



Evaluation of the Implementation of the Dublin III Regulation

DG Migration and Home Affairs

Final report

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Final Report

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1 Introduction

This document constitutes the Final Implementation Report for the ‘Evaluation of Regulation EU No 604/2013 (Dublin III)’.

1.1 Study’s objectives

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

- To study and provide an in-depth analysis (article-by-article) on the practical implementation of the ‘Dublin III Regulation’ in all Member States (**phase 1**);
- To evaluate the effectiveness, efficiency, relevance, consistency and EU added value of the Dublin III Regulation by conducting an evidence-based review of its legal, economic and social effects, including its effects on fundamental rights, including the current distribution patterns of applicants for and beneficiaries of international protection between the Member States (**phase 2**);
- To identify potential aspects in which the Dublin III Regulation could be amended based on the shortcomings identified as a result of the evaluation on the Member States’ practical implementation and without altering its fundamental principles and/or alternatives, taking into account the results of the analysis and research conducted (**phase 3**).

Accordingly, there are three deliverables for this assignment:

1. Implementation Report (phase 1);
2. Evaluation Report (phase 2);
3. Critical Analysis (‘mini-impact assessment’) of the potential changes/alternatives to the Dublin III Regulation (phase 3)

This report **feeds into phase 1 of the Study** and presents the final analysis on the **practical implementation** of the Dublin III Regulation.

1.2 Scope

The Study includes findings from **all EU Member States** and three **associated countries (Norway, Switzerland and Liechtenstein)**. **Iceland’s** contribution to this Study was unfortunately never received. The associated countries plus **Denmark** participate in the Dublin III Regulation via separate associated/international agreements with the EU, but they do not take part in the other Common European Asylum System (CEAS) legislation.

In this document we therefore refer to ‘Member States’, but also include under this heading the associated countries.

In terms of legal scope, the Study focuses on the **implementation in practice of the Dublin III Regulation¹, including its Implementing Regulations²**. Relevant aspects of the Eurodac³ and Visa Information System⁴ (VIS) Regulations have also been taken into account as well as case-law of the European Court of Justice (CJEU) and of the European Court of Human Rights (ECtHR), where relevant.

¹ Regulation (EU) NO. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (hereafter referred to as "Dublin III Regulation")

² Regulation (EC) No 1560/2003 and Regulation (EU) No 118/2014

³ The Eurodac Regulation (EU) No. 603/20136

⁴ Regulation (EU) No. 767/20087

1.3 Structure of the report

The findings are presented in a chronological structure (to the extent possible), following each step of the Dublin procedure, as follows:

- Section 2 – Organisational structure and resources of the competent authorities dealing with Dublin;
- Section 3 – Procedural guarantees and safeguards for applicants for international protection;
- Section 3 – Criteria and procedures for determining the Member State responsible;
- Section 4 – Procedures for taking charge and taking back;
- Section 5 – Implementation of the transfer;
- Section 6 – Appeal;
- Section 7 – Other (administrative cooperation).

1.4 Outline of the methodology

The Study involved the following main forms of data collection and analysis:

- **Desk research** on the implementation of the Regulation (e.g. main sources being the Quality Matrix of the European Asylum Support Office (EASO) and the national reports of the Asylum Information Database as well as other relevant literature);
- **Analysis of quantitative information** relevant to the implementation report (e.g. relevant Eurostat statistics and national statistics collected through the stakeholder consultation);
- **In-depth interviews** with a total of **31 Member States** (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK, CH, NO, LI). **Field visits** were held in **15 Member States** (AT, BE, DE, EL, FR, HU, LU, IT, MT, NL, NO, PL, SE, UK, CH) whereas in the **remaining 16 Member States** (BG, CY, CZ, DK, EE, ES, FI, HR, IE, LT, LV, PT, RO, SI, SK, LI) phone interviews were conducted. The field visits were selected, in consultation with the Commission, on the basis of a range of criteria, e.g. number of incoming/outgoing transfer requests and geographic coverage.

A range of stakeholders were consulted, including:

- Dublin units;
- Legal/policy advisors;
- NGOs;
- Lawyers/legal representatives;
- Appeal and review authorities;
- Law enforcement authorities;
- Detention authorities;
- Applicants and/or beneficiaries of international protection.

1.5 Challenges encountered

With regard to the stakeholder consultation, full cooperation from all relevant stakeholders could not be obtained in some Member States. Most notably, in some Member States, national researchers faced difficulties arranging interviews with NGOs as well as applicants/beneficiaries of international protection.

The limited timeframe available for data collection meant that NGOs in thirteen Member States declined participation in the Study. Moreover, many Member State authorities claimed to be unable to refer national researchers to applicants/beneficiaries due to data protection issues. The lack of access to such information constitutes a limitation to this Study.

As to the quantitative analyses, it must be noted that respondents' answers in some Member States were often based on estimates, reflecting the lack of structured and inadequate standardisation of data collection. To the extent possible, the Study Team used secondary sources and proxy indicators to strengthen the quantitative analyses.

2 Organisational structure and resources of the competent authorities dealing with Dublin

This section sets out the organisational structure and resources of the Member States' competent authorities dealing with Dublin. It includes information about the practical implementation of Article 35 of the Regulation as well as Article 15 and 16 of the Implementing Regulation.

2.1 Organisational structure of the competent authorities

Article 35 in the Dublin III Regulation does not stipulate any specific requirements with regard to the organisational structure of competent authorities dealing with Dublin cases, except for requiring authorities to have the 'necessary resources for carrying out their tasks' and to 'receive the necessary training with respect to the application of this Regulation'.

Consequently, differences exist in the organisational structure across Member States. Overall, a distinction can be made between:

- Member States who have established a specialised Dublin unit (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, LU, NL, PL, RO, SE, SK, UK, CH, NO);
- Member States who have not established a specialised Dublin unit (HR, LT, LV, PT, MT, SI)

For those Member States with specialised Dublin units, **most units have been established within the determining authority**. However, in **Belgium, Bulgaria, France and Italy**, the Dublin unit is vested in an authority other than the determining authority, e.g. within the Ministry of Interior (BG, IT), the Immigration Office (BE), and the asylum service within the local authorities (FR). For those Member States who have not established a specialised Dublin unit, Dublin-related tasks are performed by **specialised case officers within the determining authority**.

The tasks and responsibilities of Dublin units differ per Member State. The box below highlights specific organisational arrangements of the Dublin units in **Austria, Denmark and Germany**:

Box 2.1 Specific organisational arrangements of the Dublin units in Austria, Denmark and Germany⁵

*In **Austria**, the Dublin unit carries responsibility for the centralised arrival centres where Dublin interviews are conducted, incoming requests are forwarded and transfers to Austria are organised. Outgoing requests and outgoing transfers are dealt with by staff of initial reception centres.*

*In **Germany**, two Dublin units exist. One specialised unit handles Dublin procedures for those who entered the country irregularly, whereas another branch of the Federal Office is responsible for handling Dublin procedures during the asylum procedure if indications are found that responsibility may lie with another Member State. Transfer is in these cases the responsibility of a different specialised unit.*

*In **Denmark**, the Dublin unit handles all incoming requests. As to outgoing requests, initially immigration case officers collect information, send transfer requests and then the Dublin unit takes over in responding. Case officers will make the Dublin decision when they are making the request (whether or not they fall under Dublin procedures).*

Moreover, whereas in some Member States (e.g. RO, SI, SK) Dublin staff carry responsibility for all steps in the Dublin procedure, e.g. screening, conducting Dublin interviews, examining the Dublin criteria, preparing, submitting and replying to transfer requests, arranging and implementing transfer, in many Member States (e.g. AT, BE, BG, CY, CZ, EE, ES, DK, FI, IT, HU, HR, NL, PL, SK, UK, NO) certain steps of the Dublin procedure are carried out by/with the involvement of other authorities. For example:

- **Screening** is in some Member States performed by staff of the determining authority: regular case (BG, DE, DK, EE, ES, HU, LU, NL), registration officers (RO), screening unit (UK);
- **Conducting Dublin interviews** is in some Member States performed by: staff of the determining authority (BG, DE, DK, EL, HU, IE, LU, NL, PT, SE), police/border guards (AT, PL, UK, NO), reception officers (CZ, HR, RO), the screening unit (UK);
- **Arranging/implementing transfers** is in some Member States performed by: border guards (BE, HR, PL), police (CY, CZ, IT, SK, NO), Ministry of Interior (BG, FR), and staff of the determining authority (DE, DK). In **the Netherlands** the transfer is arranged by the Repatriation and Departure Service (an independent organisation within the Ministry of Security and Justice) and implemented by law enforcement authorities (*the Royal Dutch Marechaussee*).

The table below, based on the EASO Quality Matrix Report, provides further detailed information about which authorities carry responsibility for different steps in the Dublin procedure.

⁵ See also EASO, Quality Matrix on the Dublin Procedure

Table 2.1 Authorities responsible for different steps in the Dublin procedure

| | Case officers of the determining authority | Dublin officers within the determining authority | Another category within the determining authority | Officials from another authority |
|---|--|--|--|--|
| Screening | 9 MS: BG, DE ⁶ , DK, EE, ES, HU, LT, LU, NL | 9 MS: DE, ES, HR, IE, NL, RO, SI, SK, UK | 2 MS: RO (registration officers), UK (screening unit) | 3 MS: BE, FR, IT |
| Dublin interview | 10 MS: BG, DE ⁷ , DK, EL, HU, IE, LT, LU, PT, SE | 11 MS: AT, CY, DE, ES, HR, IE, NL, RO, SI, SK, UK | 2 MS: RO (registration officers), UK (screening unit) | 9 MS: AT, NO (police), BE (specialised officers from the immigration authority), FR, IT, LT, LV, PL, UK (border guards) |
| Making the decision on responsibility | 6 MS: BG, CH ⁸ , DE ⁹ , DK, EL, LT | 20 MS: AT, CY, CZ, DE, EE, ES, FI, HR, HU, IE, LU, LV, NL, NO, PL, RO, SE, SI, SK, UK | | 4 MS: BE (specialised officers from the immigration authority), FR, IT |
| In charge of transfer requests/ replies | 4 MS: BG, CH, DE*, DK | 20 MS: AT, CY, DE, EE, ES, FI, HR, HU, IE, LU, LV, NL, NO, PL, PT, RO, SE, SI, SK, UK | | 3 MS: BE (specialised officers from the immigration authority), FR, IT |
| Arranging transfer | 2 MS: DE*, DK | 12MS: AT, CZ, DE, ES, HR, HU, IE, LU, NL, RO, SI, SK, UK | 2 MS: DE, RO | 3 MS: BE (specialised officers from the immigration authority), FR, IT |

Source: EASO (20 July 2015) Quality Matrix Report: Dublin Procedure

⁶ In some branch offices only

⁷ Ibid.

⁸ And transfer decisions as well

⁹ In some branch offices only

As table 2.1 indicates, many different authorities are involved in the Dublin procedure. Despite involvement of different authorities, none of the Member States established any **formal internal coordination mechanisms**. Rather, some Member States established informal coordination structures. **Malta** explained, for example, that there is no need for an official coordination unit: ‘there are generally no communication problems; relevant authorities are in contact on a daily basis and are only an email or phone call away’. Instead, some Member States reported they had established **informal coordination structures**, which are more important in some Member States than others depending on the relative size of their administration and caseload. Examples include: an intranet platform through which information is exchanged (AT); working groups or weekly meetings where all concerned authorities gather once a week (FI, NO); the designation of contact persons in every department (CY), etc. **The Netherlands** organises a roundtable twice a week where all different authorities involved in the Dublin procedure update each other on the in-/outflow and discuss relevant information on Dublin procedures.

2.2 Resources of the competent authorities

The number of specialised case officers currently dedicated to Dublin differs greatly. Member States who were able to provide information on the number of full-time equivalent specialised Dublin case officers, can be divided into the following ranges¹⁰:

- 0–5: CY, EE, FR, HR, LT, LV, MT, RO, SI, LI;
- 6–10: BG, ES, IE, PL;
- 11–20: BE, FI, HU, IT;
- 20–40: AT;
- 40–60: NL, UK, CH;
- 60–80: SE.

The differences in the number of full-time staff must, however, be placed in context as: 1) differences exist in the number of incoming and outgoing take charge/take back requests handled by each Member State, and 2) differences exist in the tasks/responsibilities of Dublin staff (e.g. see Section 2.1). It is worth noting in this regard that, for example, in **France** the number of Dublin staff is relatively low mainly because the implementation of Dublin is primarily conducted at local level (e.g. the fingerprinting, checking of Eurodac, interviewing, etc. is all performed by the prefecture). The **French** Dublin unit only carries a coordinating role, being responsible for DubliNet and the communication with other Member States, including incoming and outgoing transfer requests. **Sweden** has the highest number of Dublin staff with 80 full-time equivalents.

As to trends in the number of full-time equivalents, the picture is mixed with some Member States (e.g. ES¹¹, HR¹², HU¹³, NL¹⁴, SE¹⁵, CH¹⁶) having increased the number of staff whereas in others (e.g. BE¹⁷, CY, RO, UK) the number slightly decreased. **Croatia, Hungary and Spain** explained that the increase is linked to an increase in the number of applicants for international protection. The most significant increase was in **Switzerland, the Netherlands and Sweden**. In **Switzerland**, the number of staff gradually increased from 10 in 2010 to a total of 46 in

¹⁰ Note that no information was available on the number of full-time equivalents in Germany

¹¹ Increased from 4 to 6 in 2015.

¹² From 2 to 3

¹³ From 8 in 2011 to 14 in 2015.

¹⁴ Increased from 33 to 60 in July 2015, following changes introduced by the recast Asylum Procedures Directive.

¹⁵ SE noted that the last few years the number of staff increased by 50 %.

¹⁶ Increased from 10 in 2010 to a total of 46 in 2015.

¹⁷ Decreased from 22 in 2012 to 16 in 2015.

2015, whereas the number of staff in **the Netherlands** increased from 33 in January 2015 to 60 in July 2015. **Swedish** authorities also noted that over the last few years, the number of staff increased by 50 % from approximately 40 to the current total of 80. In contrast, in the **United Kingdom** the number of staff decreased from 71 in 2014 to 52 in 2015. **The United Kingdom** explained that this decrease is, in part, due to process efficiencies as well as a reduced number of transfers (as transfers do not currently take place to **Greece**).

Overall, most Member States considered the number of staff to be sufficient, although **Cyprus, Greece, France** and **Ireland** noted that human resources are not adequate to meet obligations arising under the Regulation, particularly (as emphasised by e.g. **Cyprus** and **Greece**) in the context of the current refugee crisis. **Ireland** specifically referred to the 'increased complexity and increased burden of Dublin III on staff'. They noted that despite an increase of 140 % in staff, the Dublin unit still struggles to meet obligations under the Regulation, especially also due to the increase in the number of applications and extension of responsibilities linked to conducting Dublin interviews. **The United Kingdom** noted that 'resources are stretched', but emphasised that they are actively recruiting to keep up with demand. Also **the Netherlands**, which has the highest number of staff, noted that the adequacy of human resources is carefully monitored and may be further increased if necessary.

2.3 Training of the competent authorities

As mentioned earlier, Article 35 requires Member States to ensure that the competent authorities '*receive the necessary training with respect to the application of the Regulation*'.

Most Member States (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IE, IT, LT, LU, LV, NL, PL, SE, SI, SK, CH, NO) provide **specific training on Dublin**. According to the EASO Quality Matrix, many Member States' national authorities train their staff directly by using the EASO Training Curriculum module on the Dublin Regulation and/or also train their trainers by having them participate in training organised by EASO in **Malta**¹⁸. In some Member States training is also delivered by external experts (DE, EE, HU, LV, NO) or by other actors such as UNHCR (LT, LV), IOM (EE), or NGOs (DE, LV). In addition to training specifically on Dublin, some Member States additionally reported that Dublin case workers are also provided training on broader topics relevant to the Dublin procedure, such as interviewing children (CY, DE, DK, EL, LT, SK, UK) and vulnerable persons (DE, LT, SK, CH).

As to the **frequency of such training**, they are, according to the EASO Quality Matrix provided:

- Regularly in EE, HU, LV, NL, SE, NO;
- When needed in AT, BE, BG, CY, CZ, DE, DK, IE, FI, LU, LT, UK;
- Always to new staff in BE, CY, CZ, DE, DK, FI, IE, LU, LT, LV, PL, SE, SI, SK, UK, CH.

France, Portugal and **Romania** have not provided any specific training on Dublin to date. **France** noted that it has proven too costly to have employees participate in EASO training which is run in **Malta**.

Views on the **effectiveness of such training** differ by Member State. Although overall, most Dublin units/case workers reported that training is useful, the authorities in **Belgium** and **Lithuania** commented that training was not provided often enough. **Greece** noted that more detailed training tailored to each step of the procedure is required, whilst **Spain** highlighted the need for training on topics related to Dublin, e.g. Eurodac. **The United Kingdom** noted that training for new staff had been identified as 'an area for improvement'. Currently, new staff receives on the job training as well as a period of mentoring. Work is being undertaken to develop a training package so that there can be formalised training in classroom settings.

¹⁸ EASO Quality Matrix

The research team was not able to collect the views of non-government stakeholders on the effectiveness and relevance of the training provided to the Dublin case workers.

2.4 Communication between the competent authorities: the exchange of information via DubliNet

All Member States (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IE, IS, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI, UK, CH, LI, NO) found that it was clear who to contact in other Member States when dealing with Dublin cases. Many referred to a **list of contacts** drawn up by the Commission as well as **DubliNet** as useful tools facilitating communication and cooperation between Member States.

Box 2.2 DubliNet

'DubliNet' is an electronic communication network set-up under Article 18 of the Regulation. It provides a secured network for Member States (electronically signed and encrypted) to share and exchange information. It is as such a key tool for the implementation of the Dublin III Regulation, ensuring secure communication including data protection.

All Member States confirmed that they made use of DubliNet to exchange information throughout the procedure, for example, when submitting and replying to: information requests, take back/take charge requests, transfer arrangements including the exchange of information prior to a transfer, etc. However, some Member States (e.g. FR, HU, PL and SK) also noted that for certain specific parts of the Dublin procedure, most notably transfers, information may sometimes be exchanged via informal channels.

Informal channels (such as email, telephone or fax) are also used in exceptional circumstances when there are technical difficulties with DubliNet or when Member States deliberately choose informal channels, e.g. to communicate about study visits, liaison officers, and/or to solve any disputes. When communicating via DubliNet, Member States usually communicate in English (followed by German, French and Italian). However, the choice of language sometimes varies depending on staff language competencies. In this regard **Croatia, Malta and Norway** referred to the use of French by the **French** authorities which has, on occasion, created communication problems.

Although in general all Member States considered DubliNet an effective communication system, several difficulties were nonetheless encountered in practice. Examples include:

- Technical difficulties and system breakdown (HU, FR, LT, LV, PL, SE, UK, NO);
- Delays due to file size (BE, LV);
- No confirmation of receipt (BG, PL, SE, UK);
- Language barriers (HR, MT, NO).

The United Kingdom noted that DubliNet may be in need of technical updating or redevelopment, but stated that this would be the case for any technical tool developed in 2003. **France** and **Norway** were more critical towards the use of DubliNet and argued that a more advanced tool is required. France for example referred to DubliNet as 'a simple email exchange system', whereas **Norway** emphasised that the system is 'too fragile from a technical point of view being dependent on individual servers in Member States'.

3 Procedural guarantees and safeguards for applicants for international protection

This section provides an overview of the practical implementation of relevant articles in the Regulation on procedural guarantees and safeguards: Article 4 (right to information), Article 5 (personal interview), Article 6 (guarantees for minors)

3.1 Right to information

The Regulation stipulates under Article 4 that the competent authorities should, ‘as soon as an application for international protection is lodged, inform the applicant of the application of the Regulation’. It subsequently provides a list of elements of which the applicant should be informed.

3.1.1 Who provides information and when?

Depending on the Member State, applicants are informed about the application of the Dublin III Regulation by different types of governmental authorities, or a combination thereof. These include:

- Immigration authorities (AT, BE, BG, CY, CZ, DE, DK, EL, ES, IE, LU, LI, NL, PT, RO, SE, SK, UK, CH, NO);
- Law enforcement (AT, BE, CZ, DK, EE, FI, HU, IT, LT, LV, PL, NO);
- Dublin units (CY, HU, IT, LT, MT, PL);
- Local authorities (FR).

In those Member States where law enforcement authorities provide information, this usually occurs at their first encounter with applicants. For example, in **Germany** the *Bundespolizei* informs the applicant if it is the first to establish contact with the concerned third-country national (TCN) and will subsequently refer the applicant on to the Bundesamt für Migration und Flüchtlinge (BAMF). In **Denmark** the police show a movie to applicants to inform them of the asylum procedure, including Dublin.

According to the EASO Quality Matrix, the immigration authorities provide information at different points in the procedure: in some Member States information is already provided *before lodging an application* (DE, FR, IE, PL, SI); either at the making (AT, CY, EL) or when registering (BE, BG, CZ, DK, LU). Whereas in others it is provided *when lodging the application*, i.e. when the application is signed by the applicant (DE, EE, ES, FI, HR, IT, NL, SE, SK) or *after the lodging of an application* (DK, HU, LT, LV, CH, NO).

Moreover, in many Member States (e.g. BE, CZ, FR, HR, HU, IT, NL, PL, SI, UK, NO), next to governmental authorities, other actors, most notably NGOs and lawyers/legal representatives, play an important role in the provision of information (see also Section 3.1.3). However, the regional UNHCR Office in **the Czech Republic** noted that the government does not provide any funding to NGOs for this purpose, which was considered a problem.

3.1.2 How is information provided?

Article 4(2) stipulates that ‘the information shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand’ and that ‘where necessary for the proper understanding of the applicant, the information shall also be supplied orally’.

Most Member States (AT, BE, BG, CY, CZ, DE, DK, EL, FR, HR, HU, LV, NL, PL, RO, SE, SI, SK, CH, NO) usually provide both **written** (leaflets, letter, email, etc.) as well as **oral information**. In **Malta** applicants are provided exclusively oral information. In contrast, **Lithuania** noted that applicants are only provided oral information upon request and that this therefore rarely happens in practice. Practices in **Malta** and **Lithuania** could be in violation of the Regulation.

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With regard to written information, according to the EASO Quality Matrix, many Member States (CZ, FR, HR, HU, LT, NL, PL, RO, SE, SI, SK, CH), use the common leaflets provided in the

Commission Implementing Regulation. In the remaining Member States, the common leaflets are not used yet, but expected to be used in the near future¹⁹.

Written information is available in many different languages, ranging from a total of e.g. five languages in **Hungary** to 39 different languages in **Switzerland**. The table below, from the EASO Quality Matrix, provides an overview:

Table 3.1 Languages in which information is provided (EASO)

| Multiple languages | English only | Applicant's language | Translation |
|--|--------------|-----------------------------------|-------------|
| BE (25), CH (39), EE (9), ES(4), FR (33), HR (4), HU(5), IE (5), IT (10), LT(17), LU(23), NL (14), NO (11), RO, SE (9), SI (6) and UK (17) | CY, MT | CZ, DE, DK, FI, LV, PL, PT and SK | BG |

Source: EASO Quality Matrix

As to information that is provided orally, most Member States (e.g. AT, BE, BG, CY, CZ, DE, EL, FR, HR, HU, IT, LT, LV, PL, RO, SE, SI, SK, CH, NO), where necessary, make use of interpreters in order to 'ensure that the applicant understands or is reasonably supposed to understand'. Whereas in most Member States this is carried out face-to-face, **the Czech Republic** reported that interpretation services may sometimes also be available via the phone. No interpretation services are currently available in **Malta**, a practice which could be in violation of the Regulation.

3.1.3 What type of information is provided?

Article 4(1) lists several elements that applicants should be informed of 'in particular', e.g. the objectives of the Regulation, the criteria, the personal interview, the possibility to challenge a transfer decision, the fact that Member States can exchange data on him/her, and the right of access to data.

Some Member States (e.g. AT, BE, CY, ES, LT, PL, CH) referred to the list of elements in Article 4(1) and stated that the information provided covers all elements as stipulated therein. However, almost half of the Member States (e.g. DE, DK, EL, HR, HU, IT, LU, LI, LV, NL, RO, SI, SK, NO) reported that they provide *general* information, i.e. information about the asylum procedure, the applicants' rights and obligations as well as the potential application of the Dublin III Regulation. As such, information provided may fall short of the list as stipulated in Article 4(1). A legal representative in **the Netherlands**, however, emphasised the important role played by NGOs as well as legal representatives in ensuring that all information in Article 4(1) is gradually provided, according to each step of the procedure.

Box 3.1 Example of tailored information being provided by different authorities at different points in the procedure

*In **the Netherlands**, when lodging the asylum claim, applicants are provided with general/basic information about the procedure, their rights/obligations, as well as the potential application of Dublin. The information provided is not – and should not be – as extensive as stipulated in Article 4(1): 'when lodging a claim, applicants are often overwhelmed with information. Should applicants be informed of all items as listed in Article 4(1) they would simply not be able to understand and register this information. Rather, it is much better when lawyers/NGOs provide relevant information when necessary, following the different steps in the procedure. As such, the applicant will gradually be informed with more detailed information, if appropriate/relevant to his/her case²⁰.*

3.1.4 Views on the quality and frequency of information

Overall, NGOs and lawyers/legal representatives considered the provision of information by governmental authorities satisfactory in AT, BE, CY, LT, NL, NO, CH. An NGO in **Austria**, however, noted that information is general and provided in a standard form: 'even if information is adequate, it may still be doubted whether the applicant sufficiently understands the Dublin procedure due to its complexity'.

Some NGOs and/or lawyers/legal representatives were also more critical of the quality and frequency with which information is provided, e.g. DE, EL, IT, LU, MT, PL and SI. The box below summarises some relevant statements in this regard.

Box 3.2 Examples of statements by NGOs and/or lawyers/legal representatives about the quality of information

*Legal representatives in **Germany** noted that the information provided is insufficient, 'The common leaflet distributed by BAMF is not the same as the one provided for in the Implementing Regulation (2014). It consists of only one page and does not contain information on Article 4(1)(b), (c) or (f); only rudimentary information on 4(1)(a)'. In this regard, the German authorities explained why no use is made of the common leaflets, which were considered too long, and incomprehensible, 'It cannot be expected of an applicant to read a 60–70 page document. This is by far too much information, which the applicant is likely not to comprehend'. (**German legal representative**)*

*'In **Italy**, in practice, little written and oral information is provided; the information leaflet is no longer up-to-date [refers to Dublin II], is not made reference to by the immigration authorities and can only be found online. As such, information is rarely provided and if provided is outdated'. Instead, lawyers/legal representatives and NGOs are mostly relied upon to provide information about Dublin' (**Italian NGO**).*

*'In **Greece**, in the last six months individuals have not received information in writing. Moreover, information is basic and insufficient; individuals are not informed about the criteria (especially on Articles 16 and 17), required evidence (documents), deadlines, etc.' (**Greek NGO**).*

*'In **Malta**, there are no specific safeguards in place for the provision of information to those who are isolated or those who are with special needs. Least likely to be well-informed are those whose first language is not a common one amongst the refugee community in Malta (e.g. Albanians), or those with mental health difficulties who may take longer to absorb the information or need it to be presented in a different format' (**Maltese NGO**).*

*'The provision of information can sometimes be too formal, which is difficult to understand' (**Polish, NGO**).*

*'Too much information and too technical' (**Luxemburgish NGO**).*

3.2 Personal interview

Article 5(1) states that 'in order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant'.

3.2.1 Circumstances in which the personal interview may be omitted

All Member States consulted to date confirmed that a **personal interview takes place as standard practice**. Whereas in most Member States this consists of one interview, in **Germany** the Dublin interview consists of a two-tiered process: the '*Mittlerer Dienst*' (medium grade officials) ask part 1 of the Dublin questionnaire, after which applicants' fingerprints are taken and checked against the Eurodac database. In the case of a hit, a transfer request is

¹⁹ EASO Quality Matrix

²⁰ Legal representative in the Netherlands consulted for this Study

sent and, depending on the Member State's answer, part 2 of the questionnaire will be asked. This two-tiered process is applied to save resources.

Many Member States acknowledged that there may in practice be circumstances in which a personal interview is omitted. Indeed, according to Article 5(2): 'a personal interview may be omitted if (a) the applicant has absconded, or (b) the applicant has already provided the information relevant to determine the Member State responsible by other means'.

In line with Article 5(2), the majority of Member States reported that interviews may be omitted:

- When applicants have absconded (BE, BG, CY, DE, DK, FR, HR, HU, RO, SK, UK, CH);
- When the authorities have already acquired sufficient information to make a determination of responsibility under Dublin (CZ, HU, IT, LT).

In addition, some Member States also reported other reasons for the omission of interviews, for example: when the applicant does not want to participate (DK), when the applicant lodged a subsequent application (BG), in cases of family reunification (EL), manifestly unfounded cases (MT), or when an interview cannot be conducted due to health problems or other unforeseen circumstances (NL, SK, UK). It may be questioned whether these practices are in accordance with the Regulation, as the list of reasons for omitting a personal interview in Article 5(2) is exhaustive.

In **Italy** and **Greece**, NGOs emphasised that the authorities routinely encounter practical difficulties in conducting the interview due to capacity problems. For example, in **Greece** a personal interview is only conducted in the case of a Eurodac hit or to substantiate the humanitarian grounds of a case under Article 17 of the Regulation. According to an NGO in **Malta**, interviews are not conducted in a systematic way. **In contrast, Austria, Cyprus²¹, the Czech Republic, Finland, France, Latvia, Poland, Portugal, Spain and Sweden** do not, under any circumstances, allow the omission of interviews.

3.2.1.1 Presenting further information in the event of the personal interview being omitted

In the case where Member States omit the personal interview, Article 5(2)(b) explains that 'the Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1)'.

Different practices exist across Member States with regard to the opportunity to provide further information for an applicant's case in the event of the personal interview being omitted. All Member States (except **Italy**) allow applicants to **submit information in writing**, including any supportive documents relevant to the Dublin procedure. In **Italy** however additional information must be provided **in person** at the '*questura*'.

However, **different time frames apply** in Member States as regards the stage in the procedure when information can be submitted. For example, **Lithuania, Malta and Switzerland** allow written information to be presented at any time during the procedure. Whereas **Norway** accepts additional information at the Directorate of Immigration only before any decisions are taken, in **the Netherlands**, applicants can provide documents/written information once an 'initial' decision has been made on responsibility. Applicants are informed by the authorities of the 'intention' to submit a transfer request, following which they can, in cooperation with their lawyer/legal representative, submit any information as to why they should not submit a transfer request. In **Greece**, new documents can only be submitted within 3 months of the original application. The latter practice may be in violation of the Regulation as Article 5(2)(b) does not stipulate a maximum deadline.

²¹ Officially the personal interview cannot be omitted, but the stakeholder consultation indicates that in practice interviews may sometimes be omitted due to absconding or if there is already sufficient information.

Whereas in all Member States consulted to date applicants were found to be adequately informed about the possibility to provide information, the lack of information concerning the opportunity to submit additional information was noted as an issue by NGOs in **Greece** and **Malta**. Moreover, in **Italy** an NGO noted that although applicants provide additional information in person at the *questura* the police have no capacity to process this information. This would appear to be in clear violation of the Regulation as well as CJEU case-law²².

3.2.2 Time frame for carrying out the personal interview

Article 5(3) states that 'The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1)'.

Different time frames exist in practice across Member States for carrying out the personal interview. Several Member States (CZ, LT, NL, PL, RO, NO) noted that interviews are *normally* conducted within 24 hours of lodging an asylum claim. Other Member States plan to conduct the interview within the first week (AT, BE, CZ, IE, LV, SE), two weeks (HR, LU, CH), two months (DK) and three months (FR). For those Member States who conduct the interview within 24 hours, an NGO flagged that there may be an issue with the interview being held too early. In **the United Kingdom**, a screening interview is held as soon as the applicant is registered at a police station. One stakeholder considered this inappropriate timing for an interview, as the applicant is still likely to be in a state of shock. On the other hand, in **Slovenia**, an NGO claimed that the interview is often conducted after the Ministry of the Interior has sent the request for take back or take charge, rendering it a mere formality. This practice, if true, would seem to be in breach of Article 5(3) which requires the interview to take place, 'in any event before any decision is taken to transfer the applicant'.

As a result of the current high influx of applicants, several Member States (e.g. BE, DE, DK, ES, SE, NO) stated that the interviews are affected by **severe delays**. For example, whereas in **Norway** the interview normally takes place within 24 hours of lodging the claim, it may now take up to four months. Similarly, in **Belgium** and **Sweden** the interview normally takes place within one week, whereas it may now take 'months' or 'several weeks', respectively. In **Denmark**, the interview should normally take place within two months, but the authorities noted that it now takes six to eight months, whereas a **Danish** NGO said it takes up to a year in the current context. A lawyer/legal representative in **Germany** noted that 'months can pass between the applicants' first arrival and the first interview taking place'.

3.2.3 Conduct of the interview

Article 5 paragraphs (4), (5) and (6) lay down several safeguards for the conduct of the interview. Safeguards include the ability to use a language the applicant understands, the availability of interpreters, conduct of the interview by a qualified person, as well as access to a written summary of the interview.

In about half of the Member States interviewed (AT, BE, CY, DK, FI, IE, LT, NL, PL, RO, SI, UK, LI) different types of stakeholders²³ agreed that all safeguards for the personal interview are complied with in practice. In other Member States, some NGOs or lawyers/legal representatives brought several problems to light:

- **Language problems/availability of interpreters** (IT, FR, SE): In **Italy** language problems are a major issue as, often, no interpreter is present during the interview. Similarly, in some regions of **France**, no interpreter is present at the interview. In **Sweden** there have been issues around finding interpreters for local dialects which have caused delays. It was further noted that the quality of interpreters varies (as the best are more expensive), and

²² See Francesco Maiani, Constantin Hruschka (2011) Le partage des responsabilités dans l'espace Dublin, entre confiance mutuelle et sécurité des demandeurs d'asile Revue suisse pour la pratique et le droit d'asile (ASYL) 2011: 2. 12-19

²³ e.g. NGOs, lawyers/legal representatives and governmental authorities.

there have been cases where there was a lack of interpreter impartiality when giving tips to applicants on what to say during the interview.

- **Quality of interviewers** (AT, IT, LT, MT): In general, qualifications required under national law vary greatly across Member States. Whereas some (CZ, RO) require interviewers to have secondary school education, others (BE, CY, DK, HR, HU, LT, SE, SI, CH, NO) require university degrees as a minimum. **Italy**, **Latvia** and **Poland** require qualified police officers for conducting interviews, and **Norway** requires police qualification and a university degree. Stakeholders in **Italy** brought up the problem that police staff is not qualified to conduct Dublin interviews (lack of linguistic skills and specific skills dealing with applicants). This sentiment was echoed by stakeholders in **Lithuania**, where interviewers do not possess special qualifications for conducting interviews. In **Austria**, the authorities claimed that their staff is qualified to conduct interviews, but an NGO expressed concerns. In **Malta** concerns were expressed about the relevance of training regarding vulnerable persons. However, no further information on the specific concerns and/or the possible impact this may have on applicants was provided.
- **Written summary and access:** In **Malta** interviews are not recorded, nor is a transcript available.

In **Germany**, although generally all safeguards are complied with a lawyer/legal representative explained that the personal interview is generally very short (approximately 15–20 minutes, including the time needed for interpretation and the provision of information). As such, it was noted that the applicant is put under extreme time pressure during the interview.

Although the **presence of a legal representative** in the room during personal interviews is not stipulated by the Regulation, it can however play a critical role in ensuring that the rights of the applicant are complied with during this important stage. The provision and presence of legal representation during the personal interview seems to fall under several categories. Several countries (AT, CY, DK, FI, FR, HR, HU, MT, SI, SK, UK, CH) allow legal representation, but require the applicant to seek and hire their own representation. Some countries provide legal representation free of charge (LV, NL, SE, RO), however in **the Netherlands** the legal representative does not normally attend the Dublin interview. In **Latvia** and **Sweden** a legal representative can attend the interview free of charge upon request. Only one country, **Belgium**, stated specifically that legal representation is not allowed in the personal interview, except in the case of minors. **Cyprus** and **Greece** both noted that information about legal assistance is not usually provided to the applicant. In **Greece**, it was claimed by an NGO that, de facto, there is no access to legal assistance.

3.3 Guarantees for minors

Guarantees for the protection of minors are of the utmost importance in the Dublin Regulation, as minors require assistance to progress through the Dublin procedures, and ensure that their rights are not infringed upon in a system that might be impossible for them to navigate properly on their own.

Before entering a discussion on Member States' procedures for guaranteeing the rights of minors, it is important to note that several Member States receive very few cases of unaccompanied minors in Dublin procedures (e.g. FR, IT, LT, LV, SK), whereas respondents from other countries repeatedly noted throughout interviews that they are overwhelmed with such cases, leading to staff shortages and delays in processing (e.g. BE, EL, HU, MT, SE).

3.3.1 How are the best interests of the child assessed?

Article 6(1) states: 'the best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation'. Article 6(3) sets out four factors on which to judge the best interests of the child:

- Family reunification possibilities;
- The minor's well-being and social development;

- Safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
- The views of the minor, in accordance with his or her age and maturity.

The question of how to determine the best interests of children is subject to much discussion in the literature; no agreement exists and there are no agreed upon criteria/indicators. How do Member States determine which factors to give more importance to and how is a final decision reached? An in-depth assessment of the methods is beyond the scope of this Study, but suffice it to say that in practice Member States each give their own interpretation, as also confirmed by relevant stakeholders in some Member States (e.g. DE, DK, NL, SE, UK)²⁴.

Moreover, most Member States do not have any **special procedures or guidelines** for determining the best interests of the child²⁵, but rather rely on general international or national guidelines; for example **international guidelines** drawn up by the UNHCR and Committee of the Rights of the Child (CRC), the Handbook from the Fundamental Rights Agency (FRA), or jurisprudence from the ECtHR. **Italy, Sweden, Slovenia** and **Norway** reported they also rely on **national guidelines**.

In some Member States (CZ, DE, FI, IT, NL²⁶, NO, PL, SE) authorities reported they consult other relevant stakeholders within their Member State and take into account their views on what is considered to be in the best interests of the child. For example, in **the Netherlands** the Nidos Foundation²⁷ is generally consulted and their opinion systematically taken into account. Similarly, in **Germany** and **the United Kingdom**, the authorities consult experts in child welfare.

3.3.1.1 *Unilateral or multilateral assessment?*

Determining the best interests of the child in the context of the Dublin procedure often involves assessing the situation of a relative/family member in a different Member State, i.e. in situations where children have relatives in other Member States or where children are travelling together with relatives and the relative is subject to a transfer. As such, Article 6(3) clarifies: 'In assessing the best interests of the child, Member States shall closely cooperate with each other'. This provision was newly introduced under Dublin III.

However, the majority of Member States (e.g. AT, BE, BG, CZ, DK, EL, ES, FR, HU, IE, IT, LT, LV, LU, MT, NL, PL, RO, SK, LI) do not have any specific procedure to involve other Member States in the assessment of the best interests of the child (BIC)²⁸. Nonetheless, nearly all Member States confirmed that they **take into account** BIC assessments conducted by other Member States, although **France** noted that they have a procedure in place to verify the information. It must be noted however that diverging interpretations of the 'best interests of the child' have, on some occasions, led to communication issues between collaborating states, as reported upon by **Cyprus, Greece, France** and **Romania**. It seems that the lack of an agreed upon definition of best interests therefore prevents effective cooperation across Member States.

3.3.2 *Appointment of representatives*

Article 6(2) stipulates that Member States must ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in the Regulation. This is necessary because in many cases minors are unable to understand the Dublin system, and may be subject to rights infringements because of their vulnerable position.

²⁴ See also "Dublin for Guardians", January 2015: <http://engi.eu/projects/dublin-support-for-guardians/>

²⁵ EASO Quality Matrix

²⁶ For incoming requests only.

²⁷ Independent family guardianship organisation

²⁸ EASO Quality Matrix, Dublin Procedure

Representatives can help guide minors through the asylum process, ensuring that the procedure will result in a beneficial outcome.

Although most Member States (e.g. BE, BG, CY, DE, FR, HR, LT, MT, NL, RO, SE, SI, CH, NO) do indeed appoint a representative to minors, several Member States highlighted **practical problems**. Some (e.g. BG, CY, HU, SE, CH, EL, MT, NO) noted the increasing **lack of capacity** to provide representatives in the current context due to the large **number of arrivals**. Particular concerns were raised in **Greece** and **Hungary** in this regard. This however constitutes a wider problem of the asylum procedure, which is not limited to Dublin.

3.3.2.1 *Timing of the appointment of representatives*

The timing of the provision of guardians and/or legal representatives to unaccompanied minors is important so that their rights are assured during as much of the process as possible.

Member States appoint representatives at different points in the procedure, as follows²⁹:

- **Before** an application is lodged (AT, BE, CY, DE, EL), for applicants under 14 years old (IE, NL, RO, SK);
- **When** lodging the application (BG, SE, PL);
- **After** the initial application has been lodged (BE, HR, HU, LV, CH, NO).

Moreover, **Hungary** and **Norway** only provide for guardians after the initial age assessment has been completed, which does not violate the stipulations in the Regulation, but does put children at risk of having their rights violated at an early stage of the process.

Several countries also noted delays in appointing a guardian (e.g. HU and SE referred to days and BE to months), but **Hungary** noted that it has recently implemented a new law (September 2015) that stipulates minors must receive guardians within eight days of their application.

3.3.2.2 *Qualifications of representatives*

The second sentence of Article 6(2) proclaims: 'The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation'.

Great differences exist with regard to the specific qualifications: certain Member States (e.g. BE, BG, LT, LV, NL, PL, RO, SE, SK) appoint representatives with legal training, while others appoint representatives trained in social work (e.g. CY, FR, MT, SI). In **the Netherlands**, the minor is appointed both a guardian trained in social work as well as a legal representative who has legal qualifications. Further specific details about qualifications are beyond the scope of this Study, but can be found elsewhere³⁰.

Particular concerns about the qualifications of representatives were expressed by NGOs in **Belgium, Cyprus, Finland, Malta** and **Norway**. For example, in **Norway** and **Cyprus** NGOs expressed concerns about the **legal capacity of representatives**. In **Cyprus** these are social workers without legal capacity or systematic training, and in **Norway** they are civilian volunteers with no legal training. Similarly, in **Belgium** the NGO explained that 'there are both professional guardians as well as civilian volunteers and there is a significant difference in qualifications between both'.

Non-Governmental Organisations in **Greece** and **Norway** further raised the issue that legal aid is not free (in **Norway** it becomes free only after a negative first decision).

²⁹ Complemented with information from the EMN Study on "Policies, Practices and Data on Unaccompanied Minors, May 2015: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_policies_practices_and_data_on_unaccompanied_minors_in_the_eu_member_states_and_norway_synthesis_report_final_eu_2015.pdf

³⁰ E.g. FRA Handbook on Guardianship: http://fra.europa.eu/sites/default/files/fra-2014-guardianship-children_en_0.pdf ; Connect project available on: <http://www.connectproject.eu/>

3.3.2.3 *Access of Representatives to the case files of unaccompanied minors (UAMs) (Article 6(2))*

The third sentence of Article 6(2) explains that: ‘Such representative shall have access to the content of the relevant documents in the applicant’s file including the specific leaflet for unaccompanied minors’. This is a crucial measure to protect the rights of unaccompanied minors, because in order to receive informed assistance, their guardians and/or legal representative must have the ability to access their case file. Of the few Member States that provided information related to this question, authorities in **Poland** and **Sweden** confirmed the ability of lawyers to access such case documents, while **Hungary, the Slovak Republic** and **Norway** noted that guardians are unable to see the relevant documents of UAMs, in violation of the Regulation.

3.3.3 *Family tracing (Article 6(4))*

Article 6(4) stipulates that: ‘For the purpose of applying Article 8, the Member States where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child’. Member States may use various methods and organisations to track family members of unaccompanied minors, but they are required to attempt to find family members in order to make an informed decision of responsibility for processing the minor’s asylum claim under the Regulation.

Article 6(4) paragraph 2 explains that ‘Member State[s] may call for the assistance of international or other relevant organisations, and may facilitate the minor’s access to the tracing services of such organisations’.

Member States involve the following authorities, or a combination thereof:

- **Red Cross** (AT, BG, DE, DK, EL, LU, HU, HR, SE, CH, NO);
- **NGOs** (AT, DE, LU, NL, LI) ;
- **Social welfare services** (MT, CY, DE, IT);
- **Immigration authorities** (BE, ES, PT, SE, UK).

Yet other Member States (BE, ES, FI, HU, LT, NL, PT, RO, UK) claim that they perform the investigation **without consulting a specific institution**, for example via **requests for information**. For example, **Finland** usually sends information requests to other Member States based on ‘substantial’ information provided by the child (e.g. specific information such as name, city of residence of the potential family member). Indeed, several Member States (e.g. CY, HR, LT, NL, RO, SE) explicitly noted their **interaction with other Member States directly** to trace family members. Some Member States (AT, BE, CY, CZ, FI, HR, NL, PL, CH, NO) also explicitly noted that they take into consideration **the child’s statement**.

Greece and **Cyprus** put the burden of family tracing on the child, with help from social services and the Red Cross, and in **France**, unaccompanied minors must provide information on family members living in other Member States to start the tracing process. This may be at variance with Article 6 of the Regulation and with Article 12(3) of the Implementing Regulation as both provisions lay down proactive, *ex officio* action to trace family members.

3.3.3.1 *Effectiveness of family tracing in practice*

NGOs and/or lawyers/legal representatives voiced several concerns as to the effectiveness of family tracing in practice. Concerns related to various issues:

*'There is **insufficient capacity** to perform family tracing and it is therefore **not (systematically) performed in practice**' (NGOs in EL and MT).*

*'Family tracing **takes too long** and is often not successful, this creates secondary movement as applicants will travel on to be with their family members' (NGO in AT).*

*'The procedure takes **too long**' (lawyer/legal representative in DE).*

*'Nothing is hardly ever found and thus tracing is **usually unsuccessful**' (NGO in BE and HR).*

*'The **definition of family members** is **too strict**, which leads to the inability to find family members' (NGOs in BE and IT).*

Few responses were received from governmental authorities on the effectiveness of family tracing, but overall their views also indicate that family tracing is difficult and it was noted that more could be done in this area (e.g. AT, DK, PL).

4 Criteria/procedures for determining the Member State responsible

4.1 Access to the procedure (Article 3)

Article 3 lays out the normal procedure to be followed by Member States when determining responsibility for an application for international protection submitted on their territory. The article establishes the principle that only one Member State will be responsible for a claim, and that responsibility will be evaluated according to the criteria laid out in Articles 7 to 17 of Chapter III.

Article 3(2) requires Member States to follow a different procedure in two cases: (1) when **no Member State can be designated** according to the Chapter III criteria, and (2) when **systemic flaws in asylum procedures or reception conditions** in the responsible Member State result in inhuman or degrading treatment that could violate Article 4 of the Charter of Fundamental Rights of the European Union. The November 2014 ruling of the ECtHR in the case of *Tarakhel v. Switzerland* suggested there may be additional circumstances not covered under Article 3(2) that would amount to rights violations, suggesting Member States should obtain **individual guarantees** of sufficient standards of treatment for particularly vulnerable applicants before conducting a transfer.

When the second condition of Article 3(2) applies, Member States are to continue evaluating the evidence and Chapter III criteria to determine the next Member State responsible. It is currently unclear, however, whether the next Member State transited through by an applicant travelling illegally becomes responsible if the first Member State where the applicant entered cannot be held responsible under Article 3(2). If no Member State can be found to be responsible under Chapter III criteria, the Member State in which the application was first filed is to take responsibility, as per the first condition of Article 3(2).

4.1.1 Assuming responsibility without undertaking a formal Dublin evaluation

Nearly all Member States consulted indicated that at times they deviate from usual Dublin procedures to assume responsibility for a claim without doing a full Dublin assessment of the case (making use of Article 17(1)), even if evidence obtained during registration or initial processing (e.g. a Eurodac hit) suggests another Member State may be responsible (AT, BE, CZ, DE, EL, FR, HR, HU, IT, LT, MT, PL, PT, RO, SE, SI, CH, NO). Only **Bulgaria, Cyprus, Estonia** and **the Netherlands** indicated that Dublin procedures are applied in all circumstances.

The reasons for not undertaking a formal Dublin examination varied. **Individual humanitarian considerations** motivated some Member States:

- Local authorities in **France** have the authority to choose not to undertake a formal Dublin investigation for particularly vulnerable cases or those with health concerns;
- **Switzerland** does so when there are medical issues or other humanitarian concerns;
- **Italian** authorities may choose not to complete formal Dublin assessments in cases where doing so might disrupt the family unity; and
- **Austrian** authorities take responsibility for cases with a history of trauma.

Such cases may however arise only rarely; **Lithuanian** officials suggested they had seen just 10 such cases in the last few years. Several Member States also indicated they had assumed responsibility for a claim without undertaking a full investigation for cases involving **Greece** as a result of Article 3(2) **systemic deficiencies** (HR, HU, IT, PL, RO, NO, AT); in addition, **Greece** and **the Slovak Republic** had also both applied Article 3(2) to applicants who had entered through **Bulgaria** in the previous year (**the Slovak Republic** and **Austria** had also done so for cases from **Hungary**). It was not entirely clear, however, from the responses whether authorities in these Member States intended to indicate that they had chosen not to

undertake a full Dublin investigation for cases involving **Greece**, or if they interpreted the question as regarding the assumption of responsibility under Article 3(2) after completing a formal Dublin assessment.

Authorities in some Member States may designate **particular groups** for special procedures, again for **humanitarian** reasons:

- In **Belgium**, authorities indicated they often handle Syrian claims outside of Dublin procedures if the applicant has family (including siblings or other relatives) in **Belgium**, a situation they report encountering with increasing frequency;
- Family was also a reason for taking responsibility for claims in **the Czech Republic**;
- In **Norway**, the Ministry of the Interior has the authority to designate certain groups or individuals to be handled outside Dublin procedures, such as Afghani interpreters who assisted the **Norwegian** Defence Department, for example;
- **Spanish authorities** will refrain from sending cases involving unaccompanied minors, for example, to the Dublin unit, if there is enough evidence that the criteria for minors applies.

Claims may also be handled outside Dublin procedures for **administrative reasons**:

- **Germany** briefly suspended the use of Dublin procedures for **Syrian** applicants in the autumn of 2015 for reasons of efficiency. Authorities indicated that at the same time as the number of claims reaching **Germany** rose, **Hungarian** officials instituted a policy that they would take back a maximum of 12 people per day, with the result that the backlog of transfers rose tremendously. **German** authorities therefore chose to suspend individual checks of Dublin criteria in Syrians' cases in order to expedite the process, as the backlogs meant that few would have been transferred in any case;
- **Spanish authorities** indicated they will not forward cases to the Dublin unit on the basis of entry criteria (Articles 12–14) unless there is probative evidence these are applicable i.e. interview statements by the applicant that he or she entered through another Member State would not be enough.

Finally, several Member States (SE, AT, DK, NO, FI) have designated **specific national groups** for processing outside of Dublin procedures (i.e. not referred to Dublin units for investigation) because their cases are judged likely to be **manifestly unfounded** and are eligible for expedited processing. **Sweden, Finland** and **Denmark** have automatically dealt with all Western Balkan cases themselves since last spring for reasons of efficiency. **Norway** does this as well for those from Kosovo (as does **Austria**) and Albania, or those with previous criminal records.

4.1.2 Assuming responsibility due to systemic flaws in asylum procedures or reception conditions

Member States are also required to refrain from transferring an applicant to the Member State normally responsible under the hierarchy of criteria if there are systemic flaws in asylum procedures or reception conditions in that Member State.

In line with the ECtHR's decision in *M.S.S. v. Belgium and Greece* and the subsequent decision of the CJEU in the joined cases of *N.S. v. United Kingdom* and *M.E. v. Ireland*, most Member States indicated they refrain from transferring cases that would normally be the responsibility of **Greece** due to concerns about **systemic flaws in the asylum procedure** (AT, BE, BG, CZ, DE, DK, ES, FI, FR, HU, HR, IE, LU, MT, NL, RO, SE, UK, CH, NO). Authorities in **Cyprus**, however, suggested they would not transfer applicants that had transited through **Greece**, but that they did not often see such cases. Nor had **Portuguese** authorities dealt with such cases so far. **Croatia** suggested that although they would assume responsibility for claims from **Greece**, they are not often required to do so as most applicants abscond. Other Member States pointed to procedural flaws that had briefly suspended transfers to **Bulgaria** (BE, EL, FR, SI), Italy (SI, CH) and **Hungary** (AT, LU, SI). By contrast,

Lithuanian and **Estonian** authorities stated they had never had such cases, although overall numbers of asylum applications in both countries per year also tend to be very low.

Twelve Member States also pointed to **systemic flaws in reception conditions**, as opposed to procedures, as another reason for suspending transfers to **Greece** (BE, BG, CY, FR, HR, HU, IT, MT, NL, RO, SE, NO). Some suggested similar problems had prevented them from transferring applicants to **Bulgaria** (FR, SI), **Italy** (SI) and **Hungary** (SI, CH). **Danish** authorities, on the other hand, indicated they do not distinguish between systemic flaws in procedures versus reception conditions.

Fewer Member States reported use of Articles 3(2) or 17 due to concerns about **individual guarantees** of rights, as per the ECtHR's decision in *Tarakhel*. Member States most often raised concerns about the difficulty of obtaining individual guarantees for applicants who are to be transferred to **Italy** (BE, NO, FI), although some also mentioned that the lack of individual guarantees was also an issue in transfers to **Greece** (IT, MT). Authorities in **Cyprus** suggested they did not often encounter cases requiring individual guarantees, but that they had had difficulty in the past in obtaining these because the receiving Member State did not reply to the request for a guarantee. In **the Netherlands**, minors are not transferred to **Italy** if individual guarantees cannot be obtained. In **France**, authorities generally refrain from transferring applicants with medical concerns if an individual guarantee cannot be obtained, although most such cases are not handled through Dublin procedures. **Danish** authorities stated that they do not believe transfers to **Italy** require individual guarantees, but that there are currently cases under appeal that will clarify this.

United Kingdom authorities stated that since the rulings in *M.S.S.* and *N.S.*, they have seen a growing number of appeals and legal challenges on the basis of systemic deficiencies.

4.1.3 Assuming responsibility outside the normal hierarchy of criteria

As per Article 3(2), several Member States reported they have had to assume responsibility for a claim when **no other Member State could be designated** under the hierarchy of criteria (AT, BE, DE, FR, IE, NL, SE, UK, NO). The **Danish Immigration Service** provided figures indicating they had done this in 9,060 cases in 2014, and **United Kingdom** authorities suggest this happens 'very often'. This may occur when no conclusive evidence is found to indicate responsibility. **Dutch** authorities estimate they must take on between 5 % and 10 % of cases for this reason (which they attribute to gaps in registration and fingerprinting procedures in other Member States). **Ireland** suggested almost all the cases it handles in this way would normally fall under **Greece's** responsibility. **Luxembourg** authorities suggested that the incidence of these sorts of cases has increased since the increase in flows over the last two years. Eurodac evidence has become less available.

In **France**, however, instances where no Member State could be designated have become less common since the VIS was put into place, as this provides additional evidence on which to make a Dublin evaluation. No specific data was provided by **French** authorities, however, indicating how much the frequency of such cases had declined. Member States at or near Europe's external borders rarely faced this problem (BG, CY, EL, HU, HR, LT, PL, RO) because responsibility for the cases they see is rarely unclear as entry criteria most often apply.

A Member State may also have to take on a case under Article 3(2) if systemic flaws prevent them from transferring an applicant to the Member State normally responsible and no second Member State can be identified who should assume responsibility. **Swiss** authorities reported assuming responsibility for 351 such cases between January 2014 and August 2015.

Cases that would normally be the responsibility of **Greece** are particularly problematic. Three Member States reported they often have to assume responsibility for cases that have transited through **Greece** because no other Member State can be designated responsible (AT, BE, HU, HR), although some Member States indicated they had also done so for cases from **Bulgaria** (BE) and **Italy** (NO). Several Member States said they continue to apply the hierarchy of criteria even when **Greece** is responsible in order to determine the next Member State

responsible (NL, SE). For cases in **the Netherlands** that entered via **Greece, Hungary** has at times been the next designated for responsibility. Without Eurodac data, however, it can be hard to find a second Member State to assume responsibility (SE). It is, however, unclear under the current wording of Article 3(2) whether the next Member State, through which an applicant transited illegally, would automatically assume responsibility if the Member State normally responsible faces systemic deficiencies, and no other higher ranked criteria apply.

Member States at the external borders were much less likely to report they had been required to assume responsibility under Article 3(2) when no other Member State could be identified as responsible, and some said this issue rarely arose in their systems (BG, CY, LT, PL, RO, SI). Although **Italian** authorities have occasionally assumed responsibility for cases from **Greece**, the low flows in this direction mean this is not a large number of people. Furthermore, **Croatia** and **Slovenia** suggested that although they would assume responsibility for claims from **Greece**, they have not often had to do so in practice as most applicants abscond.

4.2 Hierarchy of criteria (Articles 7–16)

Chapter III sets out the criteria by which Member States are to assess responsibility for an application for protection, in the order in which they are to be applied. Precedence is given to considerations of family unity and the best interests and rights of child applicants (Articles 8–11). Authorities are then to consider whether another Member State granted the applicant entry to EU territory legally or issued him or her with a residency document (Article 12). Should none of the first five criteria apply, the Member State where the applicant entered EU territory illegally will be responsible for examining the claim (Article 13). Finally, Articles 14 and 15 apply to applicants who enter through visa waivers or submit claims in the international transit area of an airport.

Also relevant are Articles 7, 16 and 17. Article 7 requires Member States to take into consideration the presence of family members and relatives of an applicant on EU territory before making a transfer decision. Article 16 requires Member States to assume responsibility or request another Member State to assume responsibility for cases on humanitarian grounds or to protect family unity. Article 17 provides a mechanism for Member States to assume responsibility for cases that would otherwise fall to other Member States, or to request another Member State to assume responsibility on humanitarian grounds (including family unity).

This section assesses Member States' evaluations of the clarity of the criteria, the evidence and procedures used to apply the criteria, and whether the criteria are followed in practice.

4.2.1 Evaluating the clarity of the criteria

Member State Dublin units were asked to report whether they found the criteria currently stipulated in the Regulation to be sufficiently clear in practice. Of the consulted Member States, 18 found the criteria to be broadly clear as currently worded (AT, BG, CZ, DE, DK, EE, HU, HR, LT, LU, NL, PL, PT, RO, SE, SI, CH, NO). The country of entry criteria, comprising both Articles 12 and 13, were found to be the easiest to interpret. A few Member States suggested broadly that the criteria as a whole are not sufficiently clear and leave too much room for interpretation between Member State authorities (BE, MT).

Member States also raised concerns about specific articles:

- **Article 7 (NL, FI):** Article 7(3) is ambiguous about the particular moment in the procedure when authorities should check for evidence of family members. The text of the article simply requires that this evidence should be taken into account before a request to take back or take charge is accepted or made.
- **Article 8 (NL, AT):** **Dutch** authorities reported that Member States continue to apply different interpretations of Article 8(4), which assigns responsibility to the Member State where an unaccompanied minor submits his or her claim when no family members are present. Although not specifically cited by **Dutch** authorities, interpretations of Article 8(4) may vary due to a June 2013 CJEU ruling (the case of *MA*) that stipulated that the Member

State responsible should be determined based on where the minor is present, when no family connections exist. The Commission is currently considering amendments to this rule.

- **Articles 9–11 (IT, MT, NL):** Article 10 is not sufficiently clear on whether an applicant's family member is supposed to be physically present on the receiving Member State's territory (although this may be an issue with the **Dutch** translation). Member States have also interpreted 'partner' differently, with some requiring a civil union (see Section 4.3 on family criteria, below). Furthermore, the delegated acts in Article 8(5) intended to clarify the identification of family members and criteria for assessing family links have not been adopted by the Commission.
- **Article 12 (BE, MT, NL):** In Article 12(4), several authorities indicated that the requirement that a visa 'enabled him or her actually to enter the territory of a Member State' had caused disputes regarding the type of evidence needed to prove the criteria applied; some Member States are requiring the requesting Member State to show a copy or original passport stamped at the relevant entry point, and although the Commission has clarified that a VIS hit is sufficient, some Member States have not yet complied (it was suggested that this is an issue in **Spain**).
- **Article 13 (CY, AT):** Article 13 allows for a Member State's responsibility to expire after an applicant has lived for at least five months continuously and irregularly in another Member State before submitting an application, if Article 13(1) does not apply. But authorities in **Cyprus** and **Austria** reported that continuous residency can be difficult to prove.
- **Article 16 (CY, EL, NL, CH):** The definition of 'dependency' was stated to be unclear by Member State authorities, particularly in cases involving pregnancy, as Member States have a tendency to interpret the definition differently. Authorities in **Cyprus** and **Greece** explained that it can be difficult to find agreement between Member States on what qualifies as a disability or serious illness, and that a non-exhaustive list of qualifying conditions could be helpful, as per the Commission's remit to adopt delegated acts.
- **Article 17 (EL):** There is no clear definition of the humanitarian grounds for requesting another Member State to take on a claim, leading to discrepancies in application and interpretation.
- **Article 19 (CZ, LU):** **Czech Republic** authorities also suggested that the rules governing the cessation of responsibility were unclear. **Luxembourg** stated that it is unclear which Member State is responsible for proving that an applicant was outside the territory of the EU.

While Member State authorities did report issues with the clarity of the criteria themselves, for many Member States, the primary issue rather appeared to be the **difficulty of meeting the burden of proof** placed upon them by the varied interpretations of receiving Member States. The list of evidence provided in the Implementing Regulation is broadly considered insufficiently detailed, particularly with regard to family criteria and when Eurodac or VIS evidence is not available, leaving Member State authorities open to their own divergent interpretations of what is required to establish responsibility. **Cyprus** for example raised issues with the difficulty of providing evidence to support residency under Article 14 and dependency considerations under Article 16. Authorities in **France** suggested that Member States fall into 'camps' based on how restrictively they interpret the criteria and their requirements for evidence that align with their roles as 'entry', 'transit' and 'destination' states. Family connections are cited as particularly hard to prove (see Section 4.3, below).

4.2.2 **Timeline for examining the criteria and duration of the procedure**

Dublin checks are to be initiated at the time an application for international protection is submitted. Fingerprints and biographical data are to be taken and checked against the

Eurodac database at the time of application, in accordance with Regulation (EU) No. 603/2013.

Dublin procedures are often begun at the point of registration, after fingerprints have been taken from the applicant (AT, BG, DE, FR, HR, HU, IE, IT, LU, NL, UK, NO). In some countries registration is undertaken at the same time as the Dublin interview (HU, IT, NL, NO). In other Member States, the process begins when the application is submitted (CY, CZ, DK, EL, ES, FI, LT, PL, SI). **Danish authorities**, for example, examine all evidence, including database hits and applicants' statements during the interview, and make a determination of responsibility at that time.

Authorities in **Lithuania**, however, admitted internal guidelines on when to begin a Dublin examination did not exist. There also does not appear to be a specific timeline for beginning the procedure in **Portugal**, where Dublin examinations begin whenever pertinent evidence on responsibility appears in the asylum procedure.

A few Member States initiated Dublin procedures **immediately after the interview phase**, based on whether the interview turned up relevant information (AT, BE, HR, CH). It was not evident, however, from most Member State responses whether registration (and the check of fingerprints against Eurodac) occurred at the same time as the application was submitted or if biometric information is gathered and checked in a separate, and perhaps earlier, procedure. The exact order in which information is generally gathered and the amount of time that elapses between taking and checking fingerprints and the Dublin interview is not always clear.

The higher number of claims received by Member States may have an effect on procedures. In **Denmark**, authorities mentioned that they have begun reviewing database hits (i.e. Eurodac and VIS) prior to interviews in order to expedite cases that might fall under Dublin.

4.2.3 Evidence used and investigation of requests to assume responsibility

Member States are to determine responsibility for a claim on the basis of **probative and circumstantial evidence**. As per Article 22, probative evidence is taken as formal proof of a Member State's responsibility and includes evidence such as a Eurodac or VIS hit, as well as official residence, identity or travel documents (documentary evidence). Circumstantial evidence is refutable, but may on a case-by-case basis be sufficient for demonstrating responsibility if it is coherent, verifiable and sufficiently detailed. Circumstantial evidence can include statements by the applicant in the Dublin interview, reports from UNHCR or other international organisations, and statements by family members. Member States should weigh both probative and circumstantial evidence when determining responsibility.

While Member State authorities report both probative and circumstantial evidence is taken into consideration, probative evidence – in particular Eurodac – most often forms the basis of requests (AT, BE, BG, CZ, ES, EL, FR, HR, HU, LT, MT, NL, PT, SE, SI, CH, NO). **Portuguese** authorities, in fact, suggested nearly all cases they submit are based on Eurodac or VIS.

Authorities also indicated they tend to give **preference to probative evidence** (EL, IE, NL) when sending claims. In **the Netherlands**, authorities indicated interview data alone would not be sufficient to consider family claims, rather applicants had to provide some form of proof or documentation of a family link. And authorities in **Austria** stated that Eurodac evidence is given top priority, followed by interview statements and documentary evidence (e.g. travel documents). Where interview statements or other circumstantial evidence *is* used, attempts are made to verify it with documentary or database evidence (SE). Documentary evidence can include tickets, receipts, birth or marriage certificates or copies of passports and travel documents.

The evidence used to support a request can also vary based on the Member State to which the request is sent and the types of evidence authorities there are willing to accept (EL). **Danish** authorities stated they rely on other evidence (e.g. boarding passes or police reports) when it is available, but that some Member States will only accept Eurodac hits. **Spanish** authorities also request hard copies of visas and passports (LU). Evidence may also vary

based on the type of requests a Member State most often sends; **Slovenia**, for example, primarily sends take back requests and so relies heavily on Eurodac evidence.

Interview data seems to play a relatively minor role in Dublin examinations in many Member States **relative to probative evidence and documentation**, although most Member State authorities who provided answers indicated they do take any evidence gathered in an interview into account (AT, BE, CY, DE, DK, NL, PL, RO, SE), although Member States did not clarify to what extent this meant interviews had a bearing on the basis of the decision. Authorities in a few Member States also suggested that interview evidence tends to be insufficiently detailed to be of use in determining responsibility (BE, IT); **French** authorities noted that the usefulness of interview evidence depends on what the applicant is willing to reveal, which may not be sufficient particularly in family cases. In **the Netherlands** and **Denmark**, interview data is used but ‘hard’ (probative) evidence is given priority, and in **Hungary**, authorities indicated information collected in interviews is only used if no probative evidence is available. **Spanish** authorities stated they will not forward a case based on entry/documentation criteria (Articles 12–14) to the Dublin unit using interview data alone.

All Member States who responded indicated they utilised the **Eurodac** database to obtain evidence on responsibility for applications (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SE, SI, UK, CH, NO). Several Member States also used VIS (AT, BE, CZ, DE, DK, EE, FI, FR, HR, IE, NL, PL, PT, SE, CH, NO), although some authorities stated they do not yet have access to VIS (EL, RO, SI). **The United Kingdom** does not participate in VIS. Several Member States also check data against national police and immigration information systems (CZ, EL, FR, HR, HU, NL, PL, CH), and some also use the Schengen Information System (SIS) (NL, SE). Where data was provided, most Member States suggested that these databases are checked at the point when an application for international protection is filed. **Finland** also stated it hopes to access and use the entry/exit system once it is established.

Evaluations of the **quality of communication** varied between Member States, with answers varying quite a bit among those responding and between the particular circumstances of each case. Responses by Member State authorities did, however, point to a few specific challenges. Many interviewees reported delays in receiving responses to requests as a problem (AT, FI, HU, IE, LT, LU, PL, SE, SI, UK). Evidence and interpretations of the hierarchy of criteria were also a significant source of dispute (BG, DK, FR, MT, NL, PL, CH, NO). Authorities indicated that **challenges most often arose when no hard evidence, such as a Eurodac hit, was available** or where such evidence was not probative, such as when multiple Eurodac hits show up (NO). **Interview evidence is particularly problematic** as it requires a great deal of trust between authorities in the quality of procedures and data collection in the requesting Member State (FR), which is not always high. **Spanish** authorities suggested they do not always receive sufficient data and information from the Member States submitting a request. Indeed, **Portuguese** authorities found communication to be good *because* they rely primarily on database evidence.

In **Belgium**, liaison officers were seen as a valuable resource to overcome disputes or trust deficits, and **Swedish** authorities said that although they used DubliNet, they found direct communication, often by telephone, to be the best way to resolve any differences. In **France**, authorities cited the Contact Committee as particularly helpful in building trust and discussing issues around interpretation/application of the Regulation.

4.2.4 Application of criteria in practice

As a policy, several Member States confirmed explicitly that they follow the hierarchy of criteria as stipulated and prioritise family unity where evidence is provided (AT, BG, CY, HU, IE, LT, RO, NO). Authorities further clarified that they make an effort to take into account family connections for particularly vulnerable applicants, including unaccompanied minors. **Spanish** authorities, however, stated that they believed *other* Member States were incorrectly applying the criteria with regard to family ties and the discretionary and humanitarian clauses.

Yet other Member States admitted that although their policy is to apply the hierarchy of criteria as laid out in the Regulation, **criteria that can be supported with probative evidence, especially a Eurodac hit, tend to be applied more often** (EL, FR, HR, IE, SE, CH). This was further supported by the **Dutch** Dublin unit, which explained that the availability of evidence strongly impacts the application of the criteria. The determination of whether or not to pursue family criteria, for example, depends on the strength of the evidence presented by the applicant during the interview; efforts to trace family members are rarely undertaken unless applicants provide some sort of hard proof to authorities to suggest that this is necessary (detailed further below). Authorities in **Belgium** similarly reported most often using Articles 13, 12 and Article 3(2), again due to the availability of evidence.

Finally, authorities in **Italy** suggested that the **time limits** for responding to requests did not permit them enough time to fully research and verify the requests they received, potentially leading to a misapplication of the criteria. **Germany** also reported that time limits and delays in receiving responses were an issue (and they believed other Member States stall at times to draw out procedures). This could in part be due to the substantial load of requests faced by **Italian** authorities in recent years. According to Eurostat data, in 2014 Italy had the largest backlog of pending Dublin requests of any Dublin Member State; Italian authorities faced 3, 126 pending incoming Dublin requests as of the end of 2014.

German authorities also cited difficulties with the time limits and receiving late responses from other Member States as issues.

4.3 Family unity including minors (Articles 7(3), 8-11)

The Chapter III hierarchy of criteria gives clear priority to the best interests of minor applicants for protection as well as respect for the principle of family unity. Unaccompanied minors are protected under Article 8, which places responsibility with the Member State in which the child has family or relatives (Article 8(1)/siblings, Article 8(2)), if in the best interests of the child. If there is no family present, then the Member State where the child submitted her claim is responsible.

Regarding family unity more broadly, Article 7(3) requires Member States to take into account any evidence of family members present on EU territory, including relatives or relations beyond strictly defined immediate family. Only immediate family (spouse/partner, minor children), however, are taken into account in Articles 9–11 on family unity. Articles 9 and 10 stipulate that if an applicant has a family member in another Member State who is a beneficiary of or applicant for international protection, that other Member State is responsible for the applicant's claim. Article 11 provides for family procedures in the event that members of the same family would be separated by the usual application of the criteria (e.g. because of entry or visa criteria), and they have submitted claims simultaneously or within a close time frame in the same Member State.

This section reviews the evidence on how Member States have applied the family unity criteria in practice.

4.3.1 Use of family ties to determine responsibility

The Dublin units of most consulted Member States indicated that **family criteria are taken into account** in principle when determining responsibility (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, MT, NL, PL, PT, RO, SE, SI, UK, NO). NGO and legal informants were more sceptical regarding the effective application of family criteria in practice. While NGO interviewees in **Sweden, Romania** and **Norway** felt the family criteria were applied effectively, those in **Belgium, Cyprus, France, Malta** and **Greece** expressed concerns that the criteria were not utilised as frequently in practice as they should be. The primary barrier most often identified was the availability of evidence and particularly hard proof of family connections (BE, CZ, EL, FI, IT, MT, NL, PL).

In several Member States, authorities stated that proof of a relationship, beyond the statement of the applicant alone, is required (BE, CY, CZ, EL, FR, LT, NL, PL, RO, SI, CH). The type of verification required may depend on the Member State to whom the request is directed (BE, EL, FR), and may include a requirement to produce written documentation of a relationship (CY, EL, HU, MT) even though this is not a requirement of the Regulation. Most Member States indicated they accept official documents as verification of a relationship, including birth or marriage certificates, passports, visas and residence permits, for example (AT, BE, EL, LT, LU, NL, PL, SI, CH). Authorities may alternatively perform a cross-check of the information provided by the applicant with the alleged family member in another Member State or against their own internal databases (HR, MT, RO). Some Member States will accept statements by both parties verifying the relationship (BE, BG, CY, FR, NL, PL, RO, SI, CH). **Swedish** authorities explicitly stated they do not require documentary proof such as a marriage certificate. Only **Sweden** and **Norway** suggested that interview evidence/statements by the applicant alone would be sufficient evidence of family connections. A few Member States also accept DNA evidence (EL, NL).

Some Member States also reported they require some sort of further documentation that would help with tracing (not necessarily documentary evidence) in order to initiate family procedures, such as phone or email correspondence, addresses, etc. (BE, EL, LU, SI, CH). This is in part because tracing family can be extremely difficult. **Hungarian** authorities emphasised that applicants may be reluctant or unable to provide personal details on family members (see further discussion below), which can make cases difficult to process, and **French** authorities similarly explained that obtaining verification of a relationship from both parties can be challenging in practice because of difficulties tracking down the other party. In **Denmark**, the criteria are most often used when the family are already in **Denmark** to allow the reunifying individual to submit his or her claim there.

4.3.2 Provision of information on family by applicants

Under Article 5, Member States are required to conduct a personal interview with applicants or to provide them with some other means by which to share relevant information on family connections or other considerations relevant to determining the Member State responsible. Evaluations of Dublin II suggested that applicants were not always sufficiently aware of the importance of the information they provided to the authorities determining where their claim would be adjudicated. The recast Regulation therefore introduced the requirement for a personal interview with the applicant, and the Commission has developed a common leaflet to introduce applicants to Dublin procedures. Both changes were intended to ensure applicants provide authorities with relevant information about family connections or humanitarian considerations early on in the evaluation process.

Evidence collected from Member States so far, however, is inconclusive on whether the information usually provided is sufficient. Many Member State authorities interviewed felt that applicants did usually provide sufficiently detailed information on the existence and location of family members for authorities to initiate and trace family claims (CY, CZ, EL, FR, IE, LT, MT, NL, RO, SE, SI, NO). Some also believed that the information applicants provided had improved since the implementation of Dublin III, as applicants are now asked more specifically for this information (BG, CY, IE, LT, RO, SE). Authorities in **the Netherlands** and **Sweden** further indicated that asylum officers are also proactive about asking for this information. In **Romania**, authorities credited the addition of a separate Dublin interview to the procedures, as well as the activities of the NGO sector, for the improvement.

But for other Member States, insufficient provision of information by applicants appeared to be a central challenge in implementing the family criteria. Authorities in several Member States suggested that applicants are not sufficiently proactive in providing information on family connections in their interviews (BE, DE, ES, IT, LU, PL, UK, CH), and that little has changed since the recast of the Regulation (AT, BE, IT, PL, CH). **German** authorities stated they rarely get useful information from applicants during the first interview and must conduct additional interviews with the help of legal assistance and NGOs to obtain helpful information.

Luxembourg, for example, stated that it does not have the capacity to undertake family tracing on their own, and therefore must rely on statements of applicants to locate family.

Applicants may have difficulty providing information simply because they do not know where family members are or how to get a hold of them (AT). In other cases, however, they may be reluctant to provide information.

Non-Governmental Organisations in Italy suggested **applicants may be reluctant to provide information** because they fear their application will be rejected or they will be transferred to a location to which they did not intend to travel – they do not trust authorities to use their information in the manner stated.

- In **Austria**, NGOs also suggested that applicants who have family with cases pending in other Member States may not be willing or able to provide the necessary details to the authorities;
- Similarly, authorities in **France** suggested that applicants are more willing to provide information to verify incoming requests than on outgoing requests;
- **Danish authorities** also reported that applicants may be reluctant to provide information on family when it would mean having their claim processed outside **Denmark**;
- In **Hungary**, respondents indicated that the cooperation of applicants depended on the case; some applicants do not choose to be reunited with their families.

As indicated elsewhere, the primary issue for many Member States remains the difficulty of agreeing on acceptable evidence with their counterparts in other Member States. **Malta**, for example, suggested that sufficient information is provided by the applicants but that the issue remained the ability of applicants to provide the evidence required by authorities to substantiate transfer requests. **Norwegian** authorities stated that in addition to agreeing on what evidence proves a family connection, there can be difficulties verifying whether the connection was established prior to arriving in **Norway**, a requirement which many Member States apply (although Article 9 does not apply this requirement to family members who have already been granted protection).

Non-Governmental Organisations and legal aid providers echoed these concerns in some Member States. Some interviewees also suggested that applicants may not provide the necessary information in their interviews to initiate family procedures (BE, HR, MT), although the **Swedish** interviewee indicated that this was no longer an issue after the implementation of Dublin III.

A further problem mentioned by some authorities was the tight time frames (AT, CZ). They felt the quick turnaround required was not always possible when family tracing was needed. **German** authorities indicated it usually takes about five weeks to trace family members, partly due to delays in receiving information from other Member States.

4.3.3 Procedures with regard to family connections

4.3.3.1 Definition of family members

Article 2(g) defines family as having been formed in the country of origin and limits the definition to immediate family members (spouse/partner, minor children and the parents of a minor child). While the family provisions of the hierarchy of criteria (Articles 9–11) only cover family connections, Article 7(3) requires Member States to take into account any evidence on the presence of ‘relatives’ or any other family relations in other Member States. Article 2(h) defines relatives as an applicant’s adult aunt, uncle or grandparent.

Nearly all Member States consulted found the definitions of family to be sufficiently clear on the whole (AT, BE, BG, CY, DE, DK, EE, HR, HU, IE, LT, LU, MT, NL, PL, RO, SI, UK, CH, NO). A few specific points were raised, however, as requiring additional clarity in practice:

- **Greek, Dutch and Italian** authorities found **unmarried partners in a stable relationship** to be unclear and insufficiently defined. In **Switzerland**, NGOs also reported some

discrepancies in how this definition was applied and whether individuals were required to have a civil partnership in lieu of or in addition to a marriage (where marriages were religious ceremonies only);

- **Greek** authorities requested further clarity on the definitions of ‘**adult responsible for the applicant**’ and ‘**aunt or uncle**’;
- **Irish** authorities found the new definitions under the recast (including the use of ‘relatives’) to be challenging to implement.

Authorities also raised other concerns beyond the clarity of the criteria. In **Italy** and **Finland**, those consulted in the Dublin unit, as well as lawyers and NGOs, felt that the **limitation of family to nuclear family in most cases was too strict**. And in **Switzerland, Ireland** and **Spain**, authorities explained the criteria were problematic for applicants who had been displaced for a long time before travelling to Europe and were therefore **married outside their country of origin**, excluding them from the application of the family criteria (with the exception of Article 9). Only **Belgium** and **Malta** allow for family formed outside the country of origin (family formed during flight), although most Member States indicated they did not apply this requirement rigidly and would allow for exceptions using Article 17(1) on a case-by-case basis (DE, DK, EL, FR, LT, PL, PT, RO, UK).

With the exception of **Belgium** and **Malta**, all other Member States consulted applied the family definitions as set out in the Regulation to include only nuclear family (AT, BG, CY, DE, DK, EE, EL, FR, HR, HU, LU, RO, SE, SI, CH, NO), UK. Four Member States indicated they occasionally apply a broader definition on a case-by-case basis (FR, HU, PL, SI). **Belgian** authorities, however, reported they include siblings and adult children.

While some Member State authorities or NGOs have complained that the nuclear family definition is too limiting (AT, BE, IT, LU), Member States do appear aware of and willing to utilise Article 17(1) to overcome these limitations if they see a need. When asked whether they would propose any changes to the definition, for example, both **French** and **Dutch** authorities emphasised the need, in their view, to keep the definitions simple and clear, while making sure Member States were aware of the possibility to use the discretionary or humanitarian clause in cases that fell outside the definitions stipulated in the Regulation. **The United Kingdom** was of the opinion that the family definitions ‘were the subject of difficult and tortuous negotiation in the Council ... and we do not see any reason to recast them’.

4.3.3.2 **Communication between Member States regarding evidence on family connections**

A number of mechanisms exist to help Member States communicate information and evidence regarding responsibility for protection claims. The Implementing Regulation, for example, includes a standard form for submitting requests, and Member States may use DublinNet to exchange information on specific cases.

Yet Member States were varied on their assessment of communication regarding family connections. While most Member States felt communication was generally effective (AT, BG, CZ, EL, HR, HU, LT, RO, SI, CH, NO), several felt that effectiveness depended on the case or on the Member State with which they were cooperating (BE, MT, PL). Authorities in **Sweden** did not find communication to be effective at all, specifically expressing concerns that confirmation of the consent of applicants to be reunited with their family members is not consistently provided in the requests they receive, delaying processing. **Spanish** and **Finnish** authorities cited difficulties with some Member States submitting incomplete requests without sufficient documentation/evidence.

Even those Member States that felt communication was effective cited several specific challenges that can complicate cooperation:

- Communication regarding **evidence** was the most commonly cited challenge (BG, CY, CZ, IE, NL, PL, NO) due to substantial divergence in practice on what evidence is accepted. **Polish** and **Dutch** authorities stated they often have to ask for clarification regarding the evidence provided with a request. Some authorities suggested that

communication would be improved by a standard list of documentary evidence of a relationship that is accepted by all Member States as probative (EL, MT). **Dutch** authorities suggested that the standard forms used to exchange information on claims are sufficient and helpful, but that sufficient substantiating evidence is not always attached to the form by the requesting Member State, causing complications in communication;

- Authorities in several Member States also suggested that the **time frames for investigating and responding to family procedures** are difficult to comply with (AT, CZ, NL);
- **Belgian** authorities indicated some Member States **fail to respond to requests for information**, perhaps because there are no sanctions for neglecting to do so.

4.3.3.3 *Effectiveness of procedures for family criteria in practice*

Among the NGOs and legal representatives consulted, the consensus appears to be that the procedure for evaluating family connections is not effective (BE, EL, IT, MT, NL), although NGOs in **Poland, Romania** and **the Slovak Republic** found procedures to be broadly effective, depending on the circumstances. **Portuguese** NGOs raised concerns about transfers of Ukrainian applicants from **Portugal**, based on entry/visa criteria (most had visas for **Poland**) that violated the family criteria.

The most cited challenge was the **lack of clarity regarding what documents may be accepted** as probative of family ties (CY, EL, NL, PL, SK). NGOs in **the Netherlands** also complained that authorities there do not sufficiently investigate family ties if a Eurodac hit is obtained, as this is seen to take precedence (even though this contravenes the hierarchy of criteria). Cases where requested documents simply do not exist are seen as particularly challenging (e.g. applicants were not issued documents in the country of origin), particularly where it is necessary to prove that a relationship was formed in the country of origin (MT, SE). In **Ireland**, authorities prefer to rely on DNA evidence, where available.

Non-Governmental Organisations in **Italy** and **Austria** cited a **lack of willingness or ability on the part of applicants to share relevant information** with authorities, as hindering the effective processing of family claims. Interviewees attributed this to a deficit of trust in the asylum system and a lack of understanding of how incomplete information could harm them. **Czech Republic** authorities indicated that the success of the procedure is very much dependent on the applicant's ability to provide the required information to connect them with their family (rather than other sources of information).

Several NGOs cited the lengthy duration of the procedure as an issue (BE, DE, EL, MT, PL). Delays in family tracing have resulted in a change of responsibility for an application in **Austria** because time limits had expired. As the process drags on, applicants become more likely to take matters into their own hands and travel irregularly to another Member State to be with family. Furthermore, applicants may get frustrated and depressed, hindering integration, as the process drags on (CY). Delays can be particularly detrimental when cases involve unaccompanied minors seeking to be reunited with family (HU). **Greek** authorities further complained that DNA evidence takes too long to be analysed, although it was unclear from the findings how widely DNA evidence is used in determining family connections.

Several of the NGOs consulted also raised concerns regarding the risk that applying the family criteria inappropriately, due to failed procedures, might pose. The disruption of family unity, a violation of Article 8 ECHR, is the most obvious risk (EL, NL). An NGO in **Hungary**, however, also mentioned that serious issues can arise if consent procedures are not followed. They have seen cases where a husband may be searching for his wife, but the wife does not want to be reunited.

The authorities and NGOs put forward a few specific proposals for improvement in this area:

- **Requests for information:** The **Belgian** Dublin unit suggested introducing sanctions or consequences for Member States who do not respond to requests for information in a

timely fashion. **Danish** authorities suggested introducing a standard procedure for tracing family links;

- **Greater clarity regarding evidence of family ties:** **Irish** authorities stated that more clarity on the use of DNA evidence specifically would be useful;
- **Database of third-country national legal residents:** Both **Belgian** authorities and NGOs suggested a mechanism or database to share information on third-country national residents that could be used to check family connections;
- **Clarify criteria and improve exchange of information on evidence:** Authorities suggested that although the criteria themselves are strong, the information required to support each could be further clarified. **Czech Republic** authorities also suggested grouping all the family criteria together would help to reduce some of the unclearness regarding slight differences in definitions between some articles (e.g. should a family member be legally present in a Member State or simply have filed a claim in a Member State?);
- **Expand definition of family:** **Czech Republic** policy advisors and **Spanish** authorities suggested that expanding the definition of family might help to reduce secondary movements. Although they also indicated that they believed current family procedures to be a factor in some migration strategies, e.g. a family may send a minor to a certain country on his or her own and then attempt to reunify there. This was further supported by NGOs in **Portugal**. Authorities in **Spain** also suggested removing the requirement for family to have been formed in the country of origin, as this criterion is problematic for those fleeing protracted refugee situations;
- **Adding guidance on when cases involving minors should be transferred:** **Spanish** authorities expressed concern that families and minors are sometimes transferred during the school year, with negative effects for the children. They suggested guidelines would help avoid this.

4.3.4 Procedures with regard to minor applicants

The Regulation contains a number of safeguards intended to ensure decisions are made in the best interests of children who have applied for international protection, including the possibility to reunite with extended family or to have their application assessed where it is filed (Article 8). Article 8 takes precedence over any other element of the hierarchy of criteria.

In practice, however, it is not clear how often Article 8 is actually utilised to protect this particularly vulnerable group. Eight of the Member States consulted did not have data on the application of Article 8 (BE, EL, IT, LT, MT, NL, SE, NO). And several others stated that they had never encountered such a case or that the frequency of such cases was extremely low (BG, CY, HR, HU, PL, RO, SI). **German** authorities were able to provide data. In 2014, Article 8 had been applied to 201 cases (of 4,399 minors) in **Germany**, and in 2015 it had been applied to 297 cases (of 7,228). **Spanish** authorities received three requests for unaccompanied minors (of approximately 6,000) in 2014, and in **Ireland** the number of cases was similarly low, less than 10 per year. **The United Kingdom** received 24 requests under Article 8 in 2014.

In practice, the Member States consulted indicated that extensive efforts are taken to apply the hierarchy of criteria carefully and to ensure that the individual circumstances of claims are taken into account. Several Member States stated that they comply with the Regulation's requirements by taking on responsibility for such claims themselves, if no family are present (BE, BG, CY, DE, EL, ES, FI, HR, HU, LU, NL, RO, SI, NO). A few Member States explained, though, that they rarely see cases with unaccompanied minors (CZ, EE, LT, PL, PT).

4.3.4.1 Communication

Opinions on whether communication on cases of unaccompanied minors was effective were highly mixed. Authorities in several Member States indicated communication is effective (AT,

DE, HR, HU, IE, LT, PL, SI), although **Hungary's** authorities also mentioned they see few such cases. **Ireland** cited communication with **the United Kingdom** as particularly effective. Meanwhile, authorities in several other Member States found communication to be poor, or at least highly dependent on the circumstances (BE, BG, CY, EL, ES, FR, NL, SE, NO).

Age assessments is one area that authorities in several Member States found to be particularly difficult as standards are not harmonised across Member States (AT, BG, DK, HR, SI, UK, NO). Some Member States base their assessments on the assertions of the applicant him- or herself (BG, HR, SI), in part due to a lack of funds to conduct such assessments (SI), while others perform medical checks to determine the applicant's age (AT, NO), although only with consent of the child's legal guardian. In **Austria**, NGOs have been critical of age assessment procedures that involve an X-ray due to possible health risks.

Other concerns were also raised. **Swiss** and **Danish** authorities stated that **family can be difficult to trace** as the information provided by the minor may be insufficient. And **Romanian** authorities expressed concerns that they are not always informed about the designation of a legal representative for a minor, which hinders their ability to transfer minors in a timely fashion. **Spanish** authorities cited difficulties when other Member States sent them tracing requests with incomplete or insufficient information. In **Portugal**, NGOs stated they did not believe authorities are proactive about tracing family and instead expected minor's legal representatives to carry out the tracing.

4.3.4.2 *Challenges in practice*

Authorities in **Belgium, Hungary, Austria, the United Kingdom, and Slovenia** expressed concerns that the system for unaccompanied minors is perhaps being abused by those who are not technically minors (i.e. over 18). As with family criteria more broadly, Member States explained the difficulties of collecting evidence (CY, DK, EL) and tracing family connections. Authorities in **Malta, Denmark and Portugal** expressed frustration that procedures for minors do not move more quickly, particularly given that time may be an issue in the cases of those soon to turn 18. Article 8(4) also continues to create some confusion, particularly where an applicant has submitted claims in more than one state (CY, DK, NO).

In **Portugal**, NGOs stated they did not believe authorities are proactive about tracing family and instead expected minor's legal representatives to carry out the tracing. As a result, some minors reportedly give up hope and choose to relocate on their own to be with family.

In **Cyprus**, authorities suggested that a mechanism could be created to allow better coordination between social and welfare services throughout the process of assessing responsibility for a minor's claim. A few other Member States suggested the Commission could provide more guidance or a standardised procedure on how age assessments should be made (AT, EL, LU, NL, NO). **Finnish** authorities stated that adopting the proposed amendments to Article 8 as quickly as possible would help. **Irish** authorities suggested that family tracing efforts for minors should include a DNA examination.

4.4 **Dependency (Article 16)**

Article 16 obligates Member States to reunite family members, including children, siblings or parents, in cases where the applicant is dependent on the family member or vice versa due to pregnancy, a newborn child, serious illness, serious disability or old age.

4.4.1 *Application in practice*

The dependency clause of Article 16 does not appear to be much used in practice. All Member States consulted, with the exception of **Greece and the United Kingdom**, indicated they did not often see such cases, although the **Danish** Dublin unit indicated that they consider Article 16 a binding provision and therefore apply it whenever the criteria are fulfilled. **Austrian** authorities stated they did not see the added value in Article 16, as Article 17 could be used just as well for most cases. Authorities in **Poland**, for example, stated they had only seen four cases where the clause was used over the last two years, while **Slovenian** authorities could

only recall two cases ever. **Finnish** authorities stated they had used Article 16 approximately four or five times in 2015. **Cyprus** has never received such a request. In **Sweden**, Article 16 is primarily used to reunify applicants in **Sweden**, rather than as an avenue for outgoing transfers.

When the application does apply, the authorities consulted suggest it may encounter some of the same barriers as the other criteria, including the **difficulty of obtaining evidence**. **Greece**, one of the few Member States who reported using this clause, indicated they would only reject a request for its use if insufficient evidence were provided. And **Dutch** authorities reported that, as with other family criteria, the burden of proof in **the Netherlands** is with the applicant to present sufficient evidence that the clause should be applied. This includes proof of dependency. **Spanish** and **Irish** authorities explained they believe evidence submitted with such a request should include, as a minimum, medical certification or a clinical report.

No Member State indicated that they make a distinction between short- and long-term dependency in how they handle such cases, with the exception of **Poland** (which did not provide further information on how this was done).

Among those Member States with experience applying Article 16, **definitions of dependency vary in practice and a determination is often made on a case-by-case basis**. **Belgian** authorities explained they will accept applicants if there is no other person able to care for them in the other Member States. **Irish** authorities listed the definition of ‘take care’ as problematic: it is unclear how an individual could care for the applicant – is financial support a requirement? **Bulgaria** and **Croatia** indicated they apply the definition of dependency set out in Article 16. In **the Netherlands**, the burden of proof to demonstrate dependency is placed on the applicant, as is the case in **Poland**. **Sweden** and **Greece** also require documentary evidence of dependency, such as a medical certificate, although the burden of proof is not explicitly placed on the applicant, and authorities in **Sweden** attempt to proactively solicit this information. The lack of clear guidelines on dependency was cited as problematic by **Danish** authorities.

4.4.2 Communication

Most Member States reported either positively on the quality of communication on Article 16 issues (BE, BG, PL, RO, CH) or as having had little experience with Article 16 cases (CY, HR, LT, SE, SI). **France**, however, raised concerns about communication over cases involving medical issues, specifically, **French** authorities indicated they usually exchange standard communication forms and speak with their colleagues in another Member State over the telephone, but that this level of communication is not sufficient for complex medical cases. Authorities in **France** also claim to have experienced issues of fraud regarding medical certificates, and suggested direct communication between doctors might alleviate some of this risk.

4.4.3 Challenges and obstacles

Among Member States who reported using Article 16, defining dependency and agreeing on appropriate proof of dependency was cited as the biggest challenge (BE, CZ, EL, ES). **Greek** authorities, for example, explained that two cases they had prepared under Article 16 were rejected in **Sweden**, one who was HIV positive and another who was blind, on the basis that these cases did not constitute dependency. **Czech Republic** authorities suggested they had never used it because the combination of having to prove both dependency and family links is too high a barrier when other articles could be used instead (they also receive a relatively low number of cases). **Finnish** authorities stated they do not usually have sufficient evidence to make a thorough assessment of such requests.

In terms of recommendations for improvement, **Greece** suggested developing a more comprehensive list of situations that may qualify as dependency. And **the Netherlands** and **Denmark** pointed out that the Commission could assist by developing the delegated acts referenced in Article 16(4) to provide additional guidance. **Spain** suggested giving Articles 16

and 17 a higher place in the criteria, in order to encourage Member States to use them more often.

4.5 Discretionary clause (Article 17(1))

Previously known as the 'sovereignty clause', Article 17(1) permits Member States to assume responsibility for an application that otherwise would not normally fall to them to examine.

4.5.1 Use in practice

As with the dependency clause, Member States reported Article 17(1) is rarely used. **Bulgaria, Slovenia, Norway** and **Croatia** did indicate the clause is used with regard to applicants travelling through **Greece**, and **the United Kingdom** reported using it on occasion. **Danish** authorities suggested they use it in cases related to family unity that fall outside Articles 9–11. (It should be noted, however, that indications given here are of use in first instance decisions. Use by judicial authorities on appeal may follow a different pattern.)

Use of the clause may have increased, however, in 2015. **Finnish** authorities suggested they used the clause 'quite often' in 2015. Authorities in **Hungary**, for example, explained that they had received just 51 notifications from Member States that Article 17(1) had been applied in 2014, while by the end of September of 2015, authorities had received about 800 notifications, mostly from **Germany**. **Irish** authorities stated they applied it frequently to cases that had travelled through **Greece** (although it is unclear whether they meant cases separate from those already covered under Article 3(2)).

Separately, **Maltese** authorities also revealed that authorities may choose to take on a case under Article 17(1) if they deem the normally responsible Member State would take too long in responding to a request. **Swedish** authorities also indicated that their use of the clause began to rise last year.

Most Member States did not have reliable statistics readily available on the use of Article 17(1), and a few Member States even indicated they do not keep this data at all (DE, NL, RO, SE). **Czech Republic** authorities stated they use this Article in fewer than 10 cases a year, and **Estonian** authorities explained they had yet to apply Article 17(1) at all.

4.5.2 Challenges

No particular issues were reported in applying the discretionary clause in practice beyond those already listed above for other elements of the Regulation (BE, HR, RO, SE).

However, **Germany** stated that they are of the opinion that Article 17(1) should be applied restrictively in order to avoid undermining the principles of Dublin, stating that it is 'good publicity but nonetheless should not be applied often'.

Irish authorities expressed frustration that Article 17(1) under the recast had led to a huge amount of litigation at national level. According to the authorities, legal advisors have treated Article 17(1) as 'something an individual can apply for' and 'almost a new process', with the result that quite a bit of administrative time is spent dealing with such appeals.

4.6 Humanitarian clause (Article 17(2))

The partner to the Article 17(1) discretionary clause, the humanitarian clause, allows a Member State to request another Member State other than the one responsible to take on responsibility for assessing a claim for humanitarian reasons, particularly family or 'cultural' grounds.

4.6.1 Use in practice

Article 17(2) appears to follow similar patterns with Article 17(1) and is not frequently used. Authorities in most Member States reported they had not or only rarely encountered Article 17(2) cases (BR, CY, EE, ES, HR, HU, IE IT, NL, RO, SE, SI, CH, NO). **Austrian** authorities

reported only using Article 17(2) 14 times between January 2014 and October 2015, and **Spanish** authorities reported only receiving such cases eight times in 2014. **Greece** was, however, an exception. Authorities there reported submitting Article 17(2) requests relatively frequently for two reasons: first to address family reunification cases that otherwise would not be covered by the definition of family, and secondly when the deadline for submitting a request through normal channels has passed.

Other Member States also indicate primarily using Article 17(2) for cases with particularly serious medical concerns (CZ).

4.6.2 Challenges

As with Article 17(1), Member States reported few issues in implementing Article 17(2) in cases where it is used (although the very infrequent use of the article may itself be seen as reflecting other implicit obstacles to implementation). Not all the requests made on humanitarian grounds have been successful, according to estimates reported by Member State authorities. While **Bulgaria, Romania** and **Sweden** reported that Article 17(2) requests are almost always accepted, **Greek** and **Czech Republic** authorities complained that requests sent by them are rarely accepted due to disagreements on what constitutes a humanitarian need and whether the article should in fact be used for purposes of family reunification. Similarly, **Dutch** authorities indicated they are reluctant to accept Article 17(2) requests and only do so in exceptional circumstance and with clear proof of a substantial impact on the applicant. **Poland** only accepts cases based on family unity, and does not consider 'cultural links'. **Norwegian** authorities stated that they normally do not accept Article 17(2) requests because they want to 'avoid people who want to bypass regular migration procedures'. Similarly, **German** authorities stated they felt the clause was used 'politically' by those Member States who apply it often.

According to **Greek** authorities, one significant challenge to Article 17(2) is that Member States have a different understanding of what constitutes humanitarian reasons for a transfer. While **Greece** interprets the article as incorporating family reunification cases that do not fall within the criteria elsewhere in the Regulation, other Member States disagree and sometimes even ask for evidence of dependency, even though this is not required for Article 17(2). **Czech Republic** authorities stated that when they have used the article, other Member States have denied the request on the bases that the humanitarian grounds were not considered to be serious enough.

As with the family criteria, evidence of family connections has been raised as an issue. **Irish** authorities stated they would normally require a marriage certificate to prove a marital relationship, but this often is not provided.

One problem facing Article 17(2) may therefore be a divergent understanding among Member States of the goals of the article, as each Member State appears to approach it with a different understanding of its purpose. There also seems to be a lack of willingness on the part of some Member States to take on or consider Article 17(2) and to instead interpret its provisions narrowly.

5 Procedures for submitting take charge/take back requests

This section reviews the procedures for submitting and replying to take charge and take back requests. It begins with a statistical overview of the number of take charge and take back requests made by Member States, and of the number of take charge and take back requests accepted and rejected. The section then provides an article-by-article overview, in order to analyse the following aspects in relation to both take charge and take back requests:

- Whether the respective time limits to submit and reply to these requests are appropriate (including the new time limits introduced in the Dublin III Regulation for submitting a take back request);
- The frequency with which Member States fail to make the requests within the stipulated timelines and the reasons for this;
- How often Member States reply to requests more quickly than what is allowed, and how often Member States ask for urgent replies (in respect of take charge requests);
- How often requests are tacitly accepted as a result of the failure to reply on time, and the main reasons for this;
- The type of proof that Member States usually send with the requests, and the type of proof that is deemed necessary by Member States in order to accept the requests; and
- The main reasons for Member States to refuse requests.

Procedures for implementing transfers across Member States, and information collected on the rate of transfers, are reviewed in Section 6.

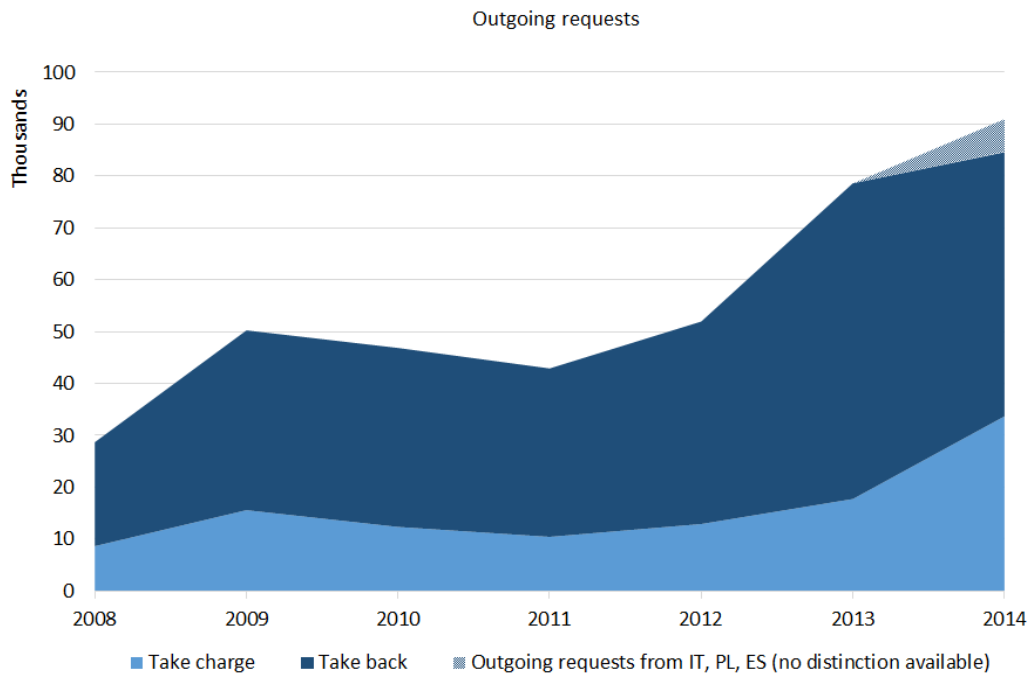
5.1 Statistical overview

5.1.1 Number of take charge and take back requests made

The number of take back requests made by Member States is significantly higher than the number of take charge requests. On average, between 2008 and 2014, 72% of outgoing Dublin requests were take back requests against 28% of outgoing take charge requests. Similarly, 74 % of incoming Dublin requests were take back requests compared to 26 % of take charge incoming requests³¹.

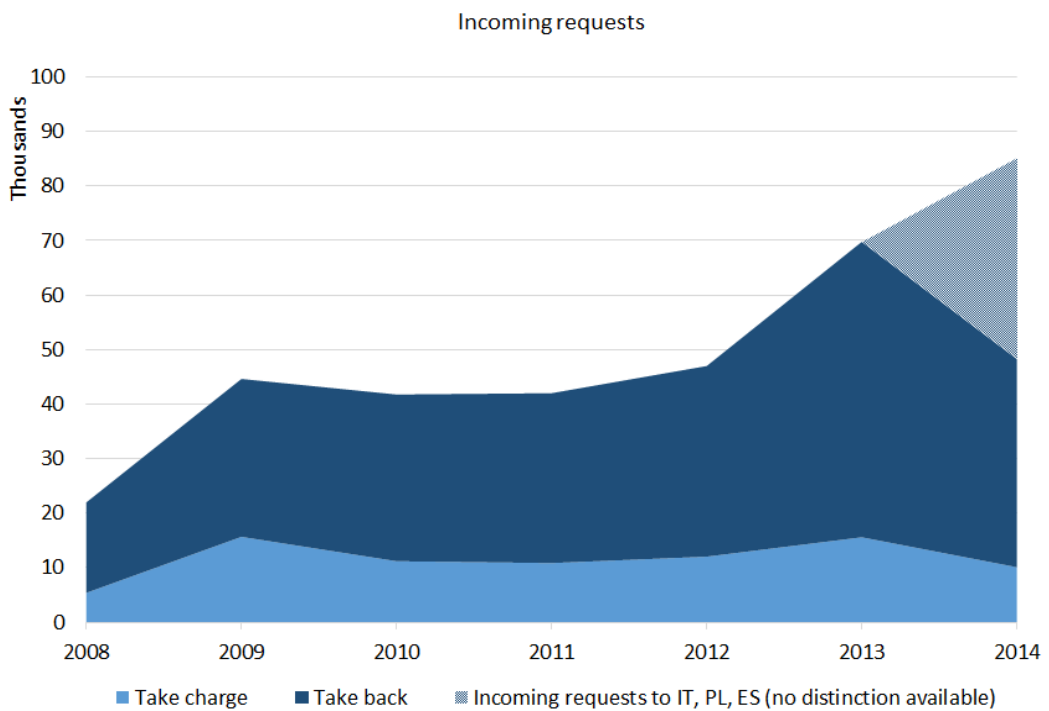
³¹ Eurostat collects the number of take charge and take back made by Member States (i.e. outgoing requests) and the number of take charge and take back requests received by Member States (i.e. incoming requests). Whilst in principle outgoing and incoming requests should be expected to match each other, in practice they do not (with incoming requests showing significantly lower values). This discrepancy is likely to result from a combination of factors, including under-reporting and delays in reporting on the part of receiving Member States.

Figure 5.1 Total number of take charge and take back requests in all Member States, 2008–2014: Outgoing requests



Source: Eurostat data migr_dubri and migr_dubro. Data were extracted between the 12th and 18th October 2015.

Figure 5.2 Total number of take charge and take back requests in all Member States, 2008–2014: Incoming requests



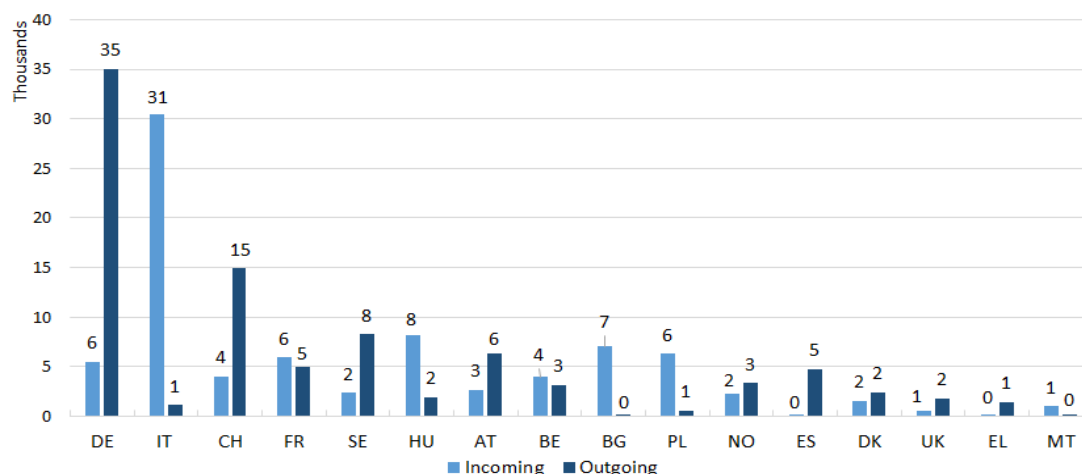
Source: Eurostat data migr_dubri and migr_dubro. Data were extracted between the 12th and 18th October 2015.

Note: Data from countries with usually significant Dublin statistics were missing for 2014, i.e. Italy, Poland and Spain. Consequently, ICF estimated the values of incoming/outgoing requests to/from Italy, Poland and Spain for 2014 and these estimates have been included in the charts. ICF estimates could not distinguish between take back and take charge for the incoming and outgoing requests for Italy, Spain and Poland in 2014.

At Member State level, incoming take back requests in 2014 were much higher in most countries than incoming take charge requests. They were far higher in **Belgium** (91 %), **Sweden** (86 %), **Switzerland** (85 %) and **Germany** (75 %). On the other hand, **Estonia**, **Spain** and **Portugal** received more incoming take charge requests than incoming take back requests, 84 %, 74 % (in 2013) and 54 % respectively of their total incoming requests.

Similarly, the number of outgoing take back requests in 2014 was also higher in most Member States than the number of outgoing take charge requests. For instance, in 2013, take back requests were far higher than take charge requests in **Italy** (93 %), **Spain** (90 %) and **Portugal** (83 %). In contrast, **Switzerland** had a higher ratio of outgoing take charge requests than outgoing take back requests (71 % being take charge in 2014).

Figure 5.3 Total number of take back and take charge requests in selected Member States

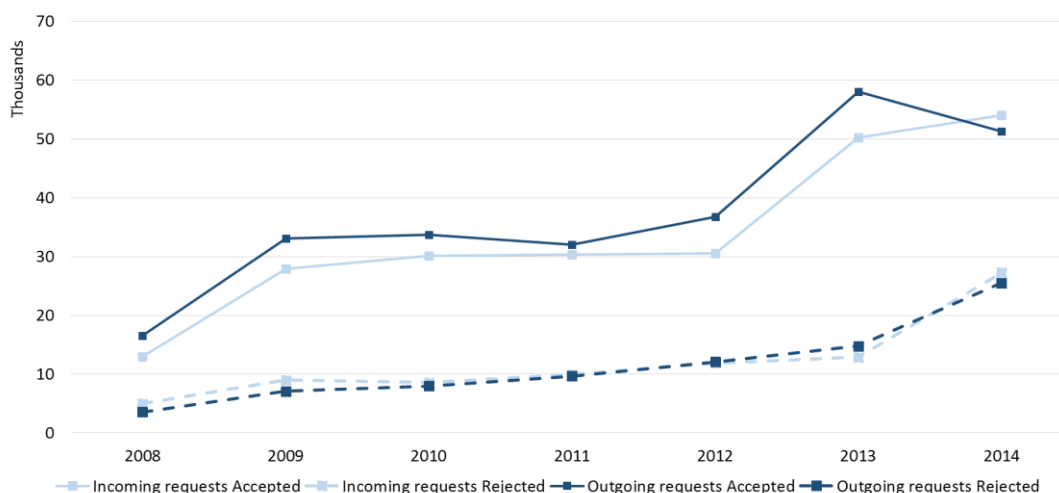


Source: Eurostat data Nb requests. Data were extracted between the 12th and 18th October 2015.

5.1.2 Number of take charge and take back requests accepted and rejected

As indicated in Figure 5.4, between 2008 and 2014, a larger number of take charge and take back requests were accepted (plain lines) than rejected (dashed lines). However, since 2013 this trend has begun to reverse. The number of decisions accepted on outgoing requests decreased between 2013 and 2014 and there was only a small increase of incoming requests that were accepted. In addition, there was a sharp increase of both incoming and outgoing requests that were rejected between 2013 and 2014.

Figure 5.4 Accepted and rejected decisions on incoming and outgoing requests in all Member States, between 2008 and 2014



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

5.2 Procedure to submit a take charge request (Article 21)

This section looks at the appropriateness of the time limits for submitting take charge requests; the frequency with which Member States are delayed in submitting take charge requests; the use of urgent take charge requests; and the types of evidence used to submit take charge requests.

5.2.1 Appropriateness of time limits for making take charge requests

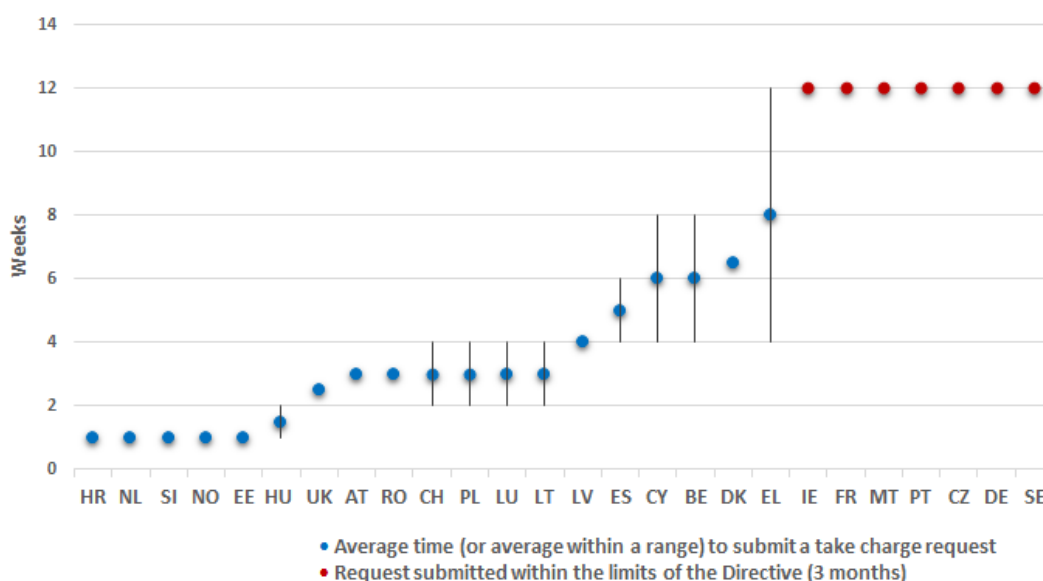
A request to take charge must be submitted to another Member State ‘as quickly as possible’, but at the latest **within three months** of receiving an application for asylum, or **two months from registering a Eurodac hit**.

The evidence obtained through interviews conducted with competent authorities suggests that Member States generally meet the time frames stipulated for submitting take charge requests. Moreover, in a number of cases, Member States reported that the average time that it takes to submit take charge requests is significantly shorter than the maximum time frame. For instance, HR, NL, SI, NO and EE all indicate average times of one week or less to submit take charge requests.

However, the evidence collected also suggests that the time it takes to submit take charge requests varies significantly depending on the case, as substantial time ranges were reported by certain Member States. For example, the **Belgian** authorities reported that the time it takes to submit a take charge request can range from four to eight weeks, depending on the complexity of the case. Authorities in **Greece** reported that the time could range from four weeks to 12 weeks.

These findings suggest that the time limits specified in the Regulation are appropriate.

Figure 5.5 Average time to submit a take charge request



Source: Answers from stakeholder consultations in Member States

The national authorities consulted by the Study Team appraised the time limits for submitting take charge requests as follows:

- Most Member States consulted indicated that the time frames are generally appropriate and should not be shortened further (AT, BG, CZ, DE, DK, EE, ES, FI, FR, HR, LU, LT, PL, PT, RO, SE, SI, UK, CH, NO);
- Two Member States indicated that the time frames should be shorter (CY, SI), although **Slovenia** stated that this would only be possible if Member States had better databases;
- Three Member States (EL, HU, IE) indicated that the time limits should be longer, in particular for cases which rely on a Eurodac hit (where **Greece** felt the two-month time frame is too short), and in **Hungary** and **Ireland's** view during times of high influx of asylum applicants. **Germany** noted that, whilst it considers the time frames important in order to expedite the process as much as possible, in the case of family members, they are sometimes too short and this sometimes means **Germany** does not request transfers.

5.2.2 Delays in submitting a take charge request

If a request to take charge is not made within the specified periods, responsibility remains with the Member State in which the application was lodged (Article 21(1)).

According to the information collected so far, delays in submitting take charge requests take place occasionally. Nine Member States reported that they have 'never' been designated as responsible for examining applications as a result of failing to meet the stipulated deadline (BG, CZ, FR, HR, LT, LU, LV, RO, SI); whereas 14 Member States reported that this happens 'rarely' (AT, CY, DK, LU, NL, PT, CH) or 'occasionally' (BE, EL, ES, HU, IE, SE, UK). Four Member States did not provide answers to this question (DE, EE, FI, IS).

Respondents cited a variety of reasons to explain the delays they occasionally encounter, including:

- **Capacity issues** (e.g. staff shortages) during times of high influx (BE, EL, ES, HU, IE, NL, SE, UK);
- **Coordination issues within the government** (e.g. in CY, due to the involvement of several departments including social welfare services and medical departments);

- **Administrative errors** (NL);
- **New information coming to light** (SE, CH).

5.2.3 Submitting urgent requests

The requesting Member State may ask for an **urgent reply** in certain cases: where the applicant has been refused permission to enter or remain, has been arrested for unlawful stay, or has been served a removal order. Receiving Member States have at least **one week to respond** (Article 21(2)). In exceptional cases, when the case is particularly complex, the requested Member State may postpone its reply, but for no longer than **one month** (Article 22(6)).

Most Member States that reported on this issue, indicated that **urgent requests to take charge requests are never** (ES, LT, LV, RO) or **rarely submitted** (CY, HR, NL, SI). **Belgium** reported that they **sometimes ask for an urgent reply** in the case of people in detention. On the other hand, **the United Kingdom** and **Malta** reported that urgent requests are always made in cases of **persons in detention**; **Malta** additionally specified that urgent requests are always made in the case of **minors**; and **the Czech Republic** reported that urgent requests are made in almost all cases.

5.2.4 Types of proof and circumstantial evidence used to make take charge requests

Take charge requests should include **proof** or **circumstantial evidence** as described in Annex II of the Implementing Regulation, to enable authorities of the requested Member State to assess whether they are responsible for the application (Article 21(3)).

Annex II provides examples of what constitutes '**probative evidence**' (substantial proof) and what constitutes '**indicative evidence**' (circumstantial evidence) to determine what obligation Member States have to readmit or take back applicants.

Several Member States reported that they make use of the lists of what counts as substantial proof or circumstantial evidence in Article 22(3) of the Regulation (CY, DK, HR, NL, RO, SE, SI, NO). However, as mentioned in Section 4.2.1, these **lists are broadly considered insufficiently detailed**, particularly with regard to the family criteria and when Eurodac or VIS evidence is not available.

In practice, Member States' approaches to the use of evidence seem to vary:

- Most Member States (AT, BE, BG, DE, EL, FI, FR, HR, HU, NL, PL, RO, SI, NO) reported that they use **all available evidence** listed in the Regulation, which includes **substantial proof as well as circumstantial evidence** such as photos, Eurodac/VIS hits, passport stamps, visas issued, ID card, proof of age, applicant's declarations/personal story, etc.;
- Other countries seem to **emphasise certain types of substantial proof over circumstantial evidence**, in particular: ID cards and visas (LT, LV), Eurodac and visas (MT), VIS, Eurodac, passport, fingerprints (CZ, DK, ES, LU, PT, SE) and fingerprints (CH);
- Some countries specified that they **start with substantial proof** such as Eurodac hits and visa/passport information, and then move on to more circumstantial evidence if these are not available (HR, HU, UK).

Nine Member States (BG, FI, HR, LT, LV, MT, PL, SI, NO) did not report any difficulties meeting the requirements of proof for submitting take charge requests. However, three Member States (**Greece, Spain and the United Kingdom**) reported that **the requirements of proof are sometimes difficult to meet**. This may reflect the different types of take charge requests that each Member State is likely to send out, with the Member States that report no particular difficulties meeting the requirements of proof possibly submitting fewer take charge requests based on family criteria, given the difficulties reported by Member States in providing proof/evidence for family criteria (see Section 4.2.1).

A number of Member States reported that a successful take charge request **depends on having a relationship of trust** with the receiving Member State, in particular when the request relies on circumstantial evidence (NL, NO). In the absence of such relationships of trust, disputes often arise over the use of circumstantial evidence.

5.3 Procedure to reply to a take charge request (Article 22)

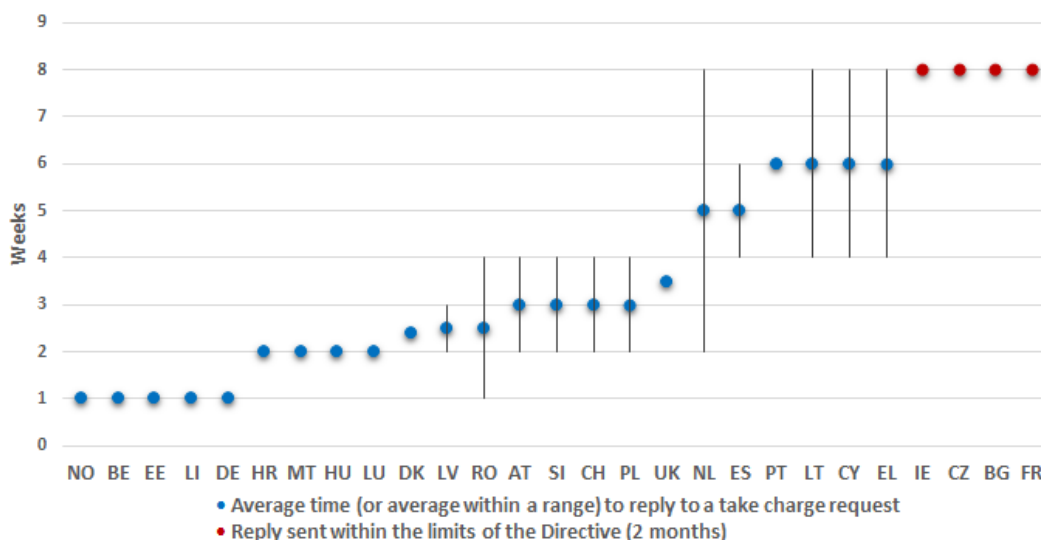
This section looks at the appropriateness of the time limits for replying to take charge requests; the frequency with which Member States are delayed in replying to urgent take charge requests; and the types of evidence that Member States consider appropriate to reply to take charge requests.

5.3.1 Appropriateness of the time limits for replying to take charge requests

A receiving Member State has **two months to accept or reject** a take charge request (Article 22(1)).

Most Member States meet the time frame stipulated for replying to take charge requests, with a number of Member States reporting that on average their response rate to take charge requests is a lot shorter than two months. Average response rates vary considerably across Member States with the fastest response rates cited by **Belgium, Estonia, Germany, Liechtenstein** and **Norway** (five to seven days each) and the slowest reported by **Bulgaria, the Czech Republic, France** and **Ireland** (two months).

Figure 5.6 Average time to reply to a take charge request



Source: Answers from stakeholder consultations in Member States

Several Member States noted that the **current influx of migrants** has delayed replies, e.g. **Lithuania** reported that the average increased from four weeks to two months, and **the Czech Republic** from a few days to two months.

The national authorities consulted by the Study Team appraised the time limits for replying to take charge requests as follows:

- Most Member States described the **time limits as generally appropriate** (AT, BE, BG, CZ, DE, DK, EE, FI, FR, HR, HU, LU, LV, MT, NL, PL, PT, RO, SE, SI, UK, CH, NO) although it was noted in Section 4 that three of these Member States acknowledged that it was difficult to meet the time limits when investigating and responding to family procedures (NL, AT, CZ);

- Some Member States suggested that the **response time should be reduced in some cases** (CY, LI, LV, SE) in order to accelerate applicants' access to the asylum procedure;
- At least six Member States considered that **longer response times would be preferable in certain cases** (EL, ES, IE).

Whilst these findings suggest that the time limits stipulated in the Regulation for Member States to reply to take charge requests are appropriate, the fact that data on response rates was not available for five Member States – among them, **Italy**, the single largest recipient of Dublin requests – means that the effects of the time limits cannot be conclusively established.

5.3.2 Delays in replying to take charge requests

Failure to respond to a take charge request within the two-month period stipulated in the Regulation is tantamount to accepting the request and entails the obligation by the receiving Member State to take charge of the applicant (Article 22(7)).

According to the information gathered by the Study Team, this type of situation is rare.

- Most Member States reported that such delays occur only occasionally (BE, BG, EE, HU, IE, PL) or rarely (AT, CY, DK, ES, FI, LU, NL, PT, SE, UK, NO);
- Seven Member States reported that delays of this kind never occur (CZ, HR, LT, LV, RO, SI, LI);
- Two Member States (EL, MT) reported that these delays occur frequently.

However, once again, the fact that replies to this question were not received from all Member States, and those Member States which replied included several with small Dublin caseloads, suggests that the findings are likely to under-report the extent of the difficulties which Member States face in replying to take charge requests within the two-month period stipulated in the Regulation.

The main reasons reported for delays in replying to take charge requests are:

- **Technical problems** e.g. problems with fax/Dublinet (BE, DK, PL) or **administrative errors** (NL);
- **Capacity problems** e.g. limited staff (BE, BG, HU, MT, UK), particularly during periods where there is a high influx of applicants.

Indeed, several Member States (BE, MT, NL, CH) reported that delays (i.e. implicit acceptances) are sometimes a more efficient way of responding to take charge requests when it is evident that they will be made responsible.

Most Member States reported that the **time limit for responding to urgent requests is generally met** (BE, BG, CY, CZ, DE, EL, FR, HR, HU, IE, LU, LV, MT, NL, PL, PT, RO, SE, SI, UK, CH, NO) although exceptions occur due, in most part, to capacity issues. **France**, for example, says seven days is sometimes too short as the full Dublin unit has only four staff members to handle 5,000 incoming requests per year and these officials are also in charge of relocation (see Section 2.2 on resources of the competence authorities).

5.3.3 Types of proof and circumstantial evidence considered adequate to reply to take charge requests

In most cases, Member States report that they accept both substantial proof and circumstantial evidence when replying to take charge requests (BG, CZ, DE, DK, EE, EL, ES, FR, HR, HU, LT, LV, NL, PT, RO, SE, SI, UK, LI, NO). This finding does not sit well with the restrictive stance on evidence in family-related matters documented in Section 4.3.2, and in respect of humanitarian requests, and it may therefore reflect the fact that requests based on family criteria and humanitarian requests are infrequent.

Two Member States indicated that circumstantial evidence is only accepted if submitted by certain Member States with whom they have a relationship of trust (BE, CY). One Member State – **Poland** – indicated that circumstantial evidence is usually insufficient.

In practice, Member States tend to **ask for more information if they receive a description of circumstantial evidence, but the proof/documentation itself is not provided**. **Romania**, for example, says in some cases they request the fingerprints of the applicant if they are not attached by the Member State who sends the request. **The Netherlands** rejects incomplete requests where the **Member State has failed to properly explain the evidence**, but explains exactly what evidence/information the requesting state needs to supply in order for them to reconsider.

Member States also reported that they are more ready to accept circumstantial evidence in their reply to a take charge request on **certain grounds**, rather than others (LV). This is most difficult in respect of take charge requests relating to illegal border crossings.

5.4 Procedure to submit a take back request when a new application has been lodged (Article 23)

This section looks at the appropriateness of the time limits for submitting a take back request when a new application has been lodged; the frequency with which Member States are delayed in submitting take back requests; and the types of evidence that Member States use to submit a take back request.

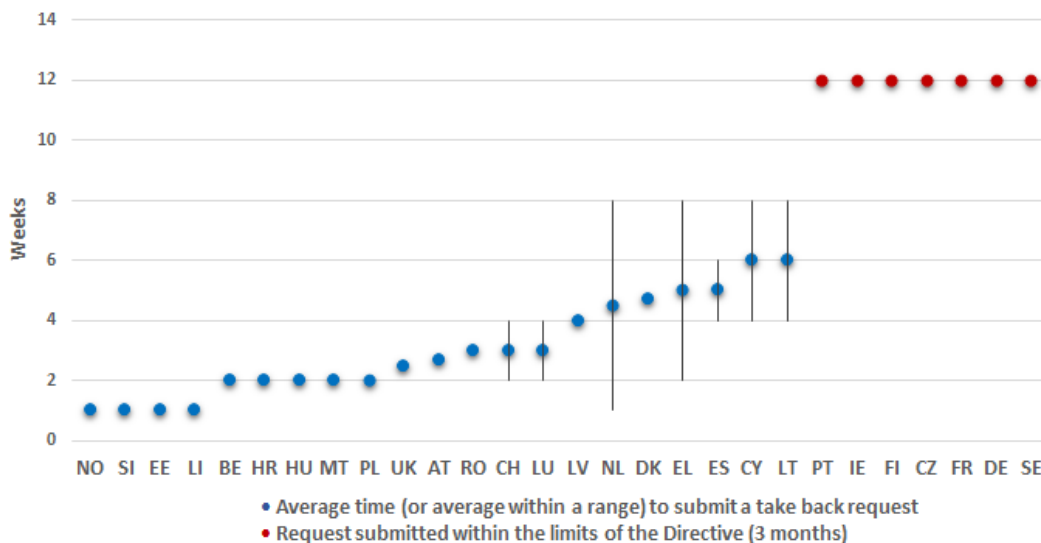
5.4.1 Appropriateness of the time limits to submit a take back request when a new application has been lodged

Take back requests should be submitted 'as quickly as possible' when a new application has been lodged, but no longer than three months after the application was submitted (or within two months of a Eurodac hit) (Article 23(2)).

Most Member States respect the time frame stipulated for submitting take back requests when a new application has been lodged, with a number of Member States reporting that on average they submit take back requests well in advance of the maximum time frame. Average response rates vary considerably across Member States with the fastest response rates cited by **Estonia, Norway, Slovenia** and **Lichtenstein** (one week) and the slowest reported by **the Czech Republic, Finland, France, Germany, Ireland, Portugal** and **Sweden** (three months).

Non-Governmental Organisations point out, however, that whilst Member States may meet the time frames stipulated for submitting take back requests, when these requests are declined by the respondent Member State, the requesting Member State often submits the requests for reconsideration. This type of exchange can be repeated a number of times, prolonging by several months the determination of responsibility.

Figure 5.7 Average time to submit a take back request when a new application has been lodged



Source: Answers from stakeholder consultations in Member States

As regards Member States’ appraisal of the time limits:

- Most countries reported that **the time limits are appropriate** (BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LT, LU, NL, PL, PT, RO, SE, SI, UK, LI, NO);
- Some Member States reported that the timelines **could be shorter** (BE, LV, LT), especially if there are hits on Eurodac;
- Other countries said the **time limits should be longer** (AT, EL, IE, CH), for example if there are several Eurodac hits and they need to contact more than one country, and in view of the **current refugee crisis**.

5.4.2 Delays in submitting take back requests when a new application has been lodged

Where a take back request is not submitted within the stipulated time frames, responsibility for examining the application will lie with the Member State in which the new application was lodged (Article 23(3)).

The evidence collected so far suggests that this situation occurs only rarely or occasionally:

- Three Member States reported that such delays often take place (FI, HU, SE);
- Five Member States reported that these delays never occur (BG, FR, HR, LT, RO);
- Fourteen Member States reported that they occur only rarely or occasionally (AT, BE, CY, CZ, DK, EL, ES, IE, LU, NL, LV, RO, PT, CH);

The main reasons reported by Member States for delays in submitting take back requests include:

- **Capacity issues**, e.g. especially during periods of high influx of applicants and when there is a shortage of staff (BE, CZ, DK, ES, HU, IE, SE, SI, LI);
- Lost requests (AT, BE) or **administrative errors** (NL);
- Information not provided in response to a request (CY, FI);
- **Different internal procedures** and different caseloads (CH);
- Transferring the Eurodac search results from the police to the authorities responsible for submitting requests (PL);

- **Information available arrives too late;**
- **Absconding** (SE).

5.4.3 Types of proof and circumstantial evidence that are used to submit take back requests

Thirteen Member States (AT, BG, CZ, DE, EL, ES, FI, HU, IE, LU, NL, UK, NO) responded that they use **all available evidence, both substantial and circumstantial** when preparing to submit a take back requests. Other countries were more circumspect: **Belgium** noted that they only use circumstantial evidence when submitting a take back request to certain Member States. **Switzerland** noted that it only uses evidence that it considers **substantial proof, not circumstantial evidence**.

Almost all Member States emphasised the **systematic or principal use of Eurodac hits** (CY, DK, FR, HU, PT, RO, SI, LI). Some specified that they use **Eurodac hits in concert with other evidence** (e.g. **Croatia** uses Eurodac hits and applicants' statements, **Estonia** uses Eurodac, visas and travel tickets; **Lithuania** uses Eurodac, copies of asylum seekers' cards, and ID; **Latvia** uses Eurodac, VIS and copies of visas, **Poland** sends the Eurodac search result, a copy of the documents and applicants' statements; **Sweden** uses VIS, Eurodac, passports and fingerprints).

Several Member States (BE, BG, CY, CZ, FI, NL, SE, SI) indicated that they make use of the lists included in Article 22(3); however, as mentioned in Section 4.2.1, these **lists are broadly considered insufficiently detailed**, particularly with regard to the family criteria and when Eurodac or VIS evidence is not available. In some cases, Member States reported they only make use of them at times (HR, RO). Only one Member State indicated that the lists are not used (CH).

5.5 Procedure to reply to a take back request (Article 25)

This section examines: the appropriateness of the time frames for replying to a take back request; the frequency of Member State delays in replying to such requests; and the type of evidence that is deemed adequate in order to reply to a Member State's take back request.

5.5.1 Appropriateness of the time frames for replying to a take back request

The requested Member State will give a decision 'as quickly as possible' and no later than **one month** after receiving the request. When the request is based on Eurodac data, that time limit will be reduced to **two weeks** (Article 25(1)).

Member States appear to comply with the time frames stipulated for replying to take back requests. The **average time periods** reported by the competent authorities are:

- One week (CH, HR, NO, PL, RO, SI, DK, AT, EE, PT, IE, DE);
- Two weeks (BE, BG, CY, HU, LT, LV, NL, SE, LU, CZ, ES, UK);
- Three weeks (EL, FR); and
- Four weeks (IE).

The majority of Member States considered the time frames stipulated for replying to take back requests appropriate (AT, BE, CY, CZ, DE, EE, FR, HR, HU, LT, LU, LV, UK, LI (if there is a Eurodac hit), NL, PL, RO, SE, SI, CH, NO). Five Member States responded that **more time is needed** (BG, EL, ES), the two-week deadline for Eurodac is tight (IE, PT). Only one Member State (FI) reported that the time frames could be shorter still.

5.5.2 Delays in replying to take back requests

Most Member States reported that it is very rare that they are designated as responsible for examining the application because of delays in replying to a take back request.

- Four Member (States) reported that this has never occurred (LT, RO, SE, LI);

- Eleven Member States reported that it occurs sometimes or rarely (AT, BE, CY, CZ, FR, HR, IE, LU, NL, PT, CH);
- Two Member States reported that it occurs relatively often (EL, FI), but only in cases when the Member State that receives the request knows they are the responsible Member State in any case.

The main reasons for delays were reported to be:

- Limited staff capacity (CZ, EE, EL, FI, IE);
- Administrative errors (ES, NL);
- Inability to trace departure (CY);
- Minimising secretarial work, which makes the process more complicated (CH).

Again, several Member States noted that **the lack of response may simply be out of expedience** when a Member State is experiencing a large influx of applicants and plans to accept the request anyway (FI, FR, NL, NO).

5.5.3 Type of proof and circumstantial evidence that are deemed adequate by Member States when they reply to take back requests

All respondents confirmed that the evidence provided is usually adequate (proof provided for take back requests is typically a Eurodac hit).

Some Member States reported that **occasionally they receive incomplete packages**: either there is evidence missing or it requires a further explanation that is not provided.

The United Kingdom reported that the type of proof and circumstantial evidence that are deemed adequate varies by Member State, depending on relationships of trust that may or may not exist between them.

5.6 Grounds for refusals to accept take charge and take back requests

Member States reported that they reject take charge and take back requests on the following grounds:

- Doubts about the whereabouts of applicants/ applicant was returned/moved to a third country before application was made (AT, DK, EL, FI, HU, LU, LV, NL, CH);
- Another Member States has responsibility (HR, HU, SI, UK, LI), e.g. the requesting Member State missed the deadline to send the request and has de facto responsibility (BG, HU, CH), a visa/residence document was issued in another state (LV, NL, SE), a database shows that the applicant was transferred from another EU Member State (SI), there is evidence of the applicant's irregular entry in another Member State (BE), the cessation of responsibility clause (AT, CY, CZ, DK);
- No legal presence of family members (BE);
- Lack of fingerprints/lack of a Eurodac hit in the receiving country (HU) or a Eurodac hit in another Member State (PL);
- Applicant is an unaccompanied minor (BG, HU, NL);
- Insufficient information/requests that have not been explained/substantiated (EE, HU, NL, RO, UK), no photograph included (RO).

5.7 Take back requests and the Return Directive (Article 24(2) and (4))

The Study Team examined the practice of Member States in respect of a third-country national/stateless person rejected by a final decision in a Member State who stays irregularly in another Member State; and in particular whether Member States choose to apply the Dublin

III Regulation by making a take back request, rather than applying a return procedure in accordance with the Return Directive.

Most countries that responded said they either have **no information/statistics available** (AT, BE, BG, DE, DK, ES, LT, LU, RO, SI, UK) or **no such cases occurred** (CY, FR, LV, PL).

Sweden noted that it does not carry out return procedures in these cases, but instead requests that the other Member State takes back the applicant. **The Netherlands** also stated that it prefers this approach (although it occasionally applies return procedures). **Norway** noted they had no such cases, 'even though it was initially seen as a good way to speed-up procedures'. **The Czech Republic** and **Portugal** issue take back requests in these cases.

5.8 Take back rules (Articles 18 and 20(5))

This section assesses how the take back rules are applied in practice, and in particular how Member States ensure in practice that the applicant for international protection can reintegrate into the asylum procedure.

Most Member States appear to follow one of three approaches:

1. In some Member States, the applications of applicants who have been transferred following a take back request are automatically reopened (CY, DE, LU, PL, PT, RO, NO);
2. In most Member States, the applicants may choose to request that their existing application is reopened or lodge a new one (AT, BE, BG, CY, DK, EL, FR, HR, HU, IE, LV, SE, SI, CH);
3. In a third group of Member States, the transfer of an applicant following a take back request automatically triggers a new application (CZ, EE, ES, FI, HR, LT, SE, SI, UK).

5.9 Cessation of responsibility (Article 19 and 20(5))

The obligations of the Member State to take back/take charge of an application under the conditions defined in the Regulation, cease when the Member State responsible can establish that the applicant has **left the territory of the EU** (and associated countries) for at least three months, unless s/he has a valid residence document issued by the Member State responsible.

When it comes to **take back requests**, the obligations of the Member State cease when it can be established that the person has left the territory of the EU (and associated countries) **following a return decision or removal order** issued by a Member State after the withdrawal/rejection of their application.

Member States appear to have made variable use of the provisions of the Dublin III Regulation regarding cessation of responsibility:

- At least three Member States (UK, CH, NO) reported that they made frequent use of these provisions in order to refuse responsibility in the context of take back requests. In the case of **the United Kingdom**, around 60% of formal requests received were rejected on this basis;
- Five other Member States (BE, CZ, DK, FI, RO) reported that they made use of these provisions occasionally. In the case of **Denmark** and **Finland**, the provisions were used to reject formal requests in 19 % and 12 % of cases, respectively;
- Six other Member States reported having never used these provisions (HR, LI, SI) or only rarely (EE, ES, PT);
- Most Member States were not able to provide any relevant information (AT, BG, DE, FR, IE, LU, NL, PL, SE).

The main reasons reported for the use of the cessation of responsibility provisions are: (i) because the applicant left the territory of the Member State following a forced return; and (ii) because the applicant had a travel document or a permit of another Member State.

Most Member States that have used the provisions on cessation of responsibility report that they make use of both substantial and circumstantial evidence to demonstrate that the applicant has left their territory. More specifically, the following types of evidence are used:

- Information from national border guards/police/other national databases (BG, HR, RO, PL, SE, SI);
- Removal/return orders and/or reports of return (BE, LV, LT, PL, NO);
- Eurodac/SIS (BE, CY, HU);
- Entry/exit systems (CY, RO);
- Travel documents/stamps in passports/flight number (PL, CH, NO) ('though most asylum seekers do not possess passports').

Only one Member State, **Ireland**, reported that the use of the cessation of responsibility provisions has increased following entry into force of the Dublin III Regulation.

6 Implementation of transfers

This section summarises the practical implementation of relevant articles concerning the implementation of transfers, including: Article 26 (notification of a transfer decision); time and modalities of transfers (Article 29); exchange of information before a transfer is carried out (Article 31); exchange of health data before a transfer is carried out (Article 32); and the use of detention (Article 28 and 2(n)).

6.1 Notification of a transfer decision (Article 26)

Article 26 defines the obligation for Member States to **notify transfer decisions to the applicant** concerned, as well as the **procedure and modalities** to do so, and the **content that should be featured** in the notification. This section assesses the extent to which Member States comply with these obligations, and analyses whether they inform the applicant of the decision to transfer him or her in a **timely and understandable manner**.

6.1.1 Degree to which Member States fulfil this obligation

Close to all the Member States consulted declared they **systematically notify the applicant** for international protection of the decision to transfer him or her to the Member State responsible for examining his or her application for international protection (AT, BE, BG, CY, CZ, DE, EL, ES, FR, HR, HU, IE, IT, LT, LV, NL, PL, PT, RO, SE, SK, UK, CH, LI, NO). Nine of these Member States specified that **failure to comply with this obligation has never occurred** (AT, CY, DE, EL, HU, LV, NL, RO, CH). **Belgium** and **Spain**, however, pointed out that it is not possible to fulfil this obligation in cases when the applicant absconds. In **Slovenia**, the Dublin unit estimated that the transfer decision was not notified in around 70 % of cases due to restrictions linked to detention. In **the United Kingdom**, the law provides that there is no obligation to provide the applicant with a new transfer notification if the transfer is arranged within 10 days of a failed removal, but the Dublin unit indicated that this is seldom used in practice.

6.1.2 Modalities of the notification

This section assesses the manner in which a transfer is communicated to the person concerned in the different Member States. It first examines whether the information is communicated in writing and/or orally, and whether it is provided in a language that the person concerned understands or is reasonably supposed to understand. The timing of the notification of the transfer decision is then studied, and finally whether the legal advisor or counsellor of the applicant is notified of the transfer decision.

6.1.2.1 Communication mode

Article 26 of the Regulation does not explicitly specify whether the information about the transfer decision should be **communicated in writing or orally**.

Most Member States (BE, BG, CY, EL, FI, HR, HU, LT, LU, LV, NL, SE, SK, LI) **notify the decision in writing, and the notification is handed to the applicant in person**. On this occasion the applicant also receives information orally³². In **Latvia**, the decision is only notified in both ways for applicants placed in detention.

In **the Czech Republic**, UNHCR stated that decisions were notified orally in all cases, but was not able to indicate whether the notification was also made in writing. This could not be verified with national authorities. In the case of **Denmark**, the situation is unclear: while the **Danish** police stated that the decision is solely notified orally, the NGO consulted for the Study stated that both types of notification are possible.

³² EASO Quality Matrix Reports, 2015.

Seven Member States stated that they **communicate the transfer decision in writing only** (AT, DE, ES, IT, PL, RO, SI). In **Austria**, the notification is made by way of a registered letter. In **France**, stakeholders consulted expressed diverging views: whilst a written certificate is provided to the applicant to inform about the transfer decision, other stakeholders consulted also indicated that there is the possibility for the certificate to be translated orally. In **Latvia**, applicants who are not in detention are notified in writing only.

Finally, in **Switzerland**, it seems that practices diverge depending on the canton, with some authorities notifying the decision in writing only while others provide both written and oral information³³.

Written information **can be kept by the applicant** so that he or she can consult it again, potentially with the support of a legal advisor or an NGO, while oral information allows the applicant **to ask for clarification on the spot** if need be. However, in **Denmark**, the NGO consulted for the Study expressed a preference for oral notifications due to their immediate character and the presence of the interpreter. In their experience, written notifications are not always understood by applicants and the time needed for the notification to be communicated by post can impact on the time left for the applicant to lodge an appeal within the seven-day time limit. For these reasons, a **combination of both types of information seems to be the most efficient way to notify the transfer in a clear and understandable manner**.

6.1.2.2 *Languages available*

In the Regulation, the obligation for Member States to notify the transfer decision to the applicant **in a language he or she understands or is reasonably expected to understand** is only defined as regards cases where the applicant is not assisted or represented by a legal advisor or other counsellor. This obligation only concerns information about the 'main elements of the decision', which includes information on the legal remedies available and the time limits applicable for seeking such remedies³⁴. Therefore, in cases where the applicant does not have a legal advisor or counsellor, this provision opens the possibility for Member States to provide partial information only in a language the applicant understands. In addition, in cases where the applicant has a legal advisor or counsellor, Member States are not obligated to translate the information, leaving it up to the legal advisor or counsellor to provide translation services.

However, **limiting access to translations or an interpreter may not be in line with other standards set at EU level**. According to Recital 25 of Directive 2013/32/EU, the applicant should have 'the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand'³⁵. It can be assumed that, in cases where the applicant is assisted or represented by a legal advisor or other counsellor, informing the applicant about the decision he or she is subject to in a language he or she understands, or is reasonably supposed to understand, could be a challenge in practice.

Written information about the transfer decision is **not frequently provided in a wide variety of languages**. Amongst the Member States consulted to date, only **Lithuania** stated that the information is provided in 18 languages. It is unclear whether this is a standard leaflet or whether the translation of individual decisions into these languages is available in all cases.

The table below provides an overview of the languages in which **written notification** of the transfer is provided, for those Member States which reported on this issue.

³³ EASO Quality Matrix Report, 2015.

³⁴ Article 26(3).

³⁵ Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection.

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Table 6.1 Overview of languages in which the individual written notification of a transfer is provided, by Member State

| | AT | BE | CY | DE | FI | FR | HR | IT | LT | LU | NL | PT | SI | CH | LI |
|-----------------|--|-----------------|---------|--|---------|--------|----------|--------------------------------|---|---|-------|------------|---------|---|------------------------------------|
| Language | German and partial information in a language the applicant understands | Dutch or French | English | German and partial information in a language the applicant understands | Finnish | French | Croatian | Italian, and French or English | Albanian, Arabic, Armenian, Chinese, English, Farsi, French, Georgian, Italian, Lithuanian, Pashto, Portuguese, Russian, Somali, Spanish, Tigrinya, Urdu and Vietnamese | French and partial information in other languages | Dutch | Portuguese | Slovene | German and partial information in applicant's mother tongue | German but translator is available |

In **Poland** and **Slovenia**, the written information is provided in a language the applicant understands or can be expected to understand³⁶.

In **Austria**, the transfer decision and information relating to the right of appeal are provided in a language the applicant understands, while the rest of the decision is communicated in German. The quality of the translation provided was, however, criticised by NGOs interviewed in the context of the Study. In **Germany**, only the grounds for the decision as well as information on remedies are translated into a language the applicant understands, but the rest of the decision is left in German. In contrast, in **Switzerland**, the grounds for the transfer decision are in German, whereas the last page of the document is translated into the applicant's mother tongue and includes information on the next procedural steps. A **Swiss** lawyer consulted for this Study stated that this represents a major challenge for applicants as they do not fully understand the grounds for the decision.

As far as **oral information** is concerned, an interpreter is present in a large number of Member States (BG, CY, CZ, EL, FI, HR, HU, LT, LU, NL, SE, SK, UK). In **the Netherlands**, the interpreter is only available by telephone when law enforcement authorities notify of the transfer.

In **Italy**, it seems that no interpreter is provided. The Dublin unit stated that applicants can get additional support from lawyers or NGOs, although the frequency with which such support could be provided was not specified. This view could not be contrasted with the views of other stakeholders. As mentioned under Section 6.1.2.1, in **France**, conflicting views were expressed by the stakeholders consulted, as the Dublin unit stated that an interpreter is usually present or can be reached by telephone, while one of the NGOs consulted stated that linguistic assistance was often provided by NGOs themselves. In **Romania**, interpretation can be provided whenever needed, but the Dublin unit specified that in a majority cases applicants understand English or other common languages. In **Portugal**, NGOs indicated that interpreters were not systematically present during the notification process, and denounced a 'gap in the system'. Finally, practices in **Switzerland** regarding oral information vary depending on the canton. In some, information is delivered in the presence of an interpreter, while in others, it is only available in French, German or Italian³⁷.

6.1.2.3 Timing of the notification of the transfer decision

The Regulation **does not provide for the time frame in which the transfer decision should be notified** to the applicant or to his or her legal representative. However, one of the objectives of the Dublin Regulation being to ensure 'rapid processing of applications for international protection'³⁸, the Dublin procedure **should be implemented as fast as possible**. Notifying transfer decisions to applicants within a **short time frame should therefore be considered good practice**.

Few Member States provided information regarding the time frame under which the transfer decision is notified to the applicant. In **the Netherlands**, the authorities stated that the notification is usually done 'as soon as possible', but a time limit is not defined in the absence of a binding standard in the Regulation. In other Member States, stakeholders stated they met appropriate time limits without specifying what those might be (AT, BE, CY, DE, EL, IT, PL, RO, CH). These views were usually provided by national authorities and in most cases could not be contrasted with the views of other stakeholders³⁹. However, in **Austria**, NGOs criticised the length of time it took to receive a transfer notification.

³⁶ EASO Quality Matrix Report, 2015.

³⁷ EASO Quality Matrix Report, 2015.

³⁸ Recital (5) of Regulation (EU) No 604/2013 of 26 June 2013 ("Dublin III Regulation")

³⁹ In Germany however a lawyer/legal representative confirmed that the time-limit for notifying a transfer decision is always respected (without specifying what this time-limit is).

In the **Czech Republic**, the UNHCR indicated that the transfer decision was in most cases notified only one or two days in advance, which was considered too late.

6.1.2.4 Presence of a legal advisor or counsellor

According to Article 26(1), in cases where the applicant is represented by a legal advisor or counsellor, **Member States can choose to notify the decision to such an advisor or counsellor instead of the person concerned**. Where applicable, the Member States can choose to communicate the decision to the person concerned.

To date, three Member States have declared they notify only the applicant of the transfer decision (EL, IT, RO). However, in these countries, the legal advisor is informed when the applicant is an unaccompanied minor. In three other Member States, the applicant **receives the notification but his or her legal advisor or counsellor can have access to it** (BE, FR, LT). Six Member States communicate the transfer decision **to the legal advisor or counsellor directly** (HR, PL, RO, SI, SK, NO). Finally, 10 of the Member States consulted to date notify the transfer to **both the applicant and his or her legal advisor** when applicable (AT, BG, CY, DE, FI, HU, LU, LV, SE, CH)⁴⁰. A lawyer/legal representative in **Germany** brought several problems to light however, especially in cases where the applicant intends to appeal the transfer decision. First, the legal representative does not receive the case file with the notification decision unless specifically asked for. Second, although the legal representative normally receives a copy of the transfer decision, he/she does not know whether the copy was received at the same time or later than when the applicant received the notification decision. Seeing that there is a one-week deadline to appeal the decision, the legal representative relies on the applicant to contact him/her with the request to appeal.

When asked whether legal advisors or counsellors were routinely involved in the notification process, **Belgium, Cyprus and the Slovak Republic** stated that this was conditional to the applicant having access to such legal assistance (see Section 7.1.2.2). In practice, this opportunity might be limited at this stage of the procedure in some Member States, due to the restrictions on the access to free legal assistance. For instance in **Cyprus**, stakeholders indicated that free legal assistance is only available at the stage of a judicial review of the decision before the Supreme Court.

6.1.3 Content of the information provided

Article 26 of the Regulation lists the elements that the applicant should be notified of once a transfer decision has been made. This section examines the nature of the information communicated to the applicant.

Overall, it seems that a majority of Member States consistently notify applicants of:

- Information on the Member State responsible for examining the application where the applicant will be transferred;
- The main elements of the decision;
- The remedies available under national law; and
- The time limits for seeking such remedies are consistent across the majority of Member States.

Member States have different definitions for the 'main elements of the decision' that should be communicated to applicants who are not assisted nor represented by a legal advisor or other counsellor⁴¹. Ten Member States specified that the main elements of the decision include a listing of the grounds for the decision (BE, CY, DE, ES, HR, HU, LV, NL, PL, SE). Other elements include the findings of the Dublin unit (BE), the acceptance of the request by the Member State responsible (BE, CY, HR, LV, NL, SE), available evidence (BE, SE), a reference

⁴⁰ EASO Quality Matrix Report, 2015.

⁴¹ Article 26(3).

to the relevant articles of the Regulation (ES), and the next procedural steps (ES, HR, NL, SE).

The time and date of the transfer are generally communicated along with the decision. However, in **the Czech Republic**, the UNHCR pointed out that information about the date of the transfer can be erroneous. **French** NGOs stated that the date is not communicated in cases where the applicant is expected to travel on his or her own. In **Luxembourg**, the date is not communicated to applicants who may abscond (but for whom the risk is not so significant that they may be detained)⁴².

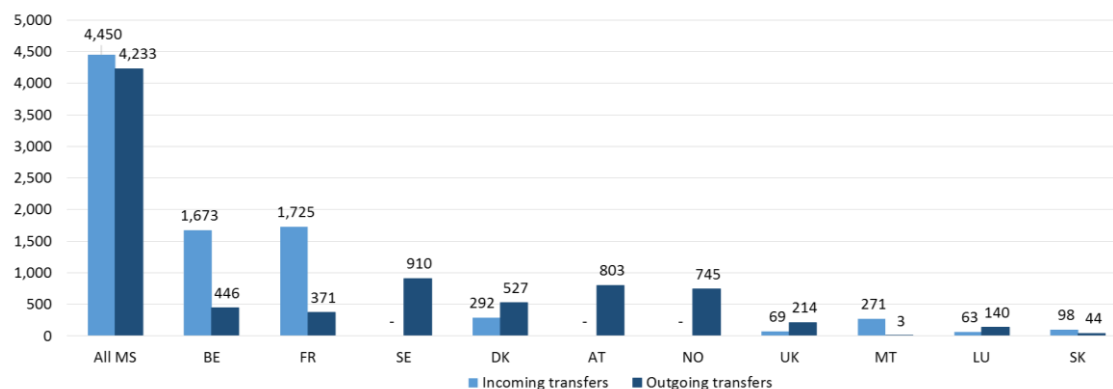
Information on the time limits to apply for the suspensive effect of the appeal, the time limits to carry out the transfers, or the persons or entities providing legal assistance is also widely shared. In **France**, the Dublin unit indicated that the transfer notification includes the right to apply for the suspensive effect of the appeal. However, this statement was contested by one of the **French** NGOs consulted. In **Lithuania**, the authorities indicated that the suspensive effect of the appeal is not mentioned in the notification. In several Member States, the transfer notification does not advise whether the applicant is expected to travel by his/her own means as well as the modalities of such travel (EL, FI, HR, HU, IE, IT, LV, PL, PT, RO, SI, UK, CH, LI). In some cases, this may be explained by the fact that this option is not available in their system (CY, HU, IT, LT, LV, MT, NL, PT, UK, CH).

The fact that information about transfer decisions is not systematically communicated to legal advisors could in practice be problematic. Indeed, several stakeholders interviewed raised the difficulty for applicants to understand often technical and legal decisions without support from a qualified person as one of the main shortcomings of the procedure in place to notify transfer decisions (HU, PL, NL, CH).

6.2 Procedure to transfer applicants: time and modalities (Article 29)

The figure below shows the total number of successfully carried out outgoing and incoming transfers in 2014 across the Member States.

Figure 6.1 Outgoing and incoming transfers in 2014

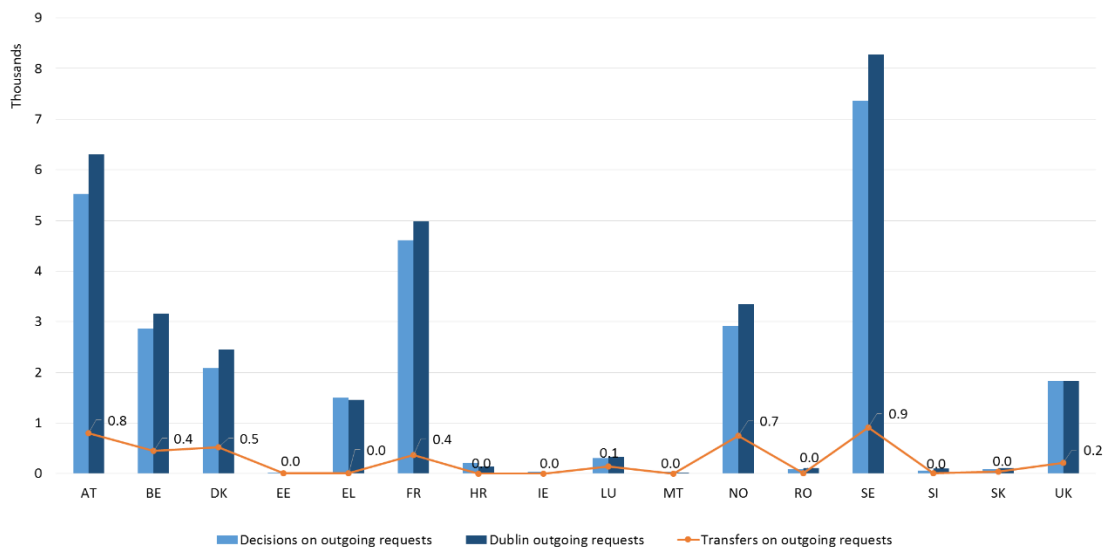


Source: Eurostat migr_dubto and migr_dubti. Data was extracted between the 12th and 18th October 2015. Countries with less than 100 transfers in 2014 were not represented in the chart (this includes IE, SI, RO, LV, EE, HR and EL).

The figure below shows that relative to the total number of Dublin outgoing requests and decisions, the number of outgoing transfers is very low.

⁴² The Dublin unit explained that there are three categories of applicants: when the risk of absconding is high the person is detained; the second category of applicants are not detained but do not know the date of the transfer; the third category are informed about the date and place of the transfer.

Figure 6.2 Total number of outgoing transfers compared to the total number of Dublin outgoing requests and outgoing decisions in 2014, by country



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

The modalities according to which transfers are carried out, and several practical aspects of their implementation, including time limits are defined under Article 29 of the Regulation. This section assesses the conditions under which transfers are implemented, as well as Member States' compliance with the time limits set in the Regulation.

6.2.2 Transfer modalities

While Article 29(1) provides a framework for the implementation of transfers, it leaves the possibility for Member States to carry them out 'according to national law'.

6.2.2.1 Authorities involved

Article 29 does not specify which national authorities should be involved in the transfer procedure. In eight of the responding Member States, the Dublin unit is in charge of coordinating and organising the transfer (AT, HR, HU, LT, MT, RO, SE, UK). This includes the communication with the responsible Member State in order to agree on the date, place, venue and modalities of the transfer. In **Belgium**, the transfer procedure is handled by different units within a central authority – the Immigration Office, which also comprises the Dublin unit. However, it appears that the Dublin unit itself is not involved in the procedure.

In several cases, the logistics of the transfer is delegated by the Dublin unit to another authority. In such cases, (DK, EL, HU, IT, LU, SE, CH, NO), the police will often be in charge of supervising the departure and accompanying the applicant to the place where the transfer is supposed to take place (aeroplane if it is an air transfer, border if it is a land transfer) and escorting him or her where applicable (BE, EL, HU, IT, CH, NO). In four Member States (LT, LV, PL, SK), the Border Police are in charge of the practical execution of transfers. In **the Slovak Republic**, the Border Police are in charge of the whole process, with different units within the authority coordinating their action. In **Austria** and **Germany** the procedure is shared between different authorities. In **Austria**, the logistics of the transfer are taken care of by the reception centres, under the supervision of the Dublin unit, while the transfer is enforced by the regional police department. In **Germany**, the BAMF simultaneously informs the foreigners' registration office (*Ausländerbehörde*) and the federal police (*Bundespolizei*) that there will be a transfer and notifies both institutions of the date and time. The foreigners' registration office organises the air transfer and the state police carry out the transport to the national border or

to the airport where the applicant is handed over to the federal police. For transfers to Member States bordering **Germany**, the federal police will hand over the applicants to the authorities of the concerned Member State at established meeting points. For air transfers, the federal police escort the applicant into the aeroplane. The federal police then notify the foreigners' registration office about the successful transfer. In **Sweden**, the procedure is shared between the Dublin unit and the police. The Dublin unit normally handles the whole process, but the police can be requested to get involved in cases where the person has absconded, and where the applicant refuses to be transferred and the Dublin unit considers the use of force may be needed to carry out the transfer. In such cases, the police are tasked with conducting the transfer. In addition, the Prison and Probation Board is informed of the process and will take care of the logistics of the transfer. However, **Swedish** law enforcement authorities stated that the Board sometimes did not have the necessary resources to carry out the transfer, in which case the police take care of it.

Article 29 does not explicitly define particular modalities according to which a transfer should be carried out. It only specifies that when transfers are carried out by supervised departure or under escort, they must be carried out in **a humane manner and with full respect for fundamental rights and human dignity**⁴³. However, Recital 24 of the Regulation provides that Member States 'should promote voluntary transfers'.

Ten Member States stated that applicants are never expected to **travel by their own means** (AT, CY, DE, HU, IT, LT, LV, MT, NL, CH). It is not clear whether this is enshrined in national law or the result of practice. This may relate to a concern about how to control the effective implementation of the transfer. The **Austrian** authorities indicated that this is a way to make sure that the applicant arrives safely in the responsible Member State.

The favoured procedure amongst the Member States consulted to carry out transfers seems to be **supervised departures** (AT, DE, HU, IT, LT, MT, NL, PL, RO, UK, SE). Such supervision may include the payment of the travel ticket, the supervision of transit arrangements in cases where no direct flight is available, obtaining the airline's consent for a transfer, with or without escort, obtaining transit approval in the case of indirect flights, accompanying the applicant boarding the plane (in cases of air transfer) or to be handed over to the authorities of the Member State responsible (in cases of land transfer).

Four Member States (DK, EL, LV, SE) indicated that in the context of a supervised air transfer, the identity documents of the applicant are handed over to the pilot of the aircraft for the duration of the flight, who then gives these to the national authorities upon arrival in the responsible Member State. Although **Greece** stated normally carrying out supervised transfers, one of the **Greek** NGOs interviewed for the Study indicated that, in practice, since the second half of 2014, applicants have been expected to purchase their own ticket with a specialised travel agency. Frequently, the applicant could not cover the cost of the ticket, which led to delays in the execution of the transfer.

Escorted transfers can be planned in cases where the person's behaviour or personal circumstances (such as his or her age) justify it (HR, HU, LT, LU, SE). In **Luxembourg**, law enforcement authorities stated that escorted transfers used to take place in extraordinary circumstances only, but that it has become the norm due to applicants' reluctance to be transferred. In five Member States, the rights of the applicant were declared to be respected during the implementation of Dublin transfers by national authorities (AT, LI, NL, RO, CH). This view could not be corroborated with the views of other stakeholders. In **the United Kingdom**, lawyers have criticised the excessive use of force to escort applicants during transfers.

6.2.3 Practical aspects

One of the main purposes of Article 29 is to set time limits for the transfer of the applicant to the responsible Member State, to ensure swift access to the procedure to determine whether he or she is eligible for international protection. In order to facilitate the execution of the

⁴³ Article 29(1) paragraph 2.

transfer, the Regulation foresees that the applicant is provided with a *laissez-passer*⁴⁴ and Member States can conclude bilateral arrangements to simplify transfer procedures with their counterparts.

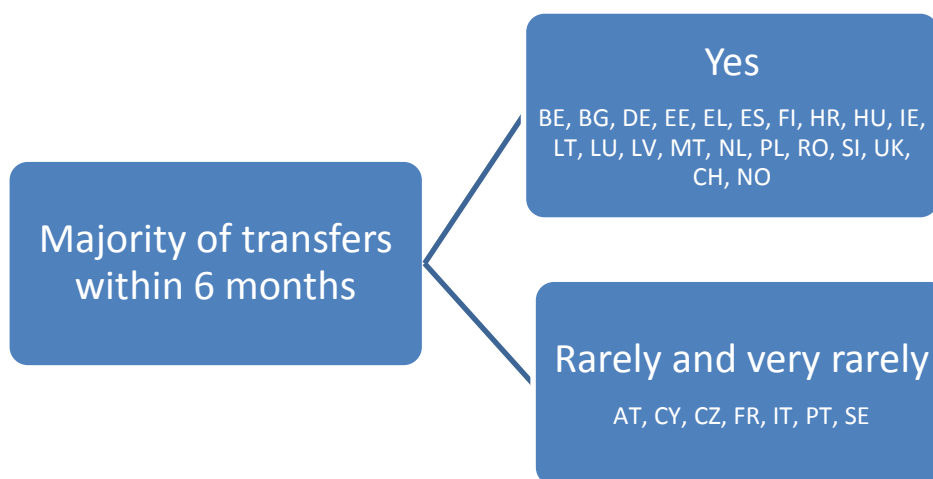
6.2.3.1 Time limits for the transfer

Article 29(1) provides that a transfer will be carried out 'as soon as practically possible' and sets a **time limit of six months** from the acceptance of the request by the responsible Member State or of the final decision on an appeal or review with suspensive effect. Should this time limit not be met, the Member State responsible is relieved of its obligation to take charge or take back the applicant and the requesting Member State becomes **responsible by default**. However, according to Article 29(2), the time limit **can be extended** as follows:

- If the transfer cannot be carried out due to the **applicant being imprisoned**, the time limit can be extended to up to one year;
- If the transfer cannot be carried out due to the **applicant having absconded**, the time limit can be extended to up to 18 months.

The figure below illustrates the time frame under which Member States consulted so far carry out the majority of their transfers.

Figure 6.3 Time frame under which the majority of transfers is carried out in consulted Member States



Source: Answers from stakeholder consultations in Member States

In practice, several of the Member States consulted stated that most transfers are carried out **within six months** (BE, BG, DE, EE, EL, ES, FI, HR, HU, IE, LT, LU, LV, MT, NL, PL, RO, SI, UK, CH, NO). In some Member States, they are even implemented well before the time limit: most transfers are estimated to take two to three months in **Slovenia**, two months in **Spain** and down to two or three weeks in **Latvia**, and three to five working days in **Ireland** (although cases involving UAM may take up to two weeks). Similarly, **Estonia** indicated that it took 14 days on average to carry out an escorted transfer. Four out of five transfers are estimated to be completed within five months in **Greece**. In the **Czech Republic**, it is estimated that the execution of a transfer takes four to five weeks in about 30 % of cases. Contrasting views were expressed in **Luxembourg**, with the Dublin unit stating that carrying out a transfer takes on average four months, while law enforcement authorities estimated that it may take between three days and one month, depending on the receiving Member State.

⁴⁴ Article 29(1).

Capacity and resources are invoked to explain this efficiency, including the increase in the number of staff members in the unit in charge of implementing transfers (EL), the availability of a Eurodac hit (ES), a low number of cases (LT, LV), the fact that transfers take place with a neighbouring country (FI), or the fact that a separate authority is in charge of the practical arrangements of the transfer (NL). **Good cooperation** between the concerned Member States as well as **appropriate travel arrangements** were also considered to speed-up the process (BG, LI, NL). Finally, the **cooperation of the applicant** and knowledge about his or her whereabouts are key to making sure that the transfer is implemented on time (DE, DK, LV, UK, NO). The **German authorities** did not quantify the number of cases where transfers are executed before the six-month time limit, but stated that a short time frame was only possible when the authorities have 'controlled access' to the applicant, via controlled accommodation or detention for instance. This view was shared by **the United Kingdom's Home Office**.

On the other hand, six Member States stated that few to very few transfers were conducted **before the expiration of the six-month time limit** (BE, CY, FR, IT, PT, SE). However, the **Italian** authorities added that this was difficult to assess in **Italy's** case due to the very low number of implemented transfers from **Italy**.

The **extension of the time limits as per Article 29(2)** is by far the main reason invoked by Member States for delays observed in the execution of transfers. Eight Member States claimed that frequently the transfer is not carried out within six months (BE, CY, CZ, FR, HR, SE, SI, NO). In **the Czech Republic**, the authorities estimated that around 70 % of transfers took more than six months to be executed. In **Sweden**, it is estimated that close to half of the transfer cases in 2015 led to the transfer not being executed within the Regulation's time frame. The **Slovenian** Dublin unit indicated that such extensions happened 'very often', hereby seemingly contradicting an earlier statement that transfers were executed within two or three months in 95 % of cases. Authorities in **Norway** stated that 39 % of the transfers between January and June 2013 were delayed because the applicant concerned absconded, which is a significant proportion. On the other hand, six Member States (HU, MT, NL, EL, MT, CH) claimed that extensions to transfers were infrequent. In **the Netherlands**, such an occurrence was presented as 'exceptional'.

Though **imprisonment of the applicant, allowing for a 12-month extension**, seems to be a rare event (BG, LU, SE, NO), absconding, allowing for an extra 18 months, was cited by 20 Member States as the primary explanation for delays (AT, BE, CY, CZ, DE, DK, EL, ES, FI, HR, HU, MT, NL, PT, RO, SE, SI, UK, CH, NO). The **Austrian** authorities stated that absconding is the main problem when it comes to the execution of transfers. The **French** Dublin unit referred to instances where applicants would **abscond for the duration of the time limit**, to only reappear after the period had expired, though the frequency of this practice was not specified. This exemplifies the viewpoint, shared by several national authorities (AT, BE, CZ, UK, NO), that **the exceptional extension of the time limits for transfer may not** ensure the effective and timely implementation of the Dublin procedure. The **Austrian** law enforcement authorities added that the transfer of responsibility once the time limit has expired constitutes an incentive for applicants to abscond.

Overall the **time limits were deemed appropriate by the majority of the Member States** consulted. However, the stakeholders in **Cyprus** deemed the time limits too long in cases where the time limit is extended, while **Lithuania** stated that transfers could be executed over a shorter time frame. On the other hand, the **Swiss** authorities indicated that the time frame could be too short in order to carry out a transfer in particular circumstances, such as when the applicant has a serious medical condition.

Other explanations for delays in the execution of transfers include:

- **Difficulties to coordinate** with other Member States and the **lack of response** from the responsible Member State to organise the transfer. An example was the difficulty finding a suitable date/hour for the transfer (some Member States only accept transfers in the morning, during national holidays, etc.);

- **Lack of resources** to implement the transfer such as the unavailability of an escort; this is currently affected by the unusual pressure upon some Member States' asylum systems;
- **Medical treatment** preventing the execution of the transfer that extends beyond the time limits;
- **Special needs** of the applicant concerned;
- **Diverging interpretations** amongst Member States of the conditions under which a transfer can be carried out, including the possibility for an applicant with a serious **medical condition** to be transferred;
- The applicant's **reluctance or opposition** to the transfer.

In addition, appeals with suspensive effect can result in the execution of transfers being postponed (BG, CY, EE, HU, IE, LT, PT, RO, SE, UK). Article 29(1) provides that the time limit starts running from the final decision on an appeal or review with suspensive effect, which can lead to the procedure lasting for longer than six months.

Problems with the effectiveness of the transfer procedure are also indicated by the evidence that applicants **do not always stay in the Member State responsible** for processing their claim for international protection. Thirteen Member States indicated that **secondary movements are 'often' observed** after the transfer procedure is completed (BE, BG, CZ, DK, ES, FR, HR, NL, PT, RO, SE, UK, CH). **Belgium** limited this observation to the nationals of certain countries of origin, such as Albania. Member States at the external borders of the EU, such as **Croatia, Hungary and Romania**, stated that once an applicant was transferred back to their territory, he or she would go back to the sending Member State or leave for another Member State shortly after. **Spain** confirmed this phenomenon when it comes to applicants transferred from another Member State: according to the national authorities, a majority of them do not lodge a claim for asylum in **Spain** and leave the territory.

However, in many Member States this phenomenon was not quantified. **The Czech Republic** law enforcement authority stated that in many cases, applicants undergo a Dublin procedure five to seven times in **the Czech Republic**. **Finland** cited the example of an applicant coming back to its territory 14 times. The **German** and **Luxembourgish** authorities estimated that secondary movements concern around 50 % of the transfers. **Romanian** authorities gave an example of an applicant who was successively transferred back to **Romania** by eight different Member States. This issue is also observed by Member States of destination such as **the Netherlands or Sweden**.

In **Germany**, draft legislation is currently being negotiated that foresees the consequences of secondary movements for applicants, including a potential reduction in the available benefits. **The Netherlands** indicated that it is impossible to detain and/or provide reception to all Dublin transferees (e.g. in NL those that lodge a repeated claim do not have a right to reception anymore) thus, frequently, applicants disappear again. This practice leads to losing track of the person concerned. **Hungary** stated that individuals have to be **placed in detention after the transfer** so that they do not leave the territory, since they tend to leave **Hungary** if placed in open reception facilities.

The **Austrian** authorities also observed the phenomenon of secondary movements in some instances.

Research has not allowed estimation of the frequency of the phenomenon described above, especially in instances where a Member State's failure to respond to the transfer request leads to the expiration of the time limit and the shift of responsibility to the requesting Member State.

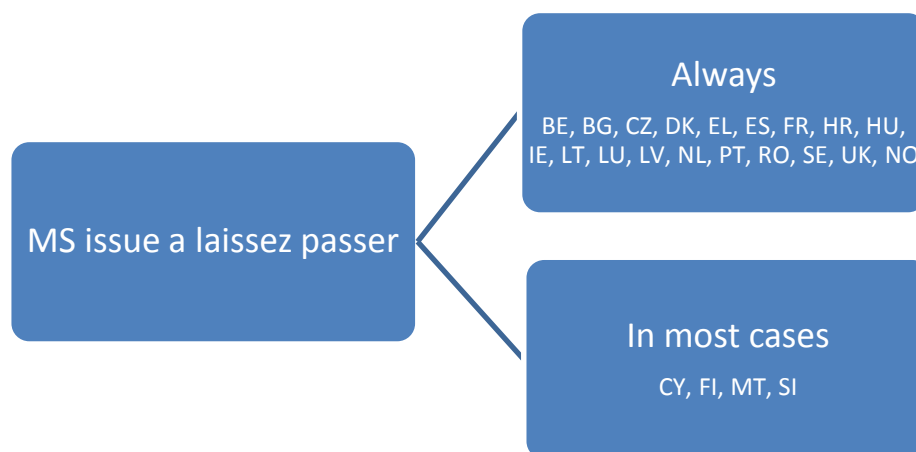
6.2.3.2 *Provision of a laissez-passer*

According to Article 29(1), paragraph 3, Member States have an obligation to provide the applicant with a laissez-passer if needed. The format of this document was set out in an

Implementing Regulation⁴⁵. It cannot be used as a travel document permitting an external frontier to be crossed or as a document proving the individual's identity.

Figure 6.4 below illustrates Member States' practices regarding the provision of a laissez-passer to the applicant.

Figure 6.4 Member States' practices regarding the provision of a laissez-passer to the applicant



Source: Answers from stakeholder consultations in Member States

The majority of the Member States consulted **provide the applicant with a laissez-passer** when it is necessary in the context of a Dublin procedure (BE, BG, CZ, DK, EL, ES, FR, HR, HU, IE, LT, LV, LU, NL, PT, RO, SE, CH, LI). In **France** for instance, the laissez-passer is provided for applicants travelling by their own means. In **Cyprus, Estonia, Finland, Slovenia** and **the United Kingdom**, it is provided when the applicant **does not have a travel document**. The **Austrian** Dublin unit indicated that laissez-passer are not provided as applicants are not expected to travel by their own means.

6.2.3.3 Bilateral arrangements about transfers

Some Member States have decided to establish bilateral arrangements with their other Member States in order to facilitate and speed-up transfer procedures. The table below details the arrangements defined between Member States.

Table 6.2 Bilateral arrangements regarding the execution of Dublin transfers between Member States

| Arrangement | AT | CZ | EE | HR | RO | SE | SI |
|-----------------------|-------------------------|----|----|----|------------|----|--------|
| Shorter time limits | | | LV | SI | | | AT, HU |
| Border crossing point | All neighbouring Member | | | SI | AT, BG, HU | | AT, HU |

⁴⁵ Commission Implementing Regulation (EU) No. 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

| Arrangement | AT | CZ | EE | HR | RO | SE | SI |
|---|---|----|----|----|----|----|----|
| | States (BG, RO) | | | | | | |
| Simplified notification of the transfer | All neighbouring Member States (BG, RO) | | | | | IT | |
| Not specified | | AT | | | | | |

Most of the time, such arrangements **define border crossing points on common borders** for land transfers as well as **shorter time limits**. For instance, **Croatia** explained that their arrangement with **Slovenia** reduces the notice period for the transfer from seven to three days. **Romania** defined four to five land-based border crossing points with **Hungary**, which facilitates the work of escort teams. **Sweden** concluded an agreement with **Italy** according to which there is **no formal transfer arrangement** between the two countries in cases where the transfer has been accepted and **only the date and place** of the transfer are communicated to **Italy** for the reception of the applicant. This system was deemed **very effective** by the **Swedish** authorities. Overall the feedback on such arrangements was positive as they were considered to **enhance cooperation between Member States**.

6.3 Exchange of information before a transfer is carried out

According to Article 31(1) Member States must communicate to the Member State responsible 'personal data which is appropriate, relevant and non-excessive' to ensure that the competent authorities can provide the person with adequate assistance.

6.3.1 Method of communication and type of information exchanged

With regard to the **method of communication**, Article 31(3) stipulates that 'the exchange of information shall only take place between the authorities notified to the Commission using the DubliNet electronic communication network'.

As described in Section 1.4, all Member States indeed use DubliNet to exchange information, also when communicating information before a transfer is carried out. Only in exceptional circumstances is DubliNet not used as described in Section 1.4, and in those cases it may be that authorities resort to informal channels such as email/phone. However, this is rarely the case in practice. Some Member States (LV, NL, SE, SI, CH) also reported using the **standard forms created by the Commission** as referred to in Article 31(4) of the Regulation for the purpose of exchanging information before a transfer is carried out.

As to the **type of information** exchanged, Member States reported exchanging all appropriate and relevant information as needed. Examples include:

- Information on measures that the receiving Member State should take upon arrival, e.g. escort unit or appropriate reception facilities (BE, BG, CY, DE, EL, RO, SE, CH, NO);
- Information about the concerned person's identity (BE, BG, CY, DE, DK, EL, LV, PL, RO, SE, NO);
- Contact and transfer details of the concerned person (AT, BE, BG, CY, DE, DK, EL, LV, LU, NL, RO, SE, NO);
- Contact details of family members (BE, BG, CY, RO, NO);

- The transferring Member State's decisions and applicable forms (BE, BG, LV, NL, PL, RO, NO);
- Assessments of age or special needs, etc. (BE, BG, CY, DE, RO, CH, NO).

6.3.2 Timeliness of the exchange of information before a transfer is carried out

Article 31(1) stipulates that data should be communicated 'within a reasonable period of time before a transfer is carried out in order to ensure that the competent authorities have sufficient time to take the necessary measures'.

Many Member States (e.g. BE, CY, EL, HR, HU, LT, LV, NL, PL, RO, SE, SI, CH) reported communicating the necessary information **in a timely and effective manner**, in accordance with the provisions of Article 31(1). **Bulgaria, France, Luxembourg, Malta and the Netherlands** however reported that they encountered situations where they were only informed at the last minute or not informed at all about the arrival and/or other information concerning the transferred person.

6.4 Exchange of health data before a transfer is carried out

Article 32 requires the transferring Member State to transmit information on any special needs which may include information on that person's physical or mental health.

6.4.1 Method of communication

Article 32(1) stipulates that health data 'shall be transferred in a common health certificate with the necessary documents attached'. Indeed, many Member States (AT, BE, BG, CH, CY, DE, EL, FR, HR, LV, NL, NO, PL, RO, SE, SI) confirmed that health data is exchanged via the **common health certificate**, with the necessary supporting documents attached. However, some Member States (CZ, DK, SK) do not use the common health certificate as indicated by the Regulation, whereas others (ES, HU, PL) reported following national rules for the exchange of health data. For example in **Poland** a standard health certificate is used containing all relevant information based on **Polish** regulations. **Germany** also noted that health data is communicated directly via liaison officers. **Estonia, Lithuania and Croatia** stated to have never encountered situations where they had been required to exchange health data.

Article 32(4) further specifies that the exchange of information will only take place between **health professionals**. However, some Member States (EL, SE) reported on instances where health data was accessible to staff members other than health professionals. For example, health data can also be brought to the attention of other authorities responsible for the Dublin procedure such as social welfare and reception officers, legal representatives, police, and immigration services dealing with a particular case.

6.4.2 The way applicants give their consent to exchange health data

Article 32(2) stipulates that 'the transferring Member State shall only transmit the information after having obtained the explicit consent of the applicant and/or his or her representative'. Most Member States confirmed that they ask for the **explicit consent of the applicant** before transmission of health data⁴⁶. To this purpose, some Member States (CY, HU, NL, SE, CH) explained that **a written declaration or certificate is signed**, either when lodging the claim (NL) or during the personal interview (BE, SI). **Malta** reported that they experienced instances where they received information from a transferring Member State without the consent of the applicant.

⁴⁶ With the exception of some countries for which we could not obtain confirmation at this time (IT, LT, MT).

6.4.3 Use of health data during or after transfers

According to Article 32(3), **health data should only be processed by health professionals** who issue/receive the health certificates. Most Member States (AT, BE, BG, CY, DE, HR, HU, NL, PL, PT, RO, SE, SI, UK) confirmed that this is the case and stated that when health data is received it is also followed-up. For example, **Romania** noted that when a certain medical procedure is required during a transfer (in terms of providing treatment or medical care), Member States inform the implementing authority carrying out the transfer who can make sure that the transfer includes a medical escort. Similarly, upon arrival in the receiving Member State, **Romania** noted that appropriate reception facilities are arranged for persons with special medical needs.

6.5 Detention (Article 28)

Article 28 frames the conditions under which Member States can place an applicant in detention in the course of a Dublin procedure. According to the Regulation, only an applicant presenting a 'significant risk of absconding' can be placed in detention. This section analyses Member States' practices when it comes to detention, as well as the standards regarding its modalities.

6.5.1 Definition of 'significant risk of absconding'

This section examines the way Member States assess whether the applicant presents a 'significant risk of absconding'. It looks at what definition of the concept was adopted in law (if any) or is applied in practice.

Article 2(n) of the Regulation defines the 'risk of absconding' as the existence of **reasons in an individual case**, based on **objective criteria defined by law**, to believe that a third-country national or stateless **person subject to a transfer procedure may abscond**. This term can also be found in other EU legal instruments such as the Reception Conditions Directive (RCD)⁴⁷ and the Return Directive⁴⁸ in order to frame the use of detention. However, the Dublin III Regulation sets a **higher standard** since its Article 28(2) states that the risk must be '**significant**'.

The assessment of Member State practices and legislation regarding their definition of a 'significant risk of absconding' was conducted on the basis of two Ad-Hoc Queries from the European Migration Network (EMN) published in 2014⁴⁹ and personal interviews conducted with national stakeholders between September and January 2016.

It appears that most Member States **did not define objective criteria** in their national legislation. In Member States that did, the '**significance**' of the risk **does not seem to be defined, which could lead to a breach of the standard set in the Regulation**. It is unclear whether this is because the degree of the risk of absconding is assessed in practice only, or because the standard applied is the same as the one defined under the Return Directive.

Eight of the Member States consulted to date **do not define objective criteria** in their national law (BE, BG, CY, EL, FR, IT, LU, LV, PL, UK). In practice, elements taken into consideration to assess the risk of absconding include evidence suggesting the applicant's **unwillingness to remain** in the Member State responsible for his or her application (such as several Eurodac hits for instance) or **misleading information regarding the person's identity**. **French** NGOs stated that **practices in France varied** depending on the prefectures (local administrative

⁴⁷ Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 8(3)(b).

⁴⁸ Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Articles 3(7) and Article 15(1)(a).

⁴⁹ [Ad-Hoc Query on detention in Dublin III cases \(Regulation EU No 604/2013\)](#), 8 September 2014 and [Ad-Hoc Query on objective criteria to identify risk of absconding in the context of reception directive art 8 \(recast\) and Dublin regulation no 604/2013 art 28 \(2\)](#), 9 December 2014.

authorities). In some prefectures, it appears that missing an interview at the prefecture is automatically considered as having absconded.

Amongst Member States that have **defined objective criteria by law**, the following criteria were cited as examples:

- Previous violations of public order or convictions (BG, UK);
- Claims to have friends or family in other Member States (DE);
- Non-compliance with deadlines for voluntary departure (BG, EE) or of a previous removal or return order (CY, NL);
- Evidence of previous absconding from/to other Member States (DE, SK, UK);
- Clear indications that the person will not comply with the transfer decision (BG) or declared opposition to transfer (HR, NL, SE);
- Previous disappearance (BG, CY, DE, NL, SE, UK);
- Provision of falsified documents or absence of documents (BG, CY, EE, HR, NL, UK);
- Provision of misleading or incorrect information (BG, CY, EE, HU, HR, LU, NL, SE);
- Doubts about the identity of the applicant (EE);
- Non-cooperation with the authorities (EE, HU, HR, LT, NL, SE, UK);
- Unknown whereabouts (BG) or change of domicile without notifying the authorities (FI);
- Eurodac hit (DE, HR, LU);
- Irregular entry into the Member State (EE, UK);
- Violation of house rules of the Reception Centre (HR).

In **Germany**, examples of criteria for determining the risk of absconding are given in §2(14) of the Residence Act. The federal police office or the foreigners' registration office carries the responsibility to show that there is a significant risk of absconding. During an interview conducted in the context of this Study, they commented that the most obvious examples include applicants who have already applied for asylum in different Member States and/or claim to have friends or family in other Member States, or if applicants mention absconding explicitly.

In **the Netherlands**, the authorities consider that at least two of the criteria listed above need to be present **in order to constitute a risk of absconding**. The degree of risk is not defined. To complement this, additional indications are listed in the legislation, such as several applications for a residence permit that have not led to an issuing of a residence permit, absence of a permanent home or place of residence, insufficient means of existence or suspicion of or sentence for a crime. While these do not constitute evidence of a risk of absconding, they can be considered indicators.

In **Norway**, reception centres apply a '**three-day rule**' according to which when they lose track of an applicant for three days, they inform law enforcement authorities and the person is considered to have absconded. When the applicant is located, he or she is placed in detention.

A **Swedish** NGO denounced the fact that **inconclusive elements** such as the applicant's unhappy reaction to the notification of the transfer decision could be used as evidence of a significant risk of absconding. However, a recent ruling by the **Swedish** Migration Court of Appeal raised the standard of proof by stating that the risk should be 'high'. The consequences of this ruling on **Swedish** practices remain to be seen.

Four Member States stated they use **the same definition as in the application of the Return Directive** (HU, LT, NL, SK). In Sweden, in practice, the provisions transposing the Return Directive are also used to support the assessment of the risk of absconding.

Article 28(2) provides that the existence of a significant risk of absconding should be based on **an individual assessment**. Such an assessment is also crucial in order to determine whether the detention is **proportional**. Eighteen of the Member States consulted confirmed that they undertake an individual assessment of the situation before placing an applicant in detention (AT, BE, CZ, DE, DK, EE, HR, HU, IT, LI, LT, LU, LV, NL, SE, SK, UK, CH). Usually all the facts and evidence are taken into account, including evidence provided during a **personal interview** (CH, HU). In **Finland**, an NGO stated that officially this assessment should be done, but did not specify whether this was the case in practice. Some Member States have established mechanisms to ensure **proportionality between the decision to deprive the applicant of his or her liberty, and the risk of the applicant absconding in order to avoid being transferred**.

- In **Austria, Belgium and Switzerland**, the decision to detain an applicant lists the grounds upon which it was taken. The **Austrian** detention authorities stated that the reasons for the person to be placed in detention should be **assessed cumulatively**. In **Austria, Belgium and the United Kingdom**, the authorities stated that the decision to detain the applicant must be compatible with the proportionality and necessity principles, and is only taken if alternative, **less coercive measures** cannot be applied.
- In **Lichtenstein**, an **NGO is involved in the procedure** in order to assess the situation and make the decision together with the authorities on a case-by-case basis.
- In **the Netherlands**, law enforcement authorities use detention as a last resort and the use of detention must always be motivated. The individual assessment is conducted by checking **national databases** to identify potential clues pointing to a risk of absconding. This is followed by an individual interview during which the applicant is told that he or she will be detained before the transfer is executed.
- In **Sweden**, authorities look at the circumstances and evaluate the significance of the risk, with the help of **guidelines**. However, stakeholders stated that it depends on the individual case and that factors can vary a lot from one case to another.

These views were expressed by national authorities and could not be contrasted with the views of other stakeholders.

6.5.2 Use of detention

This section analyses to what extent detention is resorted to by Member States in cases where a **'significant risk of absconding' is established**, as well as the **modalities and procedure** to place a person in detention under the Dublin III Regulation. It will finally examine whether alternatives to detention can be used.

6.5.2.1 Frequency of detention

According to Article 28(2), detaining an applicant where there is a significant risk of absconding is not an obligation but a possibility. This section examines the patterns which can be observed in the use of detention across Member States.

The majority of the consulted Member States declared they resort to detention in order to carry out transfers in certain circumstances (AT, BE, BG, CZ, DE, DK, EE, FI, HU, LT, LU, LV, MT, NL, PL, RO, SE, SI, SK, UK, LI).

In most of these Member States, national authorities declared that detention is used **very rarely or rarely**:

- In **Malta**, this was explained by the fact that most people who are subject to a transfer decision agree with the transfer;
- In **Latvia**, stakeholders stated that even when the conditions defined in the Regulation are fulfilled, **alternatives to detention are usually prioritised**;
- The **Dutch** authorities explained that the number of applicants detained has decreased since the adoption of the Dublin III Regulation and the recast of other CEAS instruments.

- Detention is also rarely applied in **Germany**. Authorities also referred to the ‘high barriers’ for detaining applicants under Dublin III in comparison to Dublin II. The *Bundesgericht* (federal court) had previously also decided that Article 28 could not be transposed into national legislation. However, a legal representative explained that since the introduction of the law on the redefinition of the right of residence and termination of residence (*Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung*) of 1st August 2015, detention of applicants under Dublin III is possible again and is made more use of. Still, authorities noted that detention is the responsibility of the Länder and that there is, in general, a lack of capacity for detaining applicants, therefore, it rarely occurs in practice.
- The **Austrian** authorities stated that detaining an applicant in view of a transfer used to be a standard procedure under the Dublin II Regulation, but that most of these decisions were quashed by the court in second instance. The Dublin unit stated that detention is hardly used anymore. This development in the practice was confirmed by the lawyers consulted for the Study, who indicated that the authorities now take applicants into custody for a maximum of 48 hours.
- In **Denmark**, the number of detained applicants represented around 7 % of the total number of Dublin procedures. It appears that the absolute number of detained applicants is increasing (233 in 2015, compared with 160 in 2014) but the ratio for 2015 in relation to the total number of Dublin cases is not yet known.
- **Slovenia** estimated that around 3 % of transfer decisions resulted in the detention of the applicant concerned.
- In **Switzerland**, the rate of detained applicants under Dublin procedures was estimated to be less than 10 % of cases.
- In **Lithuania**, the Dublin unit indicated that detention was not used but border guards stated that it was used when the conditions set in the Regulation were met.

In other Member States, the percentage of transfer decisions resulting in detention appears to be higher.

- The **Belgian** Dublin unit estimated that around 30 % of transfer decisions resulted in the detention of the person concerned. However, a **Belgian** NGO stated that detention was almost automatic regarding transfers that were ‘easy’ to carry out.
- **The Slovak Republic** indicated a ‘frequent’ use of detention but did not provide quantitative information.
- **Hungary** appears to **automatically detain** applicants subject to a transfer decision, with the exception of unaccompanied minors. This practice appears to be in breach of Article 28(1) of the Regulation, which provides that Member States cannot detain a person ‘for the sole reason that he or she is subject to’ a Dublin procedure.
- In **the United Kingdom**, lawyers consulted for the Study stated that in practice all applicants get detained as irregular entry into the UK and/or secondary movement is considered as ‘evidence’ of the risk of absconding.
- In **Lichtenstein**, it appears that most applicants are detained the night before the transfer takes place, however the NGO consulted for the Study indicated that detention is only used if necessary and that applicants are usually placed in reception centres or other types of accommodation.
- In **the Czech Republic**, the authorities pointed out that the estimated rate of detained applicants had risen due to the current crisis, going from an estimated 50 % in 2014 to 70 % in 2015.
- In **Luxembourg** and **Poland**, it was estimated that between 10 % and 49 % of Dublin cases led to the applicant being detained.

Seven of the Member States consulted at this stage indicated they **never use detention** (BG, EL, ES, HR, IT, LT, PT). In **Greece**, the only exception flagged by an NGO was a situation where a person was **already detained** and sought international protection while in detention. In such cases, they are held in detention until the end of the Dublin procedure and until a decision on the transfer is made. **Italy** has **not recorded any detention cases** in application of the Dublin III Regulation. In **Spain**, it is illegal to detain asylum seekers, and therefore they are placed in open facilities.

6.5.2.2 *Procedure to place an applicant in detention*

In most of the responding Member States, **police and border guard services are in charge of the procedure** to place an applicant in detention (AT, DE, FR, HU, LT, LV, MT, NL, PL, SI, SK, CH, NO). In **Sweden**, the police only intervene in cases where the use of force may be needed because there is a high risk that the applicant may abscond. Other cases are dealt with by the **Swedish** Migration Agency. In **Romania**, the Ministry of Interior's General Inspectorate for Immigration is in charge of ordering the detention.

The **placement in or prolongation of detention is pronounced by a Court** in five Member States (EE, HU, LT, PL, RO).

The Regulation provides that detention may be used **'in order to secure a transfer procedure'** but **does not specify at what stage of the procedure it may be used**. Practices vary considerably depending on the Member State.

In **Luxembourg**, three categories of applicants were established: 40–50 % of them are detained and then transferred due to the fact that they present a risk of absconding. About 25 % of applicants are not detained but also not informed about the date of the transfer. Law enforcement authorities explained that the transfer was then carried out without notice, usually very early in the morning to surprise the person. Finally, the third category of applicants (around 25 % of cases – often families) is not detained and is informed about the date of the transfer. It is unclear whether the criteria to determine which category applies are defined by law.

Applicants can be detained **from the start of the Dublin procedure** in seven Member States (DE, DK, LV, MT, NL, SI, UK, NO) i.e. before any decision on transfers has taken place. In **Latvia**, detention can still be ordered at a later stage if circumstances have changed. In **Malta**, it can be used immediately after the Dublin interview. In **Germany** and **the Netherlands**, detention is available throughout the procedure, when necessary. **The Netherlands** specified that detention can also take place after an applicant is transferred to there, although in practice most of the persons concerned are detained prior to the execution of a transfer. In **Norway**, most detentions are ordered between the moment the transfer decision is made and the moment the transfer is carried out.

In **Croatia** and **the Czech Republic**, the detention of the applicant can be ordered **from the moment it is established that another Member State is responsible for examining the application for international protection**. In **Romania**, it can start after the applicant has been notified of the transfer. The **Belgian** and **Luxembourgish** authorities can decide to place the applicant in detention **when the transfer is accepted by the receiving Member State**. In **Lichtenstein**, detention only takes place **right before the transfer takes place**.

The procedure applicable in **Lithuania** is unclear. It appears that the person is automatically placed in detention for a period of 48 hours to check his or her legal status. If the grounds for detention are identified, a court rules on the need to place him or her in detention. This would mean that the existence of a significant risk that the applicant may abscond is **only checked after the person is placed in detention for a limited period of time**.

Such divergent practices between Member States are problematic as they create legal uncertainty and may lead to extensions of the time spent by the applicant in detention in cases where it takes time for the other Member State to accept the transfer request. Practices consisting in detaining an applicant from the very start of the procedure (i.e. before the responsibility of another Member State is established) or after a transfer procedure is carried

out **do not appear to be in line with the requirement of the Regulation to use detention 'in order to secure transfer procedures'**.

Absconding was presented as a major issue, notably by self-described **'transit' Member States** such as **France** and **Hungary** where applicants do not wish to stay. In such Member States, it can be challenging to secure transfer procedures in practice. The **Austrian** authorities indicated that 81 % of applicants to be transferred disappear and called for the creation of sanctions against applicants who do not cooperate. In **Luxembourg**, national authorities stated that absconding is an issue. They estimated that around 50 % of applicants under a Dublin procedure abscond and disappear, while the other half are either willing to be transferred or return to **Luxembourg** after the transfer is carried out.

6.5.3 Guarantees for the applicant

This section will analyse what guarantees are offered to the applicant to ensure that the use of detention is proportionate and conforms to the requirements of the Regulation and the rest of the EU *acquis*.

6.5.3.1 Time frame

Article 28(3) provides that 'detention shall be for **as short a period as possible** and for **no longer than the time reasonably necessary** to fulfil the required administrative procedures with due diligence' to carry out the transfer. In addition, the Regulation sets time limits for submitting a request (one month from the lodging of the application) and for replying to such a request (two weeks from receiving the request) in cases where a person is detained. In such cases, the transfer must be carried out within six weeks from the explicit or implicit acceptance of the request by another Member State. In practice, this amounts to a maximum time limit of 12 weeks during which a person can be detained. Practices vary depending on the Member State.

Amongst the Member States consulted, **four have set maximum time limits for detention in law** (BE, FR, PL, MT). **Belgium** provides that the applicant can be placed in detention for one month, renewable once. In **France**, the maximum length of detention is set at 45 days, which is deemed **too long** by the **French** NGOs consulted for the Study. In **Malta**, the maximum time limit is three weeks. In **Poland**, the length of detention varies from 12 days to a year. The maximum length of detention is set at 90 days in the legislation, but it can be extended to one year in cases where the transfer cannot be executed due to the applicant's behaviour. If there is no pending challenge of the decision with suspensive effect, this practice appears to breach the maximum time limits set in the Regulation. **Germany** and **Greece** (in cases where the applicant was already in detention when he or she claimed asylum) have not defined any time limit in their legislation; both national authorities stated that they apply the standard set in the Regulation ('as short as possible'). The latter time period was not further defined by the interviewees and could therefore not be assessed in comparison with the maximum time limit defined under Article 28(3). In addition, this view could not be contrasted with the view of other stakeholders.

In **Hungary**, the length of detention **was influenced by the current high influx of applicants for international protection**. In the current practice, according to a local NGO, applicants are detained for 36 hours then released so they can move on to another Member State.

National authorities in 11 Member States indicated that the time frames set under Article 28(3) to submit a take charge or a take back request (**one month from the lodging of the application**) and to carry out the transfer (**six weeks from the acceptance of the request**) when an applicant is detained are usually met (AT, CZ, DK, MT, NL, RO, SE, SI, SK UK, NO). In the **Czech Republic**, UNHCR stated that in the majority of cases, transfers were not carried out, which led to the applicant being released at the end of the time limit. **Denmark**, the **Netherlands** and the **United Kingdom** specified that applicants were released in the event of the time limit elapsing, in conformity with the Regulation. In **Luxembourg**, although the maximum length of detention before the execution of a transfer was declared to be one month by the authorities, it was criticised by the NGO consulted for the Study on the grounds that it

is too long and may lead to absconding. **Slovenia** stated that an **urgent reply** was requested in cases where the applicant was detained, in accordance with Article 28(3) paragraph 2.

In **the United Kingdom**, the authorities cited instances where transfers could not be carried out within the six-month deadline due to the applicant's behaviour (e.g. physical resistance), which led to the person being released and absconding to avoid transfer. In that sense, they said that amendments brought up by the Dublin III Regulation contributed to making it more difficult to effectively transfer individuals.

6.5.3.2 *Use of alternatives to detention*

Article 28(2) provides that detention can be used 'in so far as other less coercive alternative measures cannot be applied effectively'.

Commonly used alternatives to detention include:

- House arrest (DK, FR, HR, LU, NL, PL, SI, NO);
- Obligation to report at specific times (AT, FI, HR, LU, LV, NL, NO, UK);
- Travel documents handed over to the authorities (DK, FI, LU, LV, NL, SE);
- Specific monitored accommodation (i.e. open facilities) for families (AT, BE, DK);
- Deposit (PL, SK).

Stakeholders in **Latvia** stated that the obligation to report at specific times **is implemented in a flexible manner: the frequency of reporting can be adapted** to the circumstances of the applicant and to the level of risk of absconding. In addition, reporting can be **replaced by regular visits by the authorities** in specific circumstances, such as for a mother with a young child who cannot go to the authorities' premises on a regular basis.

In **Luxembourg**, applicants for asylum hand in their travel documents in exchange for a receipt, which they have to renew on a regular basis with the authorities.

These alternatives are decided on the basis of **an assessment of the nature of the risk of absconding and the nature of the measure**. However, **Sweden** and **Slovenia** indicated that such measures are often not sufficient to prevent the applicant from absconding.

In **Austria**, the NGO consulted for the Study criticised the fact that alternative measures were not used often enough. In practice, **Croatia** indicated that such measures, even though they are available, are not used. Statements regarding **France** are contradictory, with one NGO stating that they are never made use of and another saying that house arrest could be imposed for a six-month period.

Alternative measures are not available in **the Czech Republic, Germany, Hungary and Switzerland**. **The Slovak Republic** stated that they are not made use of in cases where there is a risk of absconding.

The Netherlands noted that the Dublin III Regulation helped **to reduce the use of detention** and make **more use of alternative measures**. The reasons behind this will be further investigated with the relevant stakeholders. **Poland** confirmed this tendency as well, and pointed to the greater availability of alternative measures, as well as financial reasons. On the contrary, **the Slovak Republic** indicated that detention had been used much more frequently in recent years.

6.5.3.3 *Safeguards*

Articles 9, 10 and 11 of the Reception Conditions Directive⁵⁰ lay down a number of safeguards for detained applicants for international protection. Article 29(4) of the Dublin III Regulation

⁵⁰ Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection

provides that these safeguards should be complied with when it comes to persons falling under the scope of the Regulation.

Safeguards for persons in detention subject to the Dublin III Regulation appear to vary significantly across Member States. When reviewing these differences, it is important to note that stakeholders in certain Member States did not provide detailed information about the implementation of relevant safeguards. As a result, the following review draws significantly from existing literature. This literature has tended to focus on the safeguards available to asylum applicants in detention in general, including during the Dublin procedure, as Member States rarely distinguish the conditions that apply to them.

Procedural safeguards

Article 9 of the RCD provides for certain procedural safeguards for applicants of international protection in detention, including:

- The duration of detention should be as short as possible;
- The detention order will state the reasons in fact and in law on which it is based;
- A speedy judicial review of the lawfulness of detention (when ordered by administrative authorities) should be conducted *ex officio* and/or at the request of the applicant;
- Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation;
- Detention shall be reviewed by a judicial authority at reasonable intervals of time, *ex officio* and/or at the request of the applicant concerned;
- Applicants shall have access to free legal assistance and representation, although the State may impose certain limitations to this right.

Desk research⁵¹ and consultations with stakeholders in different Member States regarding the procedural safeguards available to persons in detention who are subject to the Dublin III Regulation, suggest a number of key findings.

The content of the detention order does not seem to pose particular difficulties, as in most Member States, the detention order refers to the reasons for detention in fact and in law.

- In many Member States, **applicants in detention are further informed in writing** of the reasons for detention and the procedures laid down in national law for challenging the detention order and requesting free legal assistance and representation, when available. However, the usual practice is to hand in a document with this information in the national language, and explain its content with the assistance of an interpreter (DK, FR, HR, HU, NL, RO, SK). The quality of this information may sometimes be limited; in **Croatia** for example, there is a time limit of 180 minutes that each detainee can make use of interpretation services during their time in detention. Furthermore, stakeholders in certain Member States, noted that detainees are not informed (at all) or are not informed in a language they understand about the reasons for their detention and their rights (CY, EL, MT).
- In some Member States (AT, BE, DE, DK, FR, HU, IE, IT, MT, RO, LI, NO) there is an **automatic and periodic judicial review of the lawfulness of the detention**, although certain stakeholders have characterised its periodicity or its scope as unsatisfactory and ineffective (AT, BE, HU). In certain Member States, the lawfulness of the detention can be

⁵¹ AIDA Report, November 2015: Austria, Belgium, Bulgaria, Cyprus, Croatia, Germany, France, Greece, Hungary, Ireland, Italy, Malta, the Netherlands, Poland, Sweden, the United Kingdom and Switzerland.

reviewed only upon applicant's request (CY, EL, HR, PL, SK, UK) and in some cases this is still not effective due to the length of the procedures (CY, EL) or its limited scope (BE).

- Finally, the **right to free legal assistance to review the lawfulness of the detention** is prescribed by law in certain Member States (AT, FR, HU, IE, IT, NL, RO, UK, NO), however stakeholders in these Member States consider that it is not always accessible or effective in practice (AT, BE, HU, PL, UK), because they believe for example that the person appointed legal representative has a conflict of interest (AT). In a significant number of countries, this right has not yet been prescribed by law (CY, DE, EL, HR, MT) and applicants have either to use their own means or to seek assistance from NGOs.

Detention conditions

Article 10 of the RCD defines **standards for the detention conditions** of applicants. It provides that applicants must be detained in **specialised facilities**, which means that, whenever possible, they should not be detained along with ordinary prisoners, or with third-country nationals who have not lodged an application for international protection. Representatives of UNHCR as well as family members, legal advisors or counsellors and relevant NGOs should be **able to visit applicants in detention**. Finally, applicants must **receive information about the rules applied in the facility and their rights and obligations**.

Interviews with stakeholders and desk research⁵² have shown that, in practice:

- Specialised facilities where only applicants of international protection are detained seem to be the exception to the rule in most Member States (AT, EL, FR, HR, IT, PL, SE, UK, CH), where applicants are detained with other third-country nationals that have not applied for asylum and are held with the purpose of removal. In addition, when both specialised facilities and detention centres for third-country nationals are overcrowded, applicants may also be detained in police stations (AT, CY, EL, FI) or even prisons (AT, IE, NL, UK).
- Detention conditions vary enormously across Member States. In certain countries (LU, NL, SE, CH, NO), applicants in detention may have their own room with en suite facilities and TV, and access to open-air and recreational activities; whereas in others, applicants stay in overcrowded, filthy dormitories, characterised by a lack of personal space, a lack of potable water, insufficient and/or poor quality food and a lack of medication, in poor sanitary conditions with very limited access to the open air, natural light and access to any activities (EL, MT). In most Member States, applicants in detention enjoy access to healthcare (AT, BE, BG, CY, DE, UK, FR, HU, HR, IE, IT, MT, NL, PL, SE, CH), with the exception of **Greece**, where access is not easily available in practice, and in **Bulgaria**, **Croatia** and **Sweden** it is available only in cases of emergency.
- Lawyers are permitted access to detention centres in most Member States, with the exception of **Italy** and **the United Kingdom**, where access is sometimes limited. Almost equally unimpeded is the access of UNHCR to these facilities, with the exception of **Cyprus**, **Italy** and **the United Kingdom**, where access is again more limited, and **France**, where access is not normally allowed. In a significant number of countries (BG, EL, FR, HR, IE, MT, NL, PL, SE), NGOs have easy access to detention facilities, although in other countries (AT, BE, CY, DE, HU, IT, UK, CH) their access is also limited. However, the access of family members is limited more often (AT, BE, BG, CY, DE, EL, FR, IT, CH) than not (EL, HR, HU, IE, NL, PL, SE), whereas in **Malta** family members do not have access to detention facilities.

Standards for the detention of vulnerable persons and persons with special reception needs

Article 11 of the RCD sets standards for the detention of vulnerable persons and applicants with special reception needs, including minors. It mainly provides that the **health of**

⁵² Ibid.

vulnerable applicants in detention should be a primary concern for the authorities, as well as the **best interests of the child** as far as minors are concerned. Minors can only be detained as a **last resort solution** and their detention should never take place in prison facilities. Their accommodation conditions should be **separate from adult detainees and adapted** for their age.

- Government stakeholders in most Member States reported that **vulnerable applicants** are only detained in exceptional situations, and some of them argued that detention applies when it is in their best interests. Detention appears to be used frequently in respect of **unaccompanied asylum-seeking children** in a few Member States (BG, EL, MT and in FR only in transit/border zones) whereas it rarely takes place in others (AT, BE, CY, DE, FR, HU, SE, UK, CH) or not at all (HR, IE, IT, NL, PL).
- However, when it comes to **asylum-seeking children in families**, detention is used frequently in more Member States (BG, EL, HU, MT, PL), although still the prevalent practice in most Member States is to rarely resort to detention in these circumstances (AT, BE, DE, FR, SE, UK) or not at all (CY, HR, IE, IT, NL, CH). According to national authorities consulted in **Malta**, the frequent detention of minor is a thing of the past, but according to several sources a minor can still be detained whilst undergoing the age assessment.

Conditions, facilities and provisions for vulnerable persons in detention vary significantly across Member States. **Sweden, the Slovak Republic and Norway** appear to have made particular efforts to meet the special needs of vulnerable applicants placed in detention, as highlighted in Box 6.1 below.

Box 6.1 Efforts to meet the special needs of vulnerable applicants placed in detention

*In **Sweden**, unaccompanied minors can only be detained for short periods of time (72 hours renewable) under particular circumstances. Unaccompanied minors have their own room and are assisted by specially trained staff. They receive a specific leaflet and are informed about the next steps in the procedure.*

*In **the Slovak Republic**, special detention conditions are foreseen for vulnerable applicants (medical care in open camp and detention centre, social worker in detention centre or open camp, absolute prohibition of detention of minor unaccompanied children, etc.). Minors may be detained only in cases where they are accompanied by a parent (statutory representative) and if detention together with the parent (statutory representative) in a detention centre is in the best interests of the minor.*

*In **Norway**, detention authorities assess the best interests of the child during the registration process, including special needs that must be addressed and whether involvement of the child care service is needed. Unaccompanied minors are kept informed of the next steps in the procedure through their legal guardian or, in some cases, through a lawyer.*

7 Appeal

7.1 Remedies (Article 27)

Article 27 defines the conditions and modalities for applicants to challenge a transfer decision concerning them (2.1.1). It also provides for a number of guarantees for the applicants, such as the suspensive effect of remedies, and access to legal and/or linguistic assistance (2.1.2).

7.1.1 Access to an effective remedy

Article 27(1) defines an effective remedy as ‘an appeal or a review, in fact and in law, against a transfer decision, before a court or a tribunal’. This section will evaluate whether applicants have effective remedies to challenge a transfer decision that concerns them, in accordance with the Regulation.

7.1.1.1 Type of remedy

International Protection applicants are entitled to the right to a remedy against a transfer decision in all Member States party to the Dublin Regulation. The only exception seems to be **the United Kingdom**, where an appeal can be lodged only on the basis of a risk of violation of applicants’ ECHR rights in the receiving country⁵³. Desk research and interviews with stakeholders confirmed that in most Member States the applicants have a right to appeal before an Administrative Court (AT, BE, BG, CZ, DE, FI, FR, HR, HU, IE, IT, LT, LV, LU, NL, RO, SE, SI, SK, UK, CH), which in some cases it is a court specialised in migration and asylum law or with the competence to adjudicate only cases of Dublin transfers (BE, IE, RO, SE).

Following the jurisprudence of the ECHR and of the CJEU, the judicial bodies in these Member States have to take into account the asylum procedure, the reception conditions and the procedural guarantees in the responsible Member State, and they usually examine both facts and points of law of each case. However, in certain cases the criteria and the practice is not uniform either across the Member States or within the Member State (DE, UK); additionally, in the case of **Switzerland** the court has competence to examine only errors of law, and cannot for example annul a transfer decision if the first instance authority, by making use of her margin of appreciation, considers that the humanitarian reasons in a case are not compelling enough to justify the annulment of an applicant’s transfer to the responsible Member State⁵⁴.

In certain Member States (CY, DK, EL, MT, PL, NO), the applicants have the right to appeal against their transfer decision to another Member State party to the Dublin Regulation, before an administrative authority, specialised to adjudicate cases of migration and asylum law, including Dublin transfers. However, in some of these Member States (CY, EL, PL, NO), in the case of a rejection after the review by an administrative authority, the applicants have a right to a judicial remedy, but there seems to be very limited practice of this right.

Some Member States indicated that **no specific procedure was foreseen for unaccompanied minors**, mostly because they are not transferred under Dublin procedures and therefore do not need to appeal a transfer decision concerning them (BE, CY, FR, HU, IT, SI). In the case of **Belgium** or **France**, the consent of the minor is a precondition of the minor being transferred to another Member State.

7.1.1.2 Rate of appeals

Few of the Member States consulted provided quantitative data on the rate of transfer decisions challenged by applicants. In **all the responding Member States, remedies are available** against a transfer decision (AT, BE, CY, CZ, DK, EL, FR, HR, HU, IE, IT, LU, MT, NL, PL, RO, SK, SE, SI, CH, LI, NO).

⁵³ Interview with a lawyer and AIDA Report, United Kingdom, November 2015, p. 31, <http://www.asylumineurope.org/reports/country/united-kingdom>.

⁵⁴ AIDA report, Switzerland, November 2015, p. 31.

The Netherlands and **Norway** indicated that a **high rate of decisions were appealed** by the applicants, with the Norwegian authorities estimating that 99 % of the decisions were appealed. Romania indicated that the rate of appeals used to be low, with only six appeals registered between 2009 and 2012, but that it had **increased considerably** since the entry into force of the Dublin III Regulation. **The Czech Republic** authorities also commented that the rate of appeals had increased since the entry into force of the Dublin III Regulation.

On the other hand, three Member States indicated that the rate of appeals observed in their country was **fairly low** (CY, MT, PL). In **Poland**, the authorities specified that in 2014, 15 appeals had been registered out of 176 decisions taken. These low rates of appeal could be explained by the fact that transfers from Member States of entry might be decided on the basis of the criteria relating to the presence of family members or relatives in the responsible Member State. In **Norway**, the authorities stated that the average rate of appealed decisions was 24.7 %. In **Germany**, although no data was available on the rate of appeal, the appeal/review authorities and legal representative consulted for this Study commented that the rate of appeal has **decreased** since 2015. This was explained in part because Dublin III is no longer applied to certain groups of applicants (i.e. temporary Dublin III suspension for Syrian asylum seekers in **Germany**) and in part also because the BAMF has been overwhelmed by the number of applications, with many decisions pending.

Resorting to remedies against a transfer decision thus **seems to vary depending on the Member State**. The scale of these variations across Member States and the reasons behind them will be further investigated through complementary research.

7.1.1.3 *Time limits*

Article 27(2) does not define the time limit during which the applicant can exercise his or her right to an effective remedy, but it provides that the applicant will be able to exercise his/her right to an effective remedy **within ‘a reasonable period of time’**.

Although **all Member States have set a period of time** during which applicants can exercise their right to an effective remedy, the absence of a precise definition **leads to significant variations** in law and in practice across Member States.

Amongst the Member States consulted, the understanding of what constitutes a ‘reasonable period of time’ varies significantly, ranging from three days (in **Hungary, Malta** and **Romania**) to 60 days in **Italy**.

A significant number of the consulted Member States provide the possibility to challenge a decision within three to eight days from the notification of the decision (AT, BE, DE, DK, HR, HU, MT, NL, SI, PT, RO, CH), and an almost equal number (CY, CZ, EL, FR, IE, LT, PL, SE, SK, UK, NO) within 14 to 21 days, whereas in a few Member States the time limit is longer: 30 days in **Belgium, Finland** and **Latvia** and 60 days in **Italy**.

In **Italy** applicants are allowed 60 days to appeal a decision before the first instance court (*Tribunale Amministrativa Regionale* – the Regional Administrative Court). In addition, the law also foresees the possibility to lodge an appeal before the President of the Republic within 120 calendar days from the notification of the decision. **Italian** lawyers and NGOs qualified the **court proceedings as ‘too lengthy’**.

In some Member States the above time limits are even shorter when the applicants are in detention, and stakeholders declared that the time limit set in certain Member States was **too short in order to allow for an effective remedy** (AT, DE, FR, HU, RO).

The reasonableness of the time limit and whether it allows for an effective remedy depends on several factors, such as the required content of the appeal (whether to write ‘I object’ is enough or a more sophisticated legal argumentation is necessary), the form of the procedure (oral or written), the provision of free legal assistance, etc., and it should be considered in conjunction with several factors in each national legal framework. However, a time limit of three days or less than seven days, as is often the case, is usually too short and ineffective in

practice, and it would be relatively rare even for nationals to respond appropriately at such short notice.

It seems that in most Member States these time limits are met as the NGOs who were consulted did not claim to the contrary. However, in **Austria**, NGOs criticised the short time limits and the lack of suspensive effect of the complaint, because applicants can be transferred while the examination of the complaint is still being analysed and has not been finalised. Legal experts and representatives of public institutions, on the other hand, stated that the practical organisation of transfers takes quite some time and during the first two weeks after notification about the transfer, hardly anyone is in fact transferred out of the country. Conversely, a **Belgian** NGO indicated that in practice, instances where the transfer was carried out by the Aliens Office before the time limit elapsed had been recorded, which obviously constituted a breach of the Regulation and reduced the effectiveness of the remedy. In **Sweden**, an NGO stated that there were cases where applicants had submitted their appeal in their own language and the time limit elapsed before it was translated, which is also considered a breach of the Regulation. **Swedish** courts have an obligation to provide support with translation and the understanding of the appeal procedure but this option is not always known to the applicants, who therefore do not make use of it. In addition, both lawyers and judges confirmed that the appeal is suspensive in almost all cases and the applicant can also ask the court to suspend the execution of the transfer until the Migration Court's decision and cases where the Migration Agency did not suspend the execution were probably mistakes. In **France**, despite the longer time limit to appeal, NGOs noted that sometimes there is a risk that applicants do not receive the notification in time for them to appeal the decision. Indeed, a legal representative in **Germany** clarified that problems arise in practice if the notification of the decision does not reach the applicant (e.g. because the letter is delivered to the janitor rather than directly to the applicant) and the applicant is transferred without having been able to exercise his/her right to an effective remedy. According to the legal representative 'many such cases have occurred in Germany'.

7.1.2 Guarantees for the applicant

This section will assess whether the appeal/review has a suspensive effect, and whether the applicant had access to legal and linguistic assistance to challenge the transfer decision.

7.1.2.1 *Suspensive effect of the appeal*

Article 27(3) defines the **possible effects of an appeal against, or review of, transfer decisions**. The appeal or review can confer upon the applicant the right to remain in the Member State during the appeal or review⁵⁵, can lead to the automatic suspension of the transfer for a 'certain reasonable period of time' during which a tribunal or court makes a decision⁵⁶, or the applicant can request within 'a reasonable period of time' the suspension of the transfer decision pending the outcome of the appeal or review⁵⁷. Finally, according to Article 27(4), Member States have the option to decide *ex officio* to suspend the transfer decision pending the outcome of the appeal or review procedure.

Amongst the responding Member States, **nine stated that the suspension of the transfer is automatic** when the transfer decision is challenged by the applicant (CY, DK, EL, HU, IE, IT, PL, PT, SI). In **Portugal**, the suspension occurs when the applicant applies for legal assistance. In eight Member States, the applicant needs to request the suspension of the transfer (AT, BE, CZ, LT, NL, RO, SE, SK), in application of Article 27(3)(c). In **Austria**, the suspension of the transfer is ordered by the courts. However, the effectiveness of the remedy was questioned by the lawyers interviewed for the Study. Indeed, they explained that by the time the court makes a decision, the person has often already left the country. In **the Czech Republic**, UNHCR stated that the practice amongst courts was not consistent, with some

⁵⁵ Article 27(3)(a).

⁵⁶ Article 27(3)(b).

⁵⁷ Article 27(3)(c).

courts adjudicating the suspensive effect and others not. In **Sweden**, the **Swedish Migration Agency** is in charge of ordering the suspension of the transfer. However, if this is not done, the applicant can request the suspension. In **the United Kingdom**, it appears that the suspensive effect is not automatic in cases where there has been another judicial review of the decision.

7.1.2.2 *Access to legal assistance*

Article 27(5) provides that Member States have an **obligation to ensure that the person has access to legal assistance**. In addition, according to Article 27(6), free legal assistance should be granted upon request where the **applicant cannot afford the costs involved**, provided that the procedure to do so is **not more favourable** than the regime foreseen for nationals. However, such access to free legal assistance may be restricted in cases where the appeal or review is considered to have **'no tangible prospect of success'**.

All the Member States consulted appear to allow access to legal assistance in principle (AT, BE, CY, FR, HR, HU, IT, MT, PT, SE, SK, SI, RO, CH, NO). In some Member States, this is limited to the judicial stage of the procedure, which means that legal assistance is not available from the start of the Dublin procedure and in the event of an administrative remedy (HR, HU).

Free legal assistance, under certain conditions, is widely available across the Member States consulted (BE, CY, DE, DK, FI, HR, HU, IE, IT, LU, MT, NL, PL, RO, SI, SK, LI, NO). Five Member States grant free legal assistance to all applicants (AT, BE, DK, NL, NO). In **Denmark**, the applicant has to request it. In other Member States, free legal assistance is **available at specific levels of the proceedings**. In Member States where an option for administrative review is provided, free legal assistance is not provided at that stage but only for **appeals before a court or a tribunal** (CY, HR, HU, MT, SI, SK). In **Croatia**, a new law is expected to be passed that will open access to free legal assistance in first instance proceedings, for reviews before the Ministry of Interior. In **the Slovak Republic**, legal assistance is freely available from the second instance, and in **Cyprus**, it is only available for appeals before the Supreme Court. Finally, in four Member States, **free legal assistance is not available for adult applicants** (CZ, EL, SE, CH). In **Sweden**, free legal assistance is provided in all cases to unaccompanied minors, but few adult applicants have access to it unless a lawyer agrees to work pro bono on the case. In **Switzerland**, free legal assistance is not provided unless requested by the applicant and only after a thorough assessment of the means and merits of the case. However, in a pilot project currently implemented in Zurich, free legal assistance is provided from the beginning. In the meantime, until this is rolled out nationally, NGOs offer free legal assistance to applicants. In **Lichtenstein**, free legal assistance can be denied in cases where there is a court decision on the merits of the case.

The **procedure for the applicant to have access to free legal assistance differs** from one Member State to another. In practice, this could create divergences in the degree to which remedies proposed to applicants are effective across the EU. Six Member States automatically assign lawyers to the applicant (AT, DK, FI, NL, SI, SK). In **Austria**, NGOs provide legal assistance. In **Denmark**, applicants have automatic access to free legal assistance provided by the **Danish Refugee Council**. Applicants can also choose another representative (e.g. a lawyer) but in that case have to pay for it. In **the Netherlands** and **Norway**, a lawyer is **assigned** to the applicant at the start of the procedure. **Slovenia** stated that 'refugee counsellors' can be assigned but the tasks and qualifications of such counsellors are unclear and will be studied in more depth. In **the Slovak Republic**, the appointment of a lawyer depends on the applicant's **application for free legal assistance** to the Centre for Legal Aid or the Ministry of Interior. The **legal advisor will visit the applicant** in detention or in a reception centre. In other Member States, the applicant **has to look for a lawyer or an NGO to advise him or her** (BE, IT, SE). This practice was criticised by stakeholders at national level due to the **difficulty for applicants in identifying** a qualified lawyer (BE, IT, SE). In **Belgium**, there is no database of lawyers specialised in asylum law. In **Italy**, the authorities provide lists of specialised pro bono lawyers but it still seems that the identification process is challenging for applicants. Moreover, the fact that the **legal advisor is not necessarily**

specialised can affect the quality of the defence provided. Finally, **capacity and language issues** were flagged as a potential issue (HU). In some Member States, legal assistance seems to be mainly provided by NGOs (FR, HU, PL, SI). In **Portugal**, applicants apply for legal assistance, which is generally provided by social security services.

In a large number of Member States **a test is applied in order to determine whether free legal assistance should be granted** (CY, EL, FR, HR, HU, IT, PT, SE, SI, SK, UK). Some of these Member States appear to **only check the means of the applicant** (EL, FR, HR, SK). In **Greece**, stakeholders indicated that providing evidence that the applicant cannot afford legal assistance can be difficult in practice as applicants are not registered with the tax authorities, and this can hamper their access to free legal assistance. In **France**, one of the **French** NGOs interviewed for this Study stated that means are tested in order to provide free legal assistance. In **Croatia**, the procedure to test the means of the applicant was said to be more flexible than for nationals. Further information will be requested from stakeholders to determine how in practice. Finally, in **the Slovak Republic**, free legal assistance can be provided after a means test only in cases where the applicant has permission to stay in the territory. The situations described by this statement need to be clarified, but this could designate cases where the applicant has been granted the right to stay on the territory pending the outcome of an appeal or a review, in accordance with Article 27(3)(a).

In other Member States, the test also assesses the **merits of the applicant** (DE, HU, IT, PT, SE, UK). In **Germany** and **Italy**, access to free legal assistance could be denied in cases where the appeal has **no tangible chance of success**, in application of Article 27(6). In **Portugal**, NGOs criticised the fact that the lawyer bar association and the lawyer can refuse to take a case if it is not deemed strong enough. In **Sweden**, lawyers and NGOs explained that the provisions of the Regulation are strictly applied. Potential issues with the appeal are thoroughly assessed and in the great majority of cases regarding adult applicants, the appeal is deemed not to have tangible prospects of success. In cases where the **Swedish** Migration Agency refuses to grant free legal assistance, lawyers can agree to take pro bono cases. Stakeholders denounced the fact that this situation depends entirely on the lawyer's will and availability, and thus creates a situation of **legal insecurity** for applicants. They added that often the decision to not grant free legal assistance was not substantiated.

Several Member States providing free legal assistance indicated that it is **used in most cases** (AT, BE, HR, IT, NL, NO). In **Switzerland**, free legal assistance was used for every appeal under the new pilot project. Before the pilot, applicants still sought legal assistance for their appeal as they systematically turned to NGOs for advice.

7.1.2.3 Access to linguistic assistance

Article 27(5) provides that Member States should provide **linguistic assistance to applicants exercising their right to an effective remedy where necessary**. At this stage of the research, there is no qualitative data on what constitutes a 'necessary' case in different Member States.

Eleven Member States **declared they provide linguistic assistance** to all applicants during their appeal or review (AT, CY, DK, HR, HU, IE, NL, RO, SK, CH, NO). In **Croatia**, interpreters are chosen from lists established by the Ministry of Interior. In **Denmark**, most of the appeals are undertaken in writing, during which the applicant's legal representative then holds a meeting with the applicant and an interpreter. However, under certain conditions, a hearing can be organised, in which case the applicant will be provided with an interpreter. Interpretation services are systematically provided in **the Netherlands** (either in person or by phone) and in **Switzerland**.

In **Belgium**, linguistic assistance can be provided but is **not always available** in reception centres due to the costs of the service. When available, though, it is widely made use of. Review authorities indicated that an interpreter can accompany the applicant's lawyer but his or her services are generally provided by the lawyer. This situation may lead to cases where interpretation services are withheld even when necessary, though no evidence of such cases was provided by the stakeholders interviewed. Four Member States stated that they **do not**

provide linguistic assistance during appeal or review procedures (EL, PT, SE, SI). In **Portugal**, NGOs denounced the fact that linguistic assistance is not included. They explained that there is only an **immigration translation hotline** run by the High Commissioner for Migration. The hotline provides assistance with **Russian** and **Ukrainian**, which reflect most Dublin cases. In **Sweden**, such assistance is provided by the **Swedish** Migration Agency but not during judicial proceedings. As already mentioned under Section 2.1.1.3, applicants sometimes have to submit their appeal in their own language. Moreover, judgments are usually explained in a language understood by the applicant once they are in court, but written judgments are handed over in **Swedish**. Lawyers and NGOs denounced this practice as it adds to the confusion of the applicant about the procedure. They explained that it can be very difficult to understand a technical decision when it is only stated once orally. In practice, applicants can seek assistance from the **Swedish** Migration Agency or NGOs to get a translation and an explanation of the content of the written judgment.

8 Other (Administrative cooperation)

This section finally summarises the practical implementation of certain overarching articles included under Chapter VII ‘administrative cooperation’. As such, it provides information on the practical implementation of: Article 34 (information sharing), Article 36 (administrative arrangements), and Article 37 (conciliation).

In addition, at the end of this section, Article 33 (Early Warning and Preparedness Mechanism) is addressed.

8.1 Information sharing

Article 34 stipulates that ‘each Member State shall communicate to any Member State that so requests such personal data concerning the applicants as appropriate, relevant and non-excessive, for (a) determining the Member State responsible; (b) examining the application for international protection; (c) implementing any obligation arising under the Regulation’.

8.1.1 Method and type of information exchanged

As to the **method** of sharing information, Member States make use of DubliNet, as described in Section 1.4, which guarantees a secure line of communication between competent authorities (e.g. Dublin units).

Concerning the **purpose of the exchange of information**, many Member States reported exchanging information as laid down in Article 34(1):

- Determining the Member State responsible (AT, BE, CY, CZ, DE, EE, EL, ES, FI, HR, HU, LT, LV, LU, MT, NL, PL, RO, SE, SI, UK, CH, LI, NO);
- Examining the application for international protection (AT, BE, DE, EL, ES, FI, HU, IE, LT, LV, LU, MT, NL, PL, RO, SE, UK, LI, CH, NO);
- Implementing any obligation arising under the recast Regulation (BE, DE, EE, ES, FI, HU, IE, RO, UK, CH, NO).

With regard to the examination of the application for international protection, some Member States (AT, BE, BG, CY, CZ, DE, ES, FI, HR, HU, IE, LT, LU, NL, PL, UK, LI, NO) who are found to be responsible for the examination of the application also **request information about the grounds of the application for international protection** from the transferring Member State. When such instances occur the information is shared between the Dublin units and the exchange usually relates to the identity of the applicant and other associated documents that may extend beyond **the items listed under Article 34(2)** in the Regulation. However, some Member States (e.g. CH, EL, LV, RO, SE, SI) have reported that they do not make such requests which is in part explained by the fact that **they start a new application procedure** and information from the transferring state is not of interest in the new procedure.

8.1.2 Volume of exchange

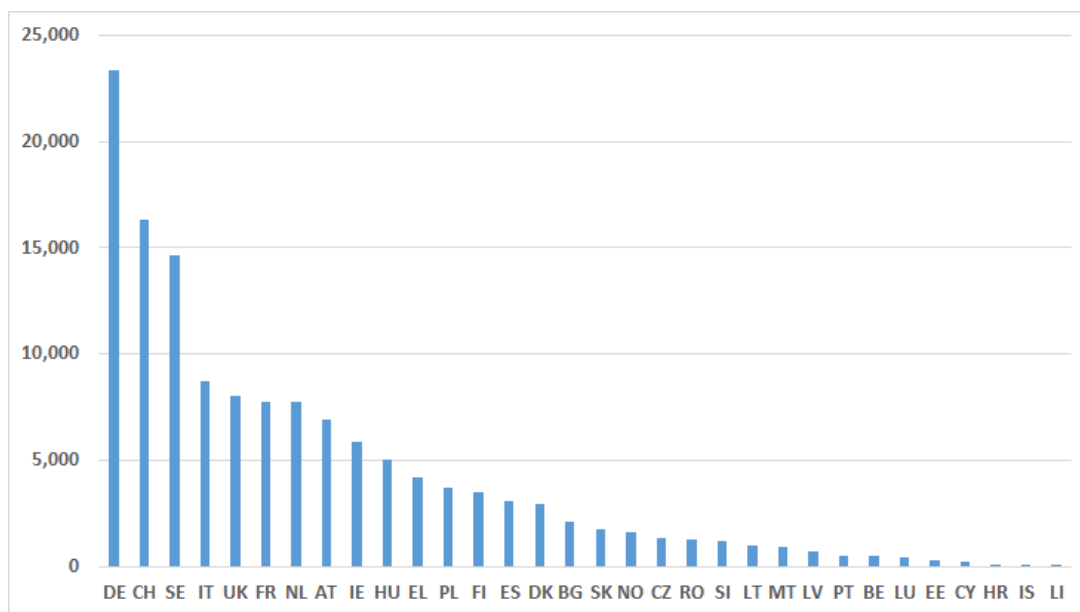
When looking at the volume of exchanges, **Sweden and Norway received the most requests for information** in 2014. Results on incoming information requests in 2014 show that incoming Dublin information requests were higher than outgoing. **Bulgaria, Germany, Greece, Italy** (2013), **Hungary**, Sweden, **the United Kingdom**, received more than 2,000 incoming Dublin information requests. Between 500 and 1,000 incoming Dublin information requests were reported by **Belgium** (2013), **Denmark, France, Romania** and **Switzerland**.

Hungary, Sweden, Italy and **the United Kingdom** topped with 6,100, 5,300, 4,800 (2013) and 4,500 incoming requests for information, respectively.

The figure below shows the total number of requests for information by Member State in the period from 2008 to 2014 where **Germany, Switzerland** and **Sweden** have the highest volume of requests at 23,300, 16,300 and 14,600. The high values in these countries can be

explained by the fact that these are among **the countries receiving the highest numbers of asylum applicants.**

Figure 8.1 Total number of requests for information (incoming/outgoing), 2008–2014



Source: Eurostat migr_dubrinfi and migr_dubrinfo data. Data were extracted between the 12th and 18th October 2015.

8.1.3 Data protection

In some Member States (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, LT, NL, PL, PT, SE, UK, CH, NO) it is standard practice ask for the written consent of the applicant before replying to an information request.

Similarly, most Member States (AT, BE, BG, CY, CZ, DE, DK, ES HR, HU, IE, LT, LV, NL, PL, PT, RO, SE, SI, LI, CH, NO) also declared that in accordance with Article 34(9) they inform the applicants when exchanges of information take place related to their personal data. However, in some Member States (e.g. FI, SE, MT, UK, CH) this may not happen at all times unless the information is relevant for the decision or a request is made by the applicant.

In cases of breaches in data protection the applicants may apply remedies as provided by the relevant national legislation which can take the form of appeals to challenge decisions (CY, DK, FI, SI) or complaints sent to the national authority dealing with data protection or other similar competent authorities (AT, BG, CZ, HR, LV, MT, PL, RO, LI, CH, NO).

8.2 Administrative arrangements

In order to facilitate the application of the Regulation, Article 36 allows Member States to **conclude bilateral agreements**, relating to (a) exchanges of liaison officers, and (b) simplification of the procedures and shortening of time limits.

The table below shows the concluded bilateral agreements between Member States. Some Member States (who may or may not have a bilateral arrangement) additionally also exchange liaison officers.

Table 8.1 Application of Article 36 in the Dublin procedure by Member States

| Member State | Bilateral agreement with | Exchange of liaison officers with |
|--------------|--|--|
| AT | BG, CZ, HU, IT, RO, SI, CH | BG, DE, EL, HU, IT, UK |
| BE | n/a | NL, DE |
| BG | AT, HU, RO | AT |
| CZ | AT | n/a |
| DE | n/a | BE, EL, FR, HU, IT, NL, PL, SE, UK |
| EE | LV | |
| EL | n/a | AT, DE |
| FR | IT, CH and an agreement is under negotiation with UK | DE, IT, CH and an agreement is under negotiation with UK |
| HR | SI | n/a |
| HU | AT, BG, RO, SI | AT, DE |
| NL | n/a | BE, DE, IT |
| IT | AT, FR, CH | AT, DE, FR, NL, SE, UK, CH, NO |
| LV | EE | n/a |
| PL | n/a | DE |
| RO | AT, BG, HU | n/a |
| SE | n/a | DE, IT |
| SI | AT, HR, HU | n/a |
| UK | n/a | AT, DE, IT |
| CH | AT, FR, IT, LI | FR, IT |
| LI | CH | n/a |
| NO | n/a | IT |

Source: EASO, 2014, 'Quality Matrix Report: Dublin Procedure' and ICF International stakeholder consultations

For example **Hungary** in its bilateral agreements with **Romania** and **Slovenia** has established dedicated border points for transfers; this simplifies the associated logistics and designates clear locations where the transfer takes place between Member States in the Dublin procedure.

Overall, Member States reported positively on the conclusion of such arrangements and argued that these add value for the implementation of the Regulation. In particular, Member States mentioned that they: facilitate transfers (AT, BG, HR, IT, NL, RO, SI, LI, CH), shorten the time limits to send/receive answers (AT, BG, EL, NL, RO, SI, LI, CH), and improve overall cooperation between Member States (AT, CZ, BG, DE, EE, EL, FR, IT, NL, RO, SI, UK, CH, NO).

When preparing or amending such bilateral arrangements several Member States (AT, BG, CZ, FR, HR, IT, RO, SI, LI, CH) reported that **the Commission is informed or consulted** by at least one of the Member States taking part in the agreement in line with the provisions of Article 36(3) of the Regulation.

8.3 Conciliation procedure

The Dublin III Regulation contains a **conciliation procedure** in Article 37 in order to solve any disputes that may arise between Member States when implementing the Regulation. **To date none of the Member States has used the conciliation procedure**, however there were instances when interest in this procedure was manifested. For example **Croatia** reached out

to the Dublin Contact Committee about applying this procedure, but they were informed that it is not commonly used, and therefore **Croatia** decided not to use it.

When Member States were asked why the procedure was not used, the Study Team received the following responses:

Box 8.1 Quotes from Member States explaining why the conciliation procedure has not been used in practice

'The procedure is too formal and slow in providing a quick solution' (CZ, RO, NL, CH).

'It can be counterproductive to have an open dispute between Member States' (NO).

'Disputes are resolved informally' (AT, BE, BG, DE, DK, EE, EL, FR, FI, HR, HU, NL, RO, SE, CH, IS, NO).

Instead, Member States prefer alternative ways to solve disputes when interpreting the Regulation, for example via: bilateral agreements (AT, BG, FR, HU, SI, NL, RO, UK, CH), liaison officers (BE, DE, IT, NL), informal contacts (AT, BE, BG, DE, DK, EE, EL, FI, FR, HR, HU, NL, RO, SE, UK, CH, IS, NO) and the Dublin Contact Committee (BE, CZ, FI, HR, CH).

8.4 Early Warning, Preparedness and Crisis Management system

In line with the terms of reference, this section reviews the reasons for the (non)implementation of Article 33 and examines the extent to which support provided by EASO can be considered de facto implementation of the Early Warning, Preparedness and Crisis Management System (EWM).

8.4.1 What is it for and how does it work?

The EWM, as stipulated in Article 33, aims to detect, at an early stage, deficiencies and/or situations of pressure in national asylum systems and ensure that plans are drawn up by the concerned Member State to avert any further deterioration in, or collapse of, the asylum system. Although often regarded as a solidarity mechanism, it was also developed out of a desire to prevent national systems deteriorating to such an extent that they would jeopardise application of the Dublin Regulation.

The mechanism involves two stages: i) preparedness, and ii) crisis management.

Under the preparedness phase, the EU can *request* Member States to draw up a 'preventive action plan', whereas under the crisis management phase (which concerns a more serious situation where an emerging problem has evolved into an actual 'crisis'), the EU can issue a *compulsory order* to the affected Member State to draw up a crisis management action plan within three months.

The Commission holds ultimate responsibility for triggering the mechanism, after consulting EASO who, on the basis of data collection and analysis on the situation of national asylum systems, can assist the Commission to make an informed decision⁵⁸. To this purpose, and linked to the EWM under Article 33, EASO has developed its own Early Warning and Preparedness System (EPS) under which it aims to collect accurate information on, and analyses of, the flows of asylum seekers into and within the EU, including Member States' capacity to manage them. Thus, EASO's EPS forms the information base for the EWM as foreseen under Article 33.

8.4.2 Application to date and reasons for its non-implementation

To date, the EWM has not been applied. However, research undertaken by ICF International in the context of the *Evaluation on the Temporary Protection Directive* indicates that since

⁵⁸ A mechanism for early warning, preparedness and crisis management in the Dublin area- Commission Services' Non-Paper, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/non-paper_art33_dublin_regulation_en.pdf, p. 1-2.

2013 several Member States have experienced significant pressure on their national asylum systems. This includes situations in e.g. **Bulgaria** (2013–2014), **Germany** (since 2013), **Greece** (since 2014), **Italy** (since 2014) and **the Netherlands** (since 2014). Whereas in some cases (notably DE, NL, SE) the national asylum systems were arguably able to cope with the pressure, the fact that several Member States had to suspend Dublin transfers towards certain Member States (following decisions of national and regional courts for a number of applicants⁵⁹) reveals that the conditions for triggering the EWM may have been present in certain cases. So, why has the mechanism not been applied to date?

First of all, some Member States (HR, NL, SI) simply argued that the conditions for triggering the mechanism prescribed in the article have not been fulfilled yet. However, the **legal conditions** and the **criteria** for the triggering of the mechanism **are open for interpretation**. For example, how to establish that ‘the application of this Regulation may be jeopardised’ and how to evidence the presence of ‘a substantiated risk of particular pressure being placed on a Member State’s asylum system and/or problems in the functioning of the asylum system of a Member State’. Although the non-paper on the EWM stipulates certain criteria to be taken into account (e.g. the relevance and severity of the problems as well as the *urgency* of the risk and the *vulnerability* of the affected national system) these in themselves also remain broad and undefined⁶⁰. Reaching political agreement on fulfilment of the legal conditions, or even on the *methodology* for monitoring national asylum systems and pressure, is a difficult task, especially as common indicators and necessary data is missing. As already mentioned, EASO plays an important role in the collection and analysis of data in order to assist the Commission to take an informed decision on whether the mechanism should be triggered or not. However, until recently, EASO’s collection of data under the EPS was in the set-up phase and included few quantitative indicators related to numbers of international protection applicants, pending cases, first instance decisions and withdrawn applications⁶¹. Crucially, the aim to feed in the EWM of the Regulation may require more varied criteria, indicators and data (i.e. related to the Member States reception system). Thus, the system as it stands now may in fact not be sufficiently advanced to be able to evidence the need for triggering the mechanism.

Secondly, several Member State authorities as well as NGOs and/or lawyers in some Member States (AT, CZ, DK, FR, IT, RO, SE, UK, CH, NO) also emphasised that **the triggering of the EWM raises a sensitive political issue** which, in their opinion, may have been another reason for its non-implementation. Two dimensions were highlighted: a) despite the aim of the EWM to assist Member States to overcome the deficiencies in their asylum systems, it could also be in a sense regarded by Member States as a public scolding and a policy of naming and shaming, and b) the implementation of such a mechanism could finally lead to the suspension of transfers to the concerned Member State, which is not a decision that other Member States would necessarily like. Following this rationale, some of the stakeholders involved may have been reluctant to trigger the implementation of the *official procedure*.

⁵⁹ *Tarakhel v Switzerland* App No 29217/12, European Court of Human Rights, 4 November 2014, *Abdullahi v Bundesasylamt*, C-394/12, Court of Justice of the European Union, 10 December 2013, *Puid v Germany*, C-4/11, Court of Justice of the European Union, 14 November 2013, *MA and Others v. SSHD*, C-648/11, Court of Justice of the European Union, 6 June 2013, *Halaf v. Bulgarian State Agency for Refugees*, C-528/11, Court of Justice of the European Union, 30 March 2013, *K v Austria*, C-245/11, Court of Justice of the European Union, 6 November 2012, *Kastrati v Sweden*, C-620/10, Court of Justice of the European Union, 3 May 2012, *N.S. v Secretary of State for the Home department. M.E. & others v Refugee Applications Commissioner*, joined cases C-411/10 and C-493/10, Court of Justice of the European Union, 21 December 2011, *M.S.S. v Belgium and Greece*, Grand Chamber, European Court of Human Rights, 21 January 2011, et.c. Transfers to Bulgaria have already been suspended by several EU States in the face of systemic deficiencies in the country’s asylum system, following UNHCR’s Observations for Bulgaria as a country of asylum.

⁶⁰ In order to specify the right momentum to trigger the mechanisms of Article 33, certain criteria should be taken into consideration such as the *relevance* of the problems identified in an asylum system (quality of asylum decisions, reception capacity and conditions, arbitrary detention, conditions of detention, length and access to asylum procedure, due process guarantees et.c), the *severity* of the problems (duration, number of applicants affected et.c), the *urgency* of the risk and the *vulnerability* of the affected national system.

⁶¹ EASO Annual report, 2014, p. 27, <https://easo.europa.eu/wp-content/uploads/EASO-Annual-Report-20142.pdf>.

Thirdly, some Member States (BE, CY, DE, ES) also noted, as a reason for not yet having triggered the EWM, that the **activation procedure is long and complicated**, and that it would therefore not be evident how it would assist Member States in cases of urgent crisis. Some civil society organisations, in this regard, referred to an apparent reluctance of Member States to try a new procedure as measures and consequences of its activation cannot be foreseen.

Finally, as argued by one Member State who was in a situation of pressure in 2014, alternative support measures (notably internal responses as well as EU-level support) sufficed in relieving the pressure and therefore obviated the need to trigger another scheme of action plan and monitoring under Article 33. According to the same source, it would seem more appropriate to consider invoking Article 33, when a Member State is less self-aware of a situation of pressure. In such a context, it was argued, that an institutional prompt in the form of Article 33 would be helpful. In other words, although the application of the mechanism remains politically sensitive, in these cases, it could also be its added value compared to other forms of assistance.

8.4.3 What happened in the absence of the activation of the EWM? Can EASO support be considered as de facto implementation of the EWM?

In the absence of the activation of the EWM, EASO assisted several Member States⁶² to deal with urgent and specific needs or more chronic and varied deficiencies of their asylum system. For example, following the decision of the ECtHR of *MSS v. Belgium and Greece* which resulted in the suspension of all Dublin transfers, EASO has provided emergency operational support to **Greece** since April 2011. A Special Support Plan is still ongoing until May 2016 to assist the **Greek** authorities with the establishment of a new asylum service, first reception service, appeals authority, reception of vulnerable persons, reduction of the pending cases of international protection, in particular at second instance and capacity building in absorption of EU funds⁶³. Similarly, but to a lesser extent, EASO has also provided technical and operational

⁶² Bulgaria, Cyprus, Italy, Greece, Luxembourg, Sweden. See: <https://easo.europa.eu/asylum-documentation/easo-publication-and-documentation/>

⁶³ EASO Annual General Report, 2014, p. 18-19, <https://easo.europa.eu/wp-content/uploads/BZAD15001ENN.pdf>, EASO Operating Plan I, <https://easo.europa.eu/wp-content/uploads/20110401-EASO-OPI-Greece.pdf>, its first amendment <https://easo.europa.eu/wp-content/uploads/20110926-EASO-OPI-Greece-Amendment-no-1.pdf>, its second amendment <https://easo.europa.eu/wp-content/uploads/20121113-EASO-OPI-Greece-Amendment-no-2.pdf>, EASO Operating Plan II, <https://easo.europa.eu/wp-content/uploads/EASO-OP-II-Greece.pdf> and its amendment <https://easo.europa.eu/wp-content/uploads/20110926-EASO-OPI-Greece-Amendment-no-1.pdf> and Special Support Plan to Greece, https://easo.europa.eu/wp-content/uploads/EASO_SPECIAL-SUPPORT-PLAN-TO-GREECE_MAY_2015.pdf.

assistance to improve the asylum and reception system in **Bulgaria**⁶⁴, **Cyprus**⁶⁵ and **Italy**⁶⁶, since June 2013.

Particularly in the case of **Greece** and **Bulgaria** (as both Member States were confronted with an urgent situation because of deficiencies in their asylum and reception systems and an influx increase), EASO's support varied extensively and covered several fields of the asylum and reception system. Its support therefore had the form and aim to manage the crises in both of these Member States. In this regard, support provided by EASO can in certain cases be considered as a de facto replacement of the activation of the EWM, either to prevent (IT, CY) or to manage crises (BG, EL) in the field of international protection. This argument was also highlighted by some Member States (AT, DK, ES, FI, HR, SI).

⁶⁴ In the framework of the EASO Operating Plan for Bulgaria, EASO provided technical and operational assistance to Bulgaria until the end of September 2014. The Plan comprised of measures of operational, institutional and horizontal support and aimed at helping Bulgaria to cope with the increase in the influx of applicants, while at the same time improving and strengthening the Bulgarian asylum and reception system, in the context of the implementation of the instruments of the CEAS. EASO Annual General Report, 2014, p. 19, <https://easo.europa.eu/wp-content/uploads/BZAD15001ENN.pdf>, EASO, Operating Plan, Bulgaria, <https://easo.europa.eu/wp-content/uploads/Operating-Plan-Bulgaria-SIGNED.pdf>. From December 2014 to June 2016, a Special Support Plan is implemented and builds on the results of the evaluation of the EASO Operating Plan to Bulgaria with the aim to enhance its reception and asylum system, EASO Annual General Report, 2014, p. 17, <https://easo.europa.eu/wp-content/uploads/BZAD15001ENN.pdf>, EASO, Special Support Plan for Bulgaria, <https://easo.europa.eu/wp-content/uploads/SSP-BG-2014-12-03.pdf>.

⁶⁵ Special Support Plan for Cyprus started in July 2014 with the support measures in the field of reception and open accommodation. A needs assessment relating to the operation and management of the Reception Centre for applicants for international protection in Kofinou was conducted and standard operating procedures for the expanded Centre were drafted by EASO experts, with suggestions on the structure, operation and management of the Centre. EASO also assisted to the development, implementation of relevant methodology and training in the field of age assessment. EASO Annual General Report, 2014, p. 16 <https://easo.europa.eu/wp-content/uploads/BZAD15001ENN.pdf>, Special Support Plan for Cyprus, <https://easo.europa.eu/wp-content/uploads/EASO-CY-OP.pdf>.

⁶⁶ On the basis of a Special Support Plan, EASO provided technical and operational support to Italy and worked together on a number of prioritised areas, such as data collection and analysis, Country of Origin Information (COI), Dublin system, reception system, emergency capacity, and training of independent judiciary. EASO Annual General Report, 2014, p. 16 <https://easo.europa.eu/wp-content/uploads/BZAD15001ENN.pdf>, and EASO, Special Support Plan for Italy, <https://easo.europa.eu/wp-content/uploads/EASO-SPP-Italy-ELECTR-SIGNED.pdf>.