU Member State. In the meantime, following the 1999 Council meeting in Tampere, Finland, Member States had decided upon the creation of one common asylum system within Europe. It was agreed that Member States should have a common asylum procedure for incoming asylum seekers so that asylum seekers would receive similar treatment regardless the country they would enter into an asylum procedure. Next to this, the system was aimed at Member States to provide refugees with an identical status of protection (VluchtelingenWerk, 2012).

In 2003, the Dublin Regulation was created replacing the Dublin Convention. This meant a change of the legal status of the content of the Dublin Convention. The agreements from now on would fall under EU law and have, under Article 288 TFEU, direct effect in all Member States including the ones joining the EU later on. Starting from the same year, efforts were made to create for minimum standards and harmonisation among the Member States as to the asylum procedure, the assignment of

refugee status and, the reception conditions for asylum seekers<sup>3</sup>. Together with the Dublin Regulation these directives form the legal basis of the common asylum system that is being developed.

Under the Dublin Regulation, responsibility for a case now becomes assigned by checking the situation of the asylum applicant against the criteria laid down in the articles four up till sixteen in their successive order. The situation one derives from is, according to Article 5 Dublin Regulation, the very moment of lodging an application for asylum. Depending on the situation of the asylum seeker different articles of the Regulation are applicable. The determination process has something of a funnel. If situation 1 is not applicable, then situation 2 or 3 is. The illustration of Appendix 2 on page 38 shows the criteria along which responsibility is determined more clearly.

Following the criteria from top to bottom one then is to find out which Member State can be assigned responsibility for a request for international protection under the 1951 Geneva Convention. One is to notice that family ties have been decided on as of great importance as four criteria are family-related. It can be noted also that the fifth criteria, assigning responsibility on the country where an applicant has irregularly crossed the EU border, lays a burden on the asylum systems of Member States sharing borders with non-EU territory. Gathering proof to see where an applicant has entered EU territory irregularly has become important for other Member States; article 10(1) of the Regulation leaving some space for the Member States to decide which methods to use apart from the use of the Eurodac finger print database.

The Regulation differs from the Convention in that it takes more account of family relations of refugees. Moreover, Member States have gotten enlarged possibilities, and responsibilities alike, to take upon a request for asylum of someone. Furthermore the Regulation brought some technical changes. To refer a request to another Member State, the time-limit has become three months from the time of the asylum application being lodged. This means a reduction of three months compared to the former Dublin Convention. The state receiving a claim is to react upon the request within two months meaning a reduction of the time-limit of one month as compared to the Convention. Contrary to this, the time-limit for transferring the asylum applicant to the Member State deemed responsible has been extended up to a total of six months.

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<sup>3</sup> Reception Conditions Directive 2003/9/EC ; Qualification Directive 2004/83/EC ; Procedures Directive 2005/85/EC

### **1.3. Conclusion**

The number of asylum requests lodged in Europe has ranged from a minimum of 150.000 to a maximum of over 650.000 applications within the time frame of illustration 1.1. For the same period, The Netherlands experienced a peak of over 50.000 applications in the year 1994 accounting for one sixth of total applications lodged in European Member States.

Member States are bound by the 1951 Geneva Convention and the European Convention on Human Rights in their assessment of an asylum request. Next to this national law may offer additional grounds for the granting of asylum. Within The Netherlands the IND has the authority to judge upon individual requests for asylum.

To assure a request for asylum is handled and to evade uncertainty as to which Member State is responsible to take upon him a procedure, states agreed on the Dublin Convention assigning responsibility of an asylum request towards a sole Member State. Other reasons for creating the Convention have been the coming into being of the Schengen area combined with a growing number of asylum seekers. Prevention of asylum seekers shopping for asylum in different Member States was deemed necessary. Later on, the Convention became the Dublin Regulation meaning the rules assigning responsibility became part of the EU acquis. Starting from 2003, additional directives were created to serve as a legal basis for a common asylum system for Europe.

The next chapter will go into more depth to the reality the Dublin Regulation has lead to. It will show the number of Dublin claims that Member States receive and describe the working of the Regulation in The Netherlands. Upcoming plans for a revised Dublin Regulation are discussed at the end of the chapter.

## 2. The Dublin Regulation in practice

### 2.1. Overview of incoming Dublin requests per country

Member States joining the Dublin system can receive requests from other states. Such a request concerns either a request to take back an asylum seeker or, to take charge of an asylum seeker. Taking charge of an asylum seeker means a state agrees to take over the responsibility over an asylum seeker having entered another state first. This is done for the reason of family reasons (Art.6, Art.7, Art.8, Art.14 Dublin Regulation), for documentation and entry reasons (Art.9, Art.10, Art.11, Art.12) and, for humanitarian reasons (Art.15). A take back request applies when an asylum seeker falls under the responsibility of one state but has, during or after his asylum procedure, left for another state.

In the following graph the total number of received requests per country are made visible for the years 2008, 2009 and, 2010. For the purpose of surveyability and convenience, no separation has been made between taking back and taking charge requests. The illustration then shows total requests received for each country that is a party to the Dublin Regulation.

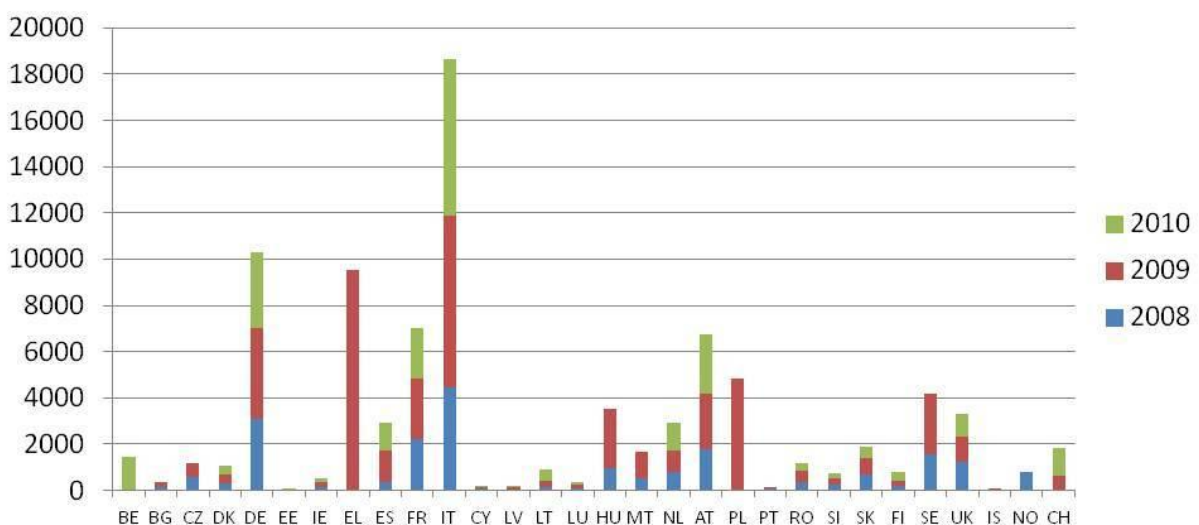


Illustration 2.1 (Eurostat, 2012) Total incoming requests EU Member States 2008-2010. For an explanation of the country codes used in the graph see Appendix 1 on page 37.

From the illustration it follows that from 2008 till 2010 Italy has received the highest amount of incoming requests from states joining the Dublin system. Only for the year 2009 Greece received more incoming requests than Italy. However it can be estimated that for 2008 as well as 2010 the number of incoming requests to Greece was equally or even higher. This is not shown into the graph as no data was made available for the years 2008 and 2010. Germany is a good third, receiving considerably less requests than Italy and Greece but still a significant number. France can be compared to Austria

regarding the number of incoming requests to take over or take charge of an asylum applicant. The Netherlands together with the UK show a considerable lower number of incoming requests. Note that, relative to its size, the number of incoming requests for Malta is extremely high.

Data lacks for some countries for some years. The lack of data for countries like Greece and Poland in this case is especially unfortunate as it can be expected, deriving from the statistics of 2009, that both countries account for a high number of incoming requests due to their geographic position being a border state of the EU. Added to this the two countries mentioned form part of popular travel routes as used by asylum seekers entering the EU. Those originating from former Soviet states are likely to travel via Poland whereas for those originating from Afghanistan, Iran and, Iraq, Greece is on their way to Europe. The Commission acknowledges difficulties as to the gathering of reliable data of in- and outgoing requests. Consequently it has stressed the importance of having a commonly agreed statistical framework in the field of asylum and immigration (European Commission, 2007).

Ranking Member States according to their number of incoming requests ignoring the countries that lack data leads to Illustration 2.2. Remarkably, the rankings show similar countries over the three years of reference. This is something to keep in mind when discussing the Dublin system within a CEAS later on. Especially since research has shown that it is only ten Member States that receive 90% of all asylum seekers (Europolitics, 2012).

2008		2009		2010	
1.	Italy (IT)	1.	Italy (IT)	1.	Italy (IT)
2.	Germany (DE)	2.	Germany (DE)	2.	Germany (DE)
3.	France (FR)	3.	France (FR)	3.	Austria (AT)
4.	Austria (AT)	4.	Austria (AT)	4.	France (FR)
5.	United Kingdom (UK)	5.	Spain (ES)	5.	Switzerland (CH)
6.	Netherlands (NL)	6.	United Kingdom (UK)	6.	Netherlands (NL)
7.	Slovakia (SK)	7.	Netherlands (NL)	7.	Spain (ES)
8.	Romania (RO)	8.	Slovakia (SK)	8.	United Kingdom (UK)
9.	Spain (ES)	9.	Romania (RO)	9.	Slovakia (SK)
10.	Denmark (DK)	10.	Denmark (DK)	10.	Lithuania

**Illustration 2.2 (Eurostat, 2012) Top-ten states receiving highest number of incoming Dublin requests 2008-2010 ignoring countries with incomplete data<sup>4</sup>**

In a recent speech to students of Harvard University, this then leads European Commissioner Malmström to conclude that there are 17 Member States that could do much more to help the former ten to the purpose of sharing responsibilities and obligations towards asylum seekers entering the EU.

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<sup>4</sup> ignoring data from EL, PL, BE, NO, BU, CZ, HU, MT, PT, SE, IS



The main objection of the Dutch Council for Refugees to the Dublin Regulation is also this unequal burden for countries and the consequent lack of solidarity showed by the Member States to share the burden together (K. Franssen, personal interview, May 23, 2012).

## 2.2. The number of Dublin cases in Ter Apel Application Centre

To give an insight as to the role of the Dublin Regulation in the Ter Apel Application Centre some numbers will be given here. They are concluded from planning and realisation overviews of the IND Ter Apel (IND, 2011) (IND, 2012).

2011					
Total number of decisions made within the Common Asylum Procedure (AA)*	2210	Number of Dublin related cases **	283	Dublin related cases as a percentage of total AA decisions made	12.8%
Total number of decisions made within the Prolonged Asylum procedure (VA)***	1835	Number of Dublin related cases****	225	Dublin related cases as a percentage of total VA decisions made	12.3%
Total number of decisions (AA+VA)	4045	Total number of Dublin related cases (AA+VA)	508	Dublin related cases as a percentage of total decisions made (AA+VA)	12.6%
*AA productie ingewilligd+afgewezen+Dublin ***VA totale productie		**totale productiecijfer AA Dublin **** totale productie cijfer VA Dublin			
2012					
Total number of decisions (January+February 2012)*	2494	Total number of Dublin related cases (AA+VA)**	291	Dublin related cases as a percentage of total decisions made (January + February 2012)	11.6%
*Realisatie productie ingewilligd+afgewezen+AADublin Week 1-8		**productie AA Dublin + productie VA Dublin Week 1-8			

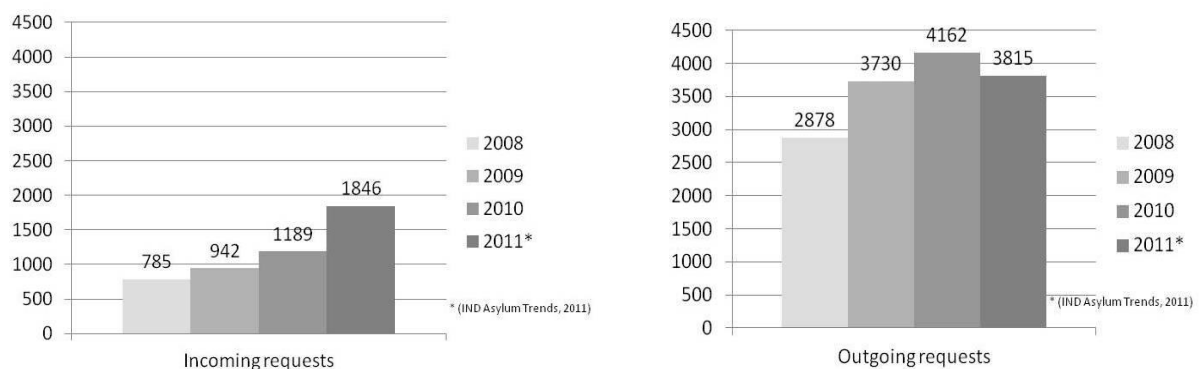
**Illustration 2.3 (IND, 2011) (IND, 2012) Overview of Dublin related cases as a percentage of total decisions made.**

As for 2011, more than one out of eight decisions taken within the Common Asylum procedure<sup>5</sup> were Dublin-related cases. Within the Prolonged Asylum<sup>6</sup> procedure this percentage was almost equal

<sup>5</sup> In Dutch: Algemene Asielprocedure (AA). The Common Asylum procedure includes a first and second hearing by an official from the IND during which the asylum seeker is given the possibility to explain his identity and reasons of flight. Following these hearings a decision on the asylum request is made. In total, this procedure takes eight working days.

(IND, 2011). Overall, a little over 12.6% of total decisions decided on in 2011 were Dublin related. In so far that results are known for 2012, a little less than 12% of total cases dealt with by IND have been Dublin-related (IND, 2012). Note that the number of total decisions for the first two months of this year already account for more than half of all total decisions being taken the year before. As a percentage, the share of Dublin related cases however remains practically the same. Nevertheless it is too early to draw any further conclusions as one cannot be sure this to be a continuous trend for 2012.

In 2011, The Dutch government made a total of 3.815 requests to other EU Member States for either taking over or- taking back asylum seekers. This is about 26% of the total number of asylum applications that were lodged in The Netherlands over the year (IND, 2012). Next to this, a total of 1.846 requests for referral were received by The Netherlands. Comparing this number with data from Illustration 2.1 on page 14 this would mean that the number of incoming requests to The Netherlands has increased since 2008. On the other hand however, the number of outgoing requests has also been much higher over the years but lately has decreased. Illustration 2.5 aims to make the foregoing more visible.



**Illustration 2.4 (Eurostat, 2012) Total incoming and outgoing requests for The Netherlands 2008-2011**

In short, for the year 2011, The Netherlands laid double the amount of Dublin claims on other Member States than it received. Within Europe, a division can be made between so-called claim-in and claim-out countries. Claim-in countries are the ones receiving a surplus of claims. This concerns the EU border countries and especially Bulgaria, Romania and Italy (C. Velders, personal interview, April 3, 2012). The Netherlands clearly then is a claim-out country. The geographic position of the Netherlands serves here as a logical explanation as applicants for asylum have to travel through

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<sup>6</sup> In case the IND needs more time to take a decision upon a request for asylum the asylum seeker is referred to the Prolonged Asylum procedure. In Dutch: Verlengde Asielprocedure (VA).

several other Member States before arriving in The Netherlands. Nevertheless, a Dublin-claim depends on several other factors as well such as former acquisition of a visa for an EU country by the asylum seeker or having family ties (minor child or, spouse) with someone having a legal status in an EU country. The high number of referrals can also be said to be a direct result of the Dutch efforts to signal Dublin indications before the asylum procedure has even started. This way maximum effectivity is ensured to the purpose of having as little asylum seekers as possible entering the procedure that, according to the Dublin Regulation, would not fall under Dutch responsibility.

### ***2.3. The application of the Dublin Regulation within The Netherlands***

At the Ter Apel application centre all incoming applicants for asylum receive an intake by the Aliens Police. The asylum seeker shortly states his reason for application, hands in any personal documents, and luggage is being researched. Moreover, fingerprints are taken and entered into the EURODAC database. A match within the database means that fingerprints have been taken from the asylum seeker before. In such a case a report being sent automatically from the database shows the exact date, year, place and, country where fingerprints have been taken before.

A dossier is made for each asylum seeker. Right after the intake with the Aliens Police, the dossier is being brought to the Dublin office of IND<sup>7</sup> to be read through. Two employees screen every dossier on possible indications for Dublin. In case of a hit in the Eurodac database it is an established fact that the person falls under the Dublin regulation. Moreover, it is possible that during the intake other proof or signals have been found that can point to the person possibly falling under the Dublin Regulation. For example, from the asylum seekers' own statement on his or her travel route to The Netherlands or, by means of the discovery of products, tickets or, bills from other Member States in the asylum seekers' luggage. The Aliens Police thus collects materials and proof but has no saying in whether a person falls under the Dublin Regulation.

If an indication is found the IND employee from the Dublin office contacts his colleagues from the Dublin Unit that has its residence in Zevenaar and receives advice on what relevant questions can be asked to investigate the Dublin indication found. Consequently a short hearing takes place in the Dublin office with the IND employee and the asylum seeker. This way additional info regarding the indication is acquired.

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<sup>7</sup> In Dutch: Dublin claim kamer

In case of clear evidence that another Member State is responsible the asylum seeker will not enter the asylum procedure in The Netherlands. An official hearing takes place but is limited to the asylum seekers' travel route not taking into account the reason of flight. The Dublin Unit then seeks contact with relevant authorities of the Member State concerned. Information is exchanged by means of the protected electronic network called DubliNet using a standard form that is to be seen in Appendix 5 on page 41. Consequently a request can be made to take over or take charge of the asylum request. In case of no reaction from the state within a period of three months from the time of the request, it is assumed the state agrees with a transfer.

Subsequently the Repatriation and Departure Service becomes responsible for effectuating the transfer. The asylum seeker is informed and in some cases placed in detention by the Aliens Police. The IND informs foreign authorities of flight number and date of departure of the asylum seeker. No notification of arrival is given. Only in case a transfer fails the IND gets notified by the Aliens Police.

#### ***2.4. Practical difficulties and cases from the work floor***

For an asylum seeker travelling over land, The Netherlands will never be the first European country of arrival. Nevertheless, not always proof is found that can form the basis of making a referral to another state. EC Regulation 1560/2003 includes a list of valid evidence determining which state is responsible. Next to this, a list of indirect proof is given (European Union, 2003). The Dublin Unit can only act when a strong case exists (C. Velders, personal interview, April 3, 2012). In the case of a hit in the Eurodac system proof is assumed to be clear. Next to this, The Netherlands have extended their possibility for finding Dublin indications by researching luggage and on the basis of a persons' own statement.

During the first official hearing within the common asylum procedure, asylum seekers are explicitly being asked for their travel route and documents that can support their statement. They are even being asked for proof such as a sugar bag or napkin that they might have used during the travel. In most of the cases people do not have such proof. Refugees that have made use of a travel agent to illegally enter EU territory declare their travel agent having warned them not to bring any of such things. Moreover, frequent heard questions by IND officials have been where the asylum seeker has entered the EU and which border crossing he or she has passed. If no clear statement follows the official will ask what language people spoke on the way, what the airplane or airport looked like or what the cabin personnel's uniform looked like. These are questions that often result in vague answers or a simple 'I don't know'.

In the end, if enough proof can be gathered to start up a case for referral and the case is accepted, this country the person is referred to then is responsible for the persons procedure. In the case of a rejection of the asylum application, the country the person is referred to is also responsible for the expulsion of the foreigner from EU territory. Here's a difficulty because Member States offer no equal chances in assigning asylum. The Dutch Council for Refugees exemplifies this in a clear example of an Iraqi asylum seeker. Whereas entering the asylum procedure would give him a three percent change of receiving a residence permit, this would be 50 percent in The Netherlands and even 90% in case of entering the procedure in Finland (VluchtelingenWerk). Thus, being referred to another country can mean having a lower chance on receiving asylum status. The logical consequence of this is asylum seekers choosing their country of destination carefully trying to escape a Dublin claim that will refer them to a country where chances of being granted asylum are perceived to be less.

Another difficulty diminishing the effectiveness of the Dublin system is the actual transfer of an asylum seeker to the country that has been determined responsible. From all requests made by The Netherlands to other Member States under the regulation, about 80% is accepted. However, only 60% of accepted requests are successfully transferred to the Member State that is responsible. Several causes account for this. For example, an asylum seeker cannot be transferred for medical reasons or, upon notification of a transfer, the person has disappeared. In other Member States the number of effective transfers is even lower. As a general rule, the longer the period between acceptance of a request and the actual transfer, the lower the number of effective transfers (C. Velders, personal interview, April 3, 2012). To prevent asylum seekers from disappearing before they have been transferred successfully Member States, including The Netherlands, then choose to place asylum seekers in detention. This is being seen as a disproportionate measure by both the Dutch Council for Refugees and the European Commission. Asylum seekers do not understand the reason for their detention as they did not commit a criminal act. They feel ashamed and their rights being violated. What makes the situation worse is that all too often, asylum seekers already have had to experience detention in their country of origin this being the reason for taking refuge in Europe. The Dutch Council for Refugees then advocates for enhanced safeguards so as to ensure the protection of rights of asylum seekers and a limited application of detention measures (K.Franssen, personal interview, May 23, 2012).

#### **2.4.1. The Dublin evaluation report**

In 2007 the European Commission executed an evaluation of the Dublin system. In the report that followed (European Commission, 2007) several deficiencies were noted. Firstly, the number of actual transfers is much lower than the amount of requests made and the amount of requests accepted. Thus,

the transfer of an asylum seeker upon acceptance of the request is noted as a problem. A reason being mentioned is asylum seekers disappearing before they are to be transferred. Consequently, Member States increasingly use custodial measures to keep an eye on the asylum seeker. The Commission judges this as a not desirable tendency and states such measures should only be applied as a last resort. Secondly, Member States have different interpretations as to the decision to take charge of an asylum seeker under the humanitarian clause (Art.15). Thirdly, procedural time limits are found insufficient; some periods were found too long and others too short to be workable. Fourth, a remarkable finding revealed by statistics, was that some Member States were found to transfer an equal number of asylum seekers between themselves. The Commission consequently proposes bilateral arrangements between states to make annulments of transfers of equal numbers of asylum seekers possible. This way unnecessary transfers of asylum seekers can be prevented. Finally, the Commission concludes that in most of the cases the incorrect application of the Dublin Regulation is to blame on exceeding set procedural time-limits.

### ***2.5. The call for new amendments of the Dublin Regulation***

In December 2008 the European Commission made proposals for a revised Dublin Regulation to increase the efficiency of the system and ensure better protection standards for the asylum seekers (European Union, 2008). Among other things, the revised version should offer the possibility to postpone a Dublin transfer in certain cases and entail a more clear guarantee as to the right to lodge an appeal against a Dublin decision (Houben, 2008). Additionally, the Commission proposed that in an extraordinary situation, Dublin referrals can be suspended. This would account in the case a country experiences a high inflow of refugees or, in the situation a country cannot offer to asylum seekers the standards as laid down in EU law as to reception conditions and access to a procedure (European Union, 2008). However, it has shown that such an emergency mechanism is a difficult point for several Member States. Discussing this mechanism in the Council in September 2011, a majority of Member States declared to be against this measure (European Parliament, 2011). The Netherlands already had taken the stance to rather provide for practical support to a Member State experiencing difficulties than putting a temporary halt to Dublin transfers to the country concerned (Ministerie van Buitenlandse Zaken, 2009).

Increased efficiency of the system	Ensuring better protection standards for asylum seekers
<ul style="list-style-type: none"> <li>➤ establish adequate deadlines for different types of requests between Member States in order to ensure that the procedure runs smoother;</li> <li>➤ Clarify the circumstances and procedures for applying certain rules, such as those allowing Member States to take responsibility for an asylum seeker for humanitarian and compassionate reasons. This aims at ensuring a more uniform and efficient application of the Regulation by all Member States;</li> <li>➤ Better specify the practical rules applicable to the transfer of an asylum seeker to the Member States responsible, such as sharing of relevant information (notably on medical needs) in advance in view of facilitating practical cooperation between Member States;</li> </ul>	<ul style="list-style-type: none"> <li>➤ Further specify the information to be provided to asylum-seekers about the rules and the implications of the Dublin procedure;</li> <li>➤ Introduce additional guarantees concerning the right to appeal against a transfer decision, in order to ensure that the right to remedy is effective;</li> <li>➤ Define clear and limited circumstances under which asylum-seekers subject to the Dublin procedure can be detained;</li> <li>➤ Facilitate the right to family reunification, in particular as concerns the reunification of an applicant with relatives between whom there is a dependency link and with beneficiaries of subsidiary protection;</li> <li>➤ Better define the rules applicable to unaccompanied minors in order to protect their best interests.</li> </ul>

**Table 2.5 (European Union, 2008) Proposed amendments to the Dublin Regulation from the European Commission**

## **2.6. Conclusion**

The Dublin Regulation is a mechanism to assign which state can be made responsible for an asylum seekers' application. The amount of applications that Member States are to deal with is unequally divided. Some Member States receive more referrals than others and thus have to deal with a higher amount of asylum applications. Following illustration 2.1 and 2.2, countries that receive relatively high numbers of incoming requests to take over or take back an asylum procedure have been highlighted. An explaining factor for high numbers of incoming requests has been concluded to be the geographical position of a country: a country sharing its border with non-EU territory that is being positioned along a travel route connecting asylum seekers' countries of origin and European territory, is much more likely to receive a surplus of incoming requests under the Dublin Regulation. This inequality is also being reflected in total numbers of asylum applications that Member States received. The need for a CEAS then is urgent as it cannot be asked from a minority of Member States to deal with the majority group of asylum seekers that enter the EU.

The Netherlands claim more than they receive, it is, they are able to refer more cases to other Member States than they receive back. Within the Ter Apel Application Centre around 12% of all procedures decided upon in 2011 were Dublin-related cases. By streamlining the procedure and doing an effort to signal possible application of the Dublin Regulation as early as possible, The Netherlands are successful in executing the Dublin Regulation. It then can be concluded that the Dublin Regulation

forms an important reality within the Ter Apel Asylum Application Centre and for the co-workers of IND deciding upon the asylum requests.

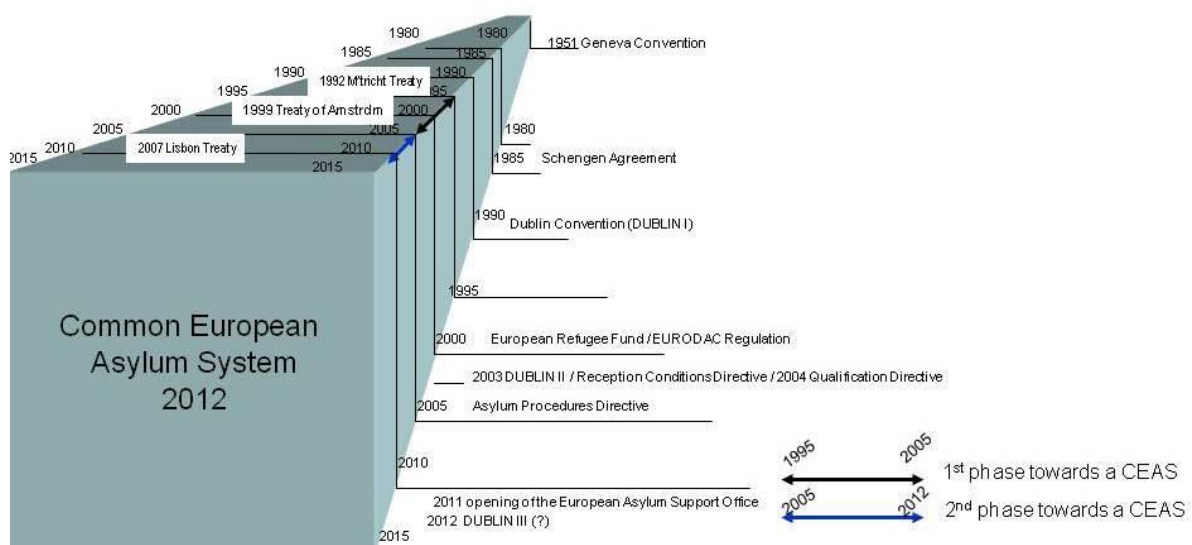
However, there are several deficiencies to mention as to the practical implementation of the Dublin system. Asylum seekers aware of the system deliberately hide proof to evade being referred to another Member State under the Dublin Regulation. As chances to be granted asylum differ among European countries, those seeking refuge carefully choose their country of destination. This would not have been necessary if Member States would have further harmonized their reception conditions and a common system had been realized that would provide for a uniform asylum procedure. Besides, in case of a referral, states feel the urge to use detention measures so as to ensure an effective transfer of the asylum seeker to the state deemed responsible. This practice has been critically looked at by the Commission.

In 2007 the European Commission published an evaluation report on the Dublin Regulation. It signalled deficiencies and in 2008 proposed measures to the purpose of a revised Dublin Regulation. The goal is to increase the efficiency of the Dublin system while at the same time ensuring the rights of asylum seekers. To correct for the deficiencies the revised regulation is to include mechanisms to temporarily put a halt to transfers to countries that cannot guarantee entrance to an asylum procedure and fail to meet EU standards on reception. The Dutch government has stated its willingness to provide for financial and practical help but opposes measures to put a temporarily halt on the transfer of asylum seekers.



### 3. The Dublin Regulation within a Common European Asylum System

When the Dublin Convention became the Dublin Regulation in 2003, three additional directives were agreed upon to the purpose of a harmonisation of Member States' asylum procedures, the granting of similar forms of protection and, the reception conditions for asylum seekers. Together with the Dublin regulation, these directives<sup>8</sup> then created for the legal ground of a common European asylum system . Added to this was the 2000 Eurodac Regulation that created for the legal basis of a fingerprint database to the support of the Dublin system. As the latest directive was agreed upon in 2005, this year was generally seen to be the first stage of a common European asylum system. The Commission then intended to direct the following stage towards the development of 'a higher common standard of protection and greater equality in protection across the EU and to ensure a higher degree of solidarity between EU Member States' (European Commission, 2008). Consequently, the Commission not only proposed a revision of the Dublin Regulation but of the whole legal basis of the common European asylum system to adjust for the deficiencies that were noted during the first stage. Under the 2009 Swedish EU presidency, Member States agreed to have the common asylum system realized by 2012 meaning by then Europe as a whole would offer a uniform asylum procedure and uniform refugee status to incoming asylum seekers.



So far, only the Qualification directive has been revised successfully. An agreement was reached in November 2011. For the other two directives negotiations still have not come to an end. As for a revision of the Dublin regulation, the Council of Ministers reached for a political agreement and

<sup>8</sup> Reception Conditions directive 2003/9/EC; Qualification directive 2004/83/EC ; Procedures directive 2005/85/EC

consequently, negotiations with the European Parliament have started following the co-decision procedure.

### ***3.1. The aim of a CEAS versus the aim of Dublin II***

As mentioned before, the final aim of a common European asylum system is stated to be the development of 'a common asylum procedure and a uniform status valid throughout the EU.' 'The ultimate objective pursued at EU level is thus (...) a system which guarantees to persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States (European Commission, 2007).' Opposed to this, the Dublin Regulation solely was aimed to serve as a tool assigning responsibility towards a Member State of a certain asylum applicant thus assuring asylum seekers access to an asylum procedure. 'the Dublin system was not devised as a burden sharing instrument but solely 'to quickly establish which Member State is responsible for the examination of an asylum application (...) on the basis of fair and objective criteria' (European Commission, 2007). However, to ensure the protection of asylum seekers' rights, the Dublin Regulation needs to be complemented by some form of burden sharing.

### ***3.2. The need for burden-sharing***

The Netherlands have a well functioning asylum procedure and reception facilities. It also is successful in effectuating the Dublin Regulation as early on in the procedure efforts are done by IND to find proof and evidence. Consequently, Dublin requests are made quickly; during or even before the asylum seeker has entered a Dutch asylum procedure. To Mrs. Eleveld, asylum lawyer in Groningen, the Dublin rules then create ground to The Netherlands to easily shove away its responsibility for some asylum seekers (A. Eleveld, personal interview, May 9, 2012). In her practice, about ten percent of cases is Dublin related of which most clients having laid upon them a claim to Italy or, Poland. The problem then as mentioned by Mrs. Eleveld is that Italy struggles with the asylum procedure not being able to deal with the influxes of asylum seekers. Few is done by other Member States to help Italy. The Dublin rules provide for a legal ground to refer asylum seekers without having to take responsibility or help Italy in its struggle to cope with the high amount of asylum seekers it already receives. In this sense the system as a whole has lead to a shoving away of responsibility between states. What makes it worse is that it is widely known that asylum seekers in Italy do not have access to translators or juridical help during the procedure. Moreover, Italian reception facilities lack capacity leaving asylum seekers with no roof above their head being forced to live on the streets. This leads asylum seekers, that have a Dublin claim to Italy upon them, seriously considering living an illegal live in The Netherlands rather than undergo a forced referral back to Italy under the Dublin Regulation.

The Commissions' Green paper acknowledges the Dublin Regulation possibly leading to an 'additional burden' for Member States sharing their borders with non-EU territory. However, it refers to the Dublin Regulation evaluation report for a conclusion that transfers taking place under the Dublin Regulation are equally balanced between Member States and thus not putting additional burden to the border Member States in specific. Nevertheless, the paper calls upon stakeholders for 'a reflection on underlying principles and objectives of the Dublin System' and the establishment of 'a corrective burden sharing mechanism complementary to the Dublin system.' Consequently, the European Council on Refugees and Exiles (ECRE) that includes the Dutch Council for Refugees published its 2008 report titled *Sharing responsibility for Refugee Protection in Europe: Dublin reconsidered* (ECRE, 2008). Intra-EU resettlement is mentioned as one among other options, meaning an asylum seeker after being assigned the refugee status eventually being relocated to another Member State.

### **3.2.1. Re-allocation of asylum applicants according to capacity**

In January of this year an informal meeting took place to discuss an European relocation scheme among the national ministers of Home Affairs (Vogel, 2012). It turned out to be a disappointment as Member States showed no willingness to bind themselves to an intra-EU relocation scheme and countries' positioning on the matter depended much on their national situation. Those countries receiving relatively few asylum seekers are clearly not keen to be bound to receive an additional number of asylum seekers to relieve other states of their burden. It thus is unsure whether an European relocation mechanism will come into being. However, smaller projects do exist. In 2009 a pilot project was set up relocating refugees from Malta to France. France was able to take into account the "potential for integration" of the asylum seekers it aimed to receive: priority was given to persons with an education and skills that matched demand at the job market, had a knowledge of French, and a willingness to integrate. A project still running is the EUREMA program relocating small numbers of refugees from Malta to France, Germany, Slovenia, Slovakia, Hungary, Poland, Romania, United Kingdom, Luxemburg and, Portugal. Within the program countries set their own criteria. IOM manages the relocation process and, potential candidates for relocation are selected by the UNHCR. The Netherlands have shortly been involved in a bilateral agreement with Malta accepting 30 refugees in 2005 (European Commission DG Home Affairs, 2009).

Within these schedules the general idea is to relocate asylum seekers upon being granted the refugee status however Mrs. Eleveld has pointed out before that precisely here lies the problem for overburdened countries namely offering a well-structured fair procedure with juridical help and

translators made available to the asylum seeker. Moreover, it can be questioned for these programmes how much of a saying an asylum seeker has in the choice of his country of destination. ECRE advocates for a model that takes into account an asylum seekers' connections with a certain Member State, based on families or, language to the purpose of a successful integration.

It is to be noted that, in any distribution mechanism to come, the European Refugee Fund is likely to serve an important role as a provider of funding the relocations.

### **3.2.2. Supporting a harmonized asylum system – European Refugee Fund**

The European Refugee Fund falling under DG Home Affairs of the Commission supports Member States in the implementation of EU asylum policy. As the Green paper on the future European asylum system concludes, the Dublin Regulation has not been completely effective in reducing the practice of asylum shopping due to a lack of similarity between Member States as to their 'national asylum procedures, legal standards and reception conditions' (European Commission, 2007). The Refugee Fund, set up in 2000, is to play a role here supporting financial aid to the purpose of a further harmonisation of rules among Member States. The fund, collecting donations from the Member States themselves, aims "to share the costs of reception, integration and voluntary repatriation of people in need of international protection" (UNHCR). The budget made available for the period 2008 to 2013 has been a total of 630 million euro providing The Netherlands with about 15.5 million euros (European Commission, 2011). Other funds that exist next to the European Refugee Fund but that are related to asylum are the Integration Fund, the Return Fund and, the External Border Fund (EC Home Affairs, 2011).

### **3.2.3. Other measures**

There is no consensus as to what the concept of solidarity and shared responsibility should mean in the case of the reception of asylum seekers to Europe. The geographic position of a Member State together with being a claim-in or claim-out country predict to a great extent its political stance (C. Velders, personal interview, April 3, 2012). This leads the topic to become a sensitive political issue and stands in the way of drafting and implementing a solution in the near future.

However, it seems that Court rulings are overtaking a political solution as transfers under the Dublin system have come to a halt for Greece in 2011. Besides, a request for a preliminary ruling from the British Court of Appeal and the Irish High Court resulted in the December 2011 ruling of the Court of Justice of the European Union (CJEU) that emphasized Member States are bound by the Charter of Fundamental Rights when applying the Dublin II Regulation (European Court of Justice, 2011).

According to the ruling “Member States, including the national courts, may not transfer an asylum seeker to the ‘Member State responsible’ within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment (..)”.

Following this ruling reports from non-governmental organisations signalling inhuman and degrading treatment in Member States prove to be of high value supporting an asylum seekers’ individual case against a transfer.

### **3.3. Conclusion**

The Dublin Convention and later on the Dublin Regulation were created to assign responsibility to assess an asylum application towards a sole Member State. First, this implied an equal assessment of applications and second, equal chances of being assigned the refugee status within Europe. A legal basis to provide for such equality was created by agreeing on the Reception and- Procedure Directives. For several reasons however, equal opportunities cannot be said to exist. Think of the different welfare levels within EU Member States and consequently their differing abilities as to the reception of asylum seekers. The European Refugee Fund hereby serves as a tool that Member States can use to finance programmes aimed to the enhancement of their national asylum systems. Moreover, pilot projects are carried out relocating asylum seekers more equally over the Member States. So far these projects are on a bi- or multilateral basis. Recently then a discussion took place among national Ministers of the Interior on whether a European relocation schedule should be created.

The Council meeting in January of this year where Member States’ ministers of Internal Affairs failed to reach an agreement on the EU relocation mechanism has been a new disappointment and emphasizes the idea that Member States are reluctant to transfer powers to an EU level although parties agree on the deficiencies the Dublin system has led to (Vogel, 2012).

In conclusion, as long as there is no clear script to follow for Member States as to the transfer of asylum seekers to Member States that fail to fulfil their obligations, a country by country ruling can be expected putting a halt to transfers under the Dublin system. It will be unlikely that 2012 will bring a Common European Asylum System that offers asylum seekers a common standard of protection among the Member States.

#### 4. Final conclusion

This report has aimed to shed light on the consequences of the Dublin Regulation for both asylum seekers and EU Member States to the purpose of answering the question *whether the Regulation can be expected to remain part of the future Common European Asylum System*. Plans for a common asylum system were made since, following the Treaty of Amsterdam, the topic of asylum fell under the EU Acquis. The system was aimed at both the creation of a uniform asylum procedure and a uniform status of protection which were to be realized by 2012.

Chapter one of the report has shown the Dublin Regulation to provide for clear rules as to which country is responsible to take charge of an asylum request. The rule ensures that an application for asylum is dealt with and prevents asylum seekers from hopping to one country after another to acquire a refugee status. However, in the second chapter it has been stated that the number of asylum requests Member States receive and are made responsible for, differs greatly. 90% of asylum seekers entering the EU is being said to be received by only ten out of 27 Member States. Illustration 2.2 on page 15 showed that over time, the same countries account for the highest number of incoming Dublin requests. This is a worrisome fact contrary to the Commissions' wish for more solidarity among Member States as to the reception of asylum seekers. This lack of solidarity is illustrated by the Member States' refusal of an European relocation scheme distributing asylum seekers more equally among the Member States.

The Netherlands fall within the group of Member States that are able to make a surplus of claims under the Dublin Regulation. The Immigration Service puts great effort to refer an asylum seeker as early as possible in the case another state is deemed to be responsible. A well-structured and streamlined asylum procedure then works in their favour. The other side of the medaille then is that, as some Member States lack reception facilities and have not been able to keep up with the set standard as for the asylum procedure, referrals under the Dublin Regulation add to the burden these Member States already experience. Sadly, the asylum seeker becomes the victim of the lack of harmonisation among EU Member States suffering from poor reception facilities and having to enter an asylum procedure that does not meet the standards as set by the EU.

These problems have been recognised by the European Commission. Consequently, it proposed to the Member States the creation of a temporary halt mechanism so as to prevent asylum seekers being sent to countries that do not meet the minimum standards. However, Member States, including The Netherlands, did not agree to such a mechanism.

Extended desk research in combination with observation and interviews with experts on the topic of asylum then leads to the conclusion that **the Dublin Regulation is unlikely to be abolished in the near future**. As long as Member States cannot agree on steps leading to more solidarity, it will be necessary to have some sort of mechanism that assigns responsibility of dealing with an asylum application.

## 5. Recommendations

Clearly, adding to the legal basis that has been created between 1999 and 2006 to the purpose of a common asylum system, further integration and harmonisation is necessary to support one single asylum policy integrating asylum procedures of the EU Member States. On the one hand this will discourage the practice of so-called asylum shopping of asylum seekers and, on the other hand, this will ensure asylum seekers being treated fairly and Human Rights are respected within the EU.

Note that under a common asylum system the Dublin Regulation would become redundant if indeed Member States would succeed in offering one uniform status of protection, similar reception conditions and a uniform asylum procedure. The existence of a common system would take away the need that asylum seekers currently feel to enter into the asylum procedure in the country where they feel they have the best chances of being assigned the refugee status or to the country offering the best facilities as to reception. The 2008 report of ECRE on a revised Dublin system describes a common asylum system where asylum requests are handled at central places within the EU. Consequently, “recognized refugees should be able to move freely within the EU to better integrate and to contribute their skills where they are needed”. This not only would benefit the EU countries but also leave a free choice for the asylum seeker as where to establish himself.

In a personal note on February 6, 2012, an immigration officer at Ter Apel Application Centre mentions a continuous reluctance of Member States to transfer competences to a EU level and the popularity of extreme-right parties within Europe as restraining factors to the completion of a common asylum system within Europe. Next to this, Mrs. Franssen of the Dutch Council for Refugees points at a lack of solidarity between European Member States that surpasses the topic of asylum.

Nevertheless, EU membership brings with it shared responsibilities. Member States that say to respect Human Rights are to show solidarity towards Member States struggling with an inflow of asylum seekers. The Dublin Regulation then should not serve as a legal excuse to continue the practice of referring asylum seekers back to countries that cannot guarantee entrance to a fair procedure, legal assistance and basic facilities (A. Eleveld, personal interview, May 9, 2012). Following the stance of the Dutch Council for Refugees, human rights should be the basic concern.



## **6. Position of the Dutch Council for Refugees on a CEAS and a revised Dublin Regulation**

The Dutch Council for Refugees favours a common asylum system and, next to the lobby work on the national level, aims to influence European policy by means of the Commission Meijers<sup>9</sup>, by contacting the Dutch members of the European Parliament and, by means of offering direct input to the European Council for Refugees and Exiles in Brussels.

The Dutch Council for Refugees regrets the stance of the Council of Ministers as to the revision of the Dublin regulation. For example, the Council opposes the Commissions' proposal of a temporary halt mechanism preventing Member States from transferring asylum seekers to states that cannot comply with the European minimum standards as laid down in the Procedure- and Reception conditions directives. The Dutch Council for Refugees strongly disagrees with the Dutch complaint that the creation of such a temporary halt system would not motivate the state concerned to improve its asylum policy leading to an actual reward of Member States for not complying with EU minimum rules. Such an argument, the council for refugees states, cannot be persisted where human rights of asylum seekers are at stake. Transferring asylum seekers under the Dublin regulation to Member States that cannot offer the minimum standards means exposing them to abuse of human rights under Article 3 of the European Convention of Human Rights<sup>10</sup>. To the Dutch Council for Refugees then, the protection of human rights is of its basic concern.

On the other hand, it is to the Dutch Council for Refugees' contentment that Member States agreed on the Dublin regulation to include an early-warning mechanism signalling deficiencies within Member State in an early phase. However, this mechanism is not sufficient to account for the problems Member States already deal with. For countries that struggle with the reception of high numbers of asylum seekers this mechanism comes too late and the Dutch Council for Refugees then stresses again the need for a complementary measure such as the temporary halt mechanism to prevent asylum seekers being sent to states that cannot offer them sufficient protection.

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<sup>9</sup> The Commission Meijers [[www.commissie-meijers.nl](http://www.commissie-meijers.nl)] includes experts on aliens- and asylum law and criminal law working on the EU level. By means of sending letters that are addressed directly to EU institutions the Commission Meyers tries to influence EU policy in a direct way. Its most recent letter dates from May 2012 and brings forward concerns on the lack of safeguards as to the detention criteria within the revised Dublin regulation proposal.

<sup>10</sup> Article 3 ECHR on the prohibition of inhuman or degrading treatment

Overall, it is seen as a worrisome fact that proposals, as initialized by the European Commission to counteract the deficiencies noted in the 2007 evaluation report on the Dublin regulation, are being returned to a minimum by the Council of Ministers. Not only the temporary halt mechanism was rejected by the Council but it also rejected enhanced safeguards for family members and vulnerable persons under the Dublin regulation. The Dutch Council for Refugees then hopes for strong resistance from the European Parliament opposing the Council of Ministers' rejections of Commissions' proposals.

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***Appendix 1 – Country codes illustration 2.1***

BE	Belgium	HU	Hungary
BG	Bulgaria	MT	Malta
CZ	Czech Republic	NL	Netherlands
DK	Denmark	AT	Austria
DE	Germany	PL	Poland
EE	Estonia	PT	Portugal
IE	Ireland	RO	Romania
EL	Greece	SI	Slovenia
ES	Spain	SK	Slovakia
FR	France	FI	Finland
IT	Italy	SE	Sweden
CY	Cyprus	UK	United Kingdom
LV	Latvia	IS	Iceland
LT	Lithuania	NO	Norway
LU	Luxembourg	CH	Switzerland

## ***Appendix 2 – Assignment of responsibility under the 2003 Dublin Regulation***

